

ADDIS ABABA UNIVERSITY
COLLEGE OF
LAW AND GOVERNANCE STUDIES CENTER FOR
HUMAN RIGHTS

**INCREASING SUBMISSIONS OF HUMAN RIGHTS VIOLATION
COMPLAINTS BEFORE THE FEDERAL COUNCIL OF
CONSTITUTIONAL INQUIRY: ISSUES RELATED TO 'TRIGGERS'**

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September, 2018

Addis Ababa

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Declaration

I, **Frehiwot Ararsa**, hereby declare that this thesis is original and the result of my own work and has never been submitted to any other institutions. I also declare that any secondary sources or materials used in this thesis have been duly acknowledged.

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List of Acronyms

FDRE	Federal Democratic Republic of Ethiopia
FDRE Constitution	Federal Democratic Republic of Ethiopian Constitution
PDRE	People Democratic Republic of Ethiopia
HoF	House of Federation
CCI	Constitutional Inquiry of the Federal Democratic Republic of Ethiopia
UDHR	Universal Declaration of Human Rights
UN	United Nations
NGO	Nongovernmental Organization
CCI Proclamation	Council of Constitutional Inquiry Proclamation No. 798/2013
E.C	Ethiopian Calendar

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Abstract

This thesis is explored the triggering grounds behind the increment of human right violations complaints before the Council of Constitutional Inquiry. The study thus, tray to find the triggering ground behind the increment. By using qualitative methodology, it analyzed both primary and secondary sources of data. The primary sources include in-depth interview with individual complaints, attorneys, the members and legal experts of the Council. As a secondary source, analysis of cases files and cases flow summary report of the Council are examined. Finally, the overall finding of the study shows that, the reasons that trigger the increment of human rights violation complaints can be categorized in to three. The first describes the disposition of complaints that trigger to submit their allegation of human rights violation to the Council. The second triggering ground is related to the particular reasons related with the most increasing specific human rights complaints. And the third is reasons associated with the Council that contributes for increment. Concerning the disposition of the complainant, misunderstanding on constitutional interpretation and the mandate and function of the Council found out to be the major triggering factor for the increment. Moreover, complainant perspective toward the justices system contributes for the increment. Concerning issues related with the subject matter; focusing on property related right complaints, it is found out that the normative and process related issues and the nature of the right itself triggers the increment. As pulling triggering grounds accessibly of the Council in terms of cost, procedure, and place are found out as a reason for the increment. The increment is affecting the Council since clearly inadmissible cases are taking the time of the Council. Due to this application which have clear constitutional cause of action are not entertained within the appropriate time. Therefore, based on the finding it is concluded that the Council needs to device a schemes to curb this case load.

Key Words; CCI, Constitutional Interpretation, Triggering Grounds, Increasing Submissions of Human Rights Violation Complaints

Chapter one

1. Background of the Study

Constitution is a reflection of the aspirations of the society and the means to ascertain rule of law by affirming the structures and processes of government, entrenched principles of the state and the fundamental rights of citizens.¹ Customarily, to serve for longer periods of time and to accommodate the dynamic nature of the society, the provisions of the Constitution are stated vaguely. Hence, for full realizations of the constitutional normative standards, constitutional states employ different constitutional interpretation modalities.² Constitutional interpretation is ultimately intended to uphold the will of the people by standing in fundamental blocs of interests and values of a given society that has been formulated into the Constitutional provisions.³ The concept of constitutional interpretation denotes the review of constitutionality of laws, actions and practice of the state apparatus that may contravene the Constitution.⁴ This may arise when legislations and practices, are in conflict with provisions of the Constitution and its preamble or when there is gap or vagueness in the provisions of the Constitution. Thus, effective constitutional interpretation mechanisms serve for the realization of human rights, supremacy of the Constitution and rule of law.

The subject matter of constitutional interpretation comes forward for the first time in the history of adjudication in 1803 when the American Supreme Court entertained the *Marbury vs Madison* case.⁵ The decision, *inter alia*, set a precedent that the Supreme Court has the power to review acts of Congress, principles and usages of law, court decisions, act of persons who hold office and determine whether they are unconstitutional and void.⁶ After this time, the modalities of

¹ Elliot Bulmer “what is a Constitution? Principles and concepts”, International Institute for Democracy and Electoral Assistance, Sweden, 2017, p2

² Seleshi Zeyohannes, "Constitutional Law II", Ethiopian Justice and Legal Systems Research Institution, 2009 p12

³ *Ibid*

⁴ Getachew Assefa “Ethiopian Constitutional Law with Comparative Notes and Materials” School of law, Addis Ababa University, Addis Ababa, September 2012 A textbook , p 509

⁵ William W. Van Alstyne, "A critical guide to *Marbury and Madison* case", Duke law journal, January 1969, p16

⁶ *Ibid*

constitutional interpretations have been evolved through the legislative acts, political conventions and judicial decisions.⁷ From different approaches that have been followed by the states, the centralized and decentralized are the major ones.⁸ In the decentralized model ordinary courts have the mandate to interpret the Constitution or it is made equivalent with adjudication. Countries like United States of America, Denmark, Brazil and India apply this model.⁹ In the centralized model, constitutional interpretation is handled by a special constitutional interpreter, courts that have a distinctive jurisdiction or through political representations. The model is the contribution of the socialist legal philosophy since it emerged from the former USSR¹⁰ and currently applicable in South Africa, Germany, Spain, Russia and Italy.¹¹ Departed from the dominant constitutional interpretation approaches, countries like Switzerland made constitutional interpretation through referendum. Ethiopia also has a unique model since, the 1995 Constitution of Ethiopia entrusts the power to interpret the Constitution to the House of Federation (HoF) which is a political body.¹²

Historically, Ethiopia has adopted its written Constitutions within different political frameworks starting from the *Haile Selassie* regime in 1931.¹³ Prior to the enactment of this Constitution, customary laws and conventions that embraced legal, spiritual and secular values governed the relationship between state and its subjects.¹⁴ The 1931 Constitution was taken as a modest step to modernize the state administration.¹⁵ The revised 1955 Constitution even though it made no change in the prerogative of the emperor; it has made progress in incorporating human rights clauses in chapter three of the Constitution. The 1987 Constitution of the People's Democratic Republic of Ethiopia, which was endowed with socialist legal philosophy, declared that the power

⁷ *Supra note 1*, p26

⁸ *Supra note 4*

⁹ *Ibid*

¹⁰ Christopher Osakwe "The theories and realities of modern Soviet constitutional law: An analysis of the 1977 USSR Constitution" (undated) p21 & 68

¹¹ *Supra note 4*

¹² Getahun Kassa, "Mechanisms of constitutional control: a preliminary observation of the Ethiopian system", *Afrika Focus*, 2007, p75

¹³ Proclamation Promulgating The Imperial Constitutions Of The Empire Of Ethiopia, July 16, 1931

¹⁴ Aberra Jembere "An introduction to the Legal History of Ethiopia (1434-1974)" Shama Books; Printed by Master Printing P.L.C Addis Ababa, Ethiopia, 2012, p183

¹⁵ *Ibid* p165

belongs to the working people.¹⁶ The Constitution¹⁷ gives the mandate to interpret the Constitution to the State Council (*Shengo*) which is the highest organ on the state. The 1995 Federal Democratic Republic of Ethiopia Constitution envisages a wide range of human rights provisions and democratic state structure.¹⁸ Article 62(1) of the Constitution provides that, the power to interpret the Constitution is vested in the HoF. The constitutional assembly minutes proves the rationales for this constitutional endorsement.¹⁹ It claims that, the Constitution is a political contract made by nations' nationalities and people of Ethiopia, thus, the ultimate interpreter should be themselves and it also states that interpretation of the Constitution is the manifestation of their self-determination. The minute states that

"...Since the Constitution is a political contract, whenever contention arise, between nations nationalities and peoples and issues of self-determination is arises the ultimate interpreter should not be the court rather the Council of constitutional inquiry which is under the HoF. Thus, the Council will be established with a mandate to conduct constitutional investigate and to give recommendation to the House of Federation".²⁰

The Constitution, establishes the Council of the Constitutional Inquiry (CCI) with a mandate to receive and investigate constitutional issues before the case proceeds to the House of Federation.²¹ Persons with vested interest claiming any laws, customary practices, decision of government organs and office, are unconstitutional can submit their compliant in writing to the Council.²² The Council is expected to either submit its recommendations to the House of Federation or remand the case and render a decision if it finds there is no need for constitutional interpretation.²³

¹⁶ The Constitution of the People's Democratic Republic of Ethiopia, 1987, Article 3(1) and Article 8.

¹⁷ *Ibid*, Article 63

¹⁸ Chapter 3 of Federal Democratic Republic Ethiopian Constitution of 1995

¹⁹ የኢትዮጵያ ሕገመንግስት ጉባዔ፣ ቃለ ጉባኤ ጥራዝ 5፣ ሕዳር 21-24 1987 ዓ.ም አዲስ አበባ፣ ገጽ 11

²⁰ *Ibid*

²¹ “Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia”, “Proclamation No. 1/1995” Article 84(1).

²² Council of Constitutional Inquiry Proclamation, "Proclamation No. 798/2013", August 2013, Article 1.

²³ *Ibid*;

Within the past three years, the cases submitted before the Council is increasing. Even though this fact possibly has an effect on the efficiency of the council's time and quality of ability, there is no study conducted on what are the 'triggering' reasons for the increment.

2. Statement of the Problem

Constitutional Interpretation is one of the essential tools in guarding the infringement of human rights.²⁴ For the protection of fundamental rights and freedoms incorporated in the Constitution, apart from normative standards, the existence of strong and competent institutions to protect and enforce these rights is indispensable.²⁵ One of the most crucial institutions in this regard is the organ that interprets the Constitution. According to Article 84 of FDRE Constitution, the CCI is mandated to investigate constitutional dispute up on consideration of the case, find it necessary, interpret the Constitution and present its findings and recommendations thereon to the HoF.

According to Article 4 of proclamation No 798/2013, Courts or interested parties who deem constitutional interpretation necessary, can submit their application to the Council with subsequent procedural requirements. After examining the application, the Council may reject the application and notify same in writing to the applicant or submit its recommendation to the HoF together with related information and documents, if it believes there is a need for constitutional interpretation.²⁶ Dissatisfied parties by the decision of the Council have the right to appeal to the HoF. However, significant number²⁷ of recommendation and findings given by the Council are accepted by the HoF.²⁸ This indicates that, the Council's investigation stage is the most decisive stage in the constitutional interpretation process. Thus, identifying and addressing problems that

²⁴Adem kassie Abebe, "The potential role of constitutional review in the realization of human rights in Ethiopia", University of Pretoria, 26 October 2012, p32

²⁵Chi Mgbako, "Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights", Fordham International Law Journal, 2008, p 261

²⁶FDRE Constitution, Article 13

²⁷According to the internal cases flow summary report of the Council except two cases all the recommendation given is accepted by the House. (The case review internal report is made by the case flow directorate of the Council in 2010 and the review is made from 2000-2010 E.C)

²⁸በኢ.ፌ.ዴ.ሪ ሕገ መንግስት አጣሪ ጉባኤ የጉዳዮች ፍሰት አስተዳደር ዳይሬክቶሬት (የመዝገብ-በዛት-ማጠቃለያ)፣ (ከመዝገብ-ቁጥር001-2396/09)፣ (from 2000-2010 E.C) 2010 ዓ.ም.

the Council experiences in its function and factors affecting its performance are significant so as to improve the constitutional interpretation practices.

Starting from the year 2007 E.C, submission of compliant is increasing. During the first five years following establishment of the CCI a maximum of 143 cases were being submitted annually.²⁹ However, in the past three years the case flow is regularly increasing.³⁰ In the year 2015/16, 389 cases were submitted out of which 305 were rejected and 13 accepted for constitutional interpretation.³¹ In the year 2016/17, 572 cases were submitted. The Council has investigated only 28 cases so far where it accepted 1 and rejected 27 of it. The remaining 544 are still pending. In the first quarter of 2017/2018 (between July 2017 to October 2017), around 192 cases were submitted and none of them are entertained.³² According to the expertise of the Council, from the submitted cases most of the complaints do not have a constitutional issue and do not have causes of action. According to the Council report³³, from the total complaints, human rights related complaint accounts 98%.³⁴ Practically, the members of the Council meet every month and consider around 10 cases and annually, they dispose a maximum of 150 cases.³⁵ Taking into account the number of the case submitted annually, it can be understood that the case disposal is inconsiderable. In spite of the increment, the Council did not create a case load management scheme thus, to determine one case; it takes more than two years.³⁶

If the case flow continues in the same manner; effectiveness and focus of the Council will be obstructed and in a way insignificant cases will consume the time of the Council, and critical rights violation will be set aside. Countries like Germany and South Africa's constitutional court experience demonstrates that the increment of complaint submission by itself might not be a problem so long as it is based on clear right violations, the contested issue is recognized under the Constitution and the institution is at capacity to entertain the case. However in Ethiopia,

²⁹*Ibid*

³⁰*Ibid*

³¹*Ibid*

³² *Ibid*

³³*Ibid*

³⁴*Ibid,*

³⁵*Ibid*

³⁶*Ibid*

considering the meeting period of the Council, the non-permanent employment of its members³⁷, the structure of the CCI, and especially the case load and other problems those which do not have merit can create inconvenience. These lead to the delay on entertainment of cases which have constitutional issue and have clear cause of action.

As grounds for these problems, the constitutional delegation of the power of constitutional interpretation, absence of application procedure for constitutional interpretation, its structural problems and mode of interpretations are addressed by different researches and studies.³⁸ However, while the rate of the increment is intensified for the past three years, factors like the triggering grounds behind the increment of the submission are not studied. If the triggering grounds are not identified, complaints that do not have cause of action and clearly inadmissible cases will take time of the Council as a result of this claims which have clear cause of action will not be entertained in due time. Hence, searching the pattern and merit of the increment, and the irregularity behind the triggering ground helps to identify why complaints bring cases, assist to device a scheme to curb the case load, enhance quality of deliberation and put on the Council's focus on solving human rights infringements in the ground. Thus, this proposed research aspires mainly to explore the triggering grounds for the increment of human rights complaints. To do this, the researcher will carry out informant analysis and use it to propose possible solutions. For the purpose of the research, the triggering grounds are practical reasons other than the legally specified avenues that trigger constitutional disputes.

³⁷Article 15 of proclamation No 798/2013, member of the council are the President and vice of the Federal Supreme Court, six legal experts appointed by the President of the Republic on recommendation by the House of Peoples' Representatives, and three persons designated by the House of the Federation from among its members.

³⁸For instance Article by Assefa Fesseha "Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HoF), Adeam Kassea's, research on "The potential role of Constitutional review in the realization of human rights in Ethiopia and Getahun Kassa's Article "mechanisms of constitutional control: a preliminary observation of the Ethiopian system" can be mentioned. In these articles, problems such as the council are the constitutional delegation of the power of constitutional interpretation, and modes of interpretations are addressed.

3. Objective of the study

3.1.1 General Objective of the Study

The overall objective of this research is to identify the irregularity of triggering grounds behind the increment of human rights violation complaints of the Council of Constitutional Inquiry and to contribute for the improvement of the practice.

3.1.2. Specific Objective of the Study

1. Identify the reasons that trigger complainants to submit allegation of human rights violation to the CCI.
2. Identify which human rights complaints are frequently complaint with and the particular reasons related with the most increasing specific human rights complaints.
3. Identify the triggering reasons associated with the Council.

4. Research Questions

1. What triggers complainants to submit human rights violation complaints before the CCI?
2. Which type of human right complaints are the most frequently complaint with? What are the particular reasons in relation to the subject matter of this right?
3. What reasons are associated with the Council to trigger the increment?

5. Significance of the study

The research by identifying the main triggering grounds for the increment of complaints, it tries to contribute for improvement of the constitutional interpretation practice of the country. Identifying the reasons for the increment will assist to know how and where clearly inadmissible cases are coming. This enables the Council to focus on investigating cases which have clear cause of action. Moreover, it will help the Council to device a scheme to curb the case load, enhance quality of deliberation and most importantly put on the Council's focus on solving human rights complaints which have clear cause of action.

6. Research Methodology

The research is aimed at exploring the triggering grounds that leads to the increment of submissions of human rights violation complaints before the Council of Constitution Inquiry, thus, it can be identified as an explorative research. Since, the research drives the required knowledge from the actual experience of respondent by measuring the phenomena rather than the theory it can be identified as empirical research. It is mainly designed to reveal a complainant's disposition and the reason that drive for the increment thus; it can be identified as qualitative research. The research is proposed to search the reason for the increment, thus, qualitative methods are the best method for researching many of the why and how the increment is happening. Thus, the qualitative feature of the study aims to substantiate and elaborate qualitative findings. Based on this methodology, the sampling and the scientific data collection is made as follows.

6.1. Sampling Technique

For the purpose of the research, purposive and snow ball sampling techniques are employed. Purposive sampling is selected because it is the best method to search the reasons for the increment. “This type of sampling can be very useful in situations when it is needed to reach a targeted sample quickly, and where sampling for proportionality is not the main concern”.³⁹ For the purpose of achieving the intended objective of the research, the experience and the knowledge of the informants are the main concern. Thus, using purposive sampling method was effective in achieving the objective of the research.

According to the preliminary investigation in the Council, there are around 2046 pending case⁴⁰ by March 2018. Considering the time it takes and the limited capacity of the researcher, it was infeasible to reach to these individual complainants. Thus, individual complaints are selected based on purposive sampling method. Consequently, applicants are selected purposively based on the suggestion made by the Council's experts⁴¹ as it is the best way to gain the required knowledge than selecting the complaints randomly. Based on the suggestion, 8 complainants out of 15 are selected mainly based on the time their case is stayed in the proceedings and those who came frequently to check the status of their case. This is because it is deemed they have a relatively better understanding for the required data. The remaining complainants are selected from new opening cases randomly. Additional to individual applicants, attorneys who brought cases frequently are selected purposively based on their frequency in handling different cases before the Council.

³⁹ Ashley Crossman, “Understanding purposive sampling”, accessed at, <https://www.thoughtco.com/purposive-sampling-3026727>, 2018, last visited, March 12, 2018

⁴⁰ Supra 27

⁴¹ Interview with KebebeTadese, Special assistance to the Council members and general secretaries, interviewed at the office of the CCI, 20 March 2018, and Ms.Rahel Berehanu, Directorate Director in the case flow management directorate, March 2018. The discussion was about the selection of compliant, and they suggest in order to get the required information correctly the complaints should be selected on their stay in the proceedings and those who came frequently to check the status of their case.

To know the irregularity of the triggering grounds behind the increment, considering the experience and knowledge for the issue, legal experts, and member of the Council's, and Supreme Court judges are selected combining purposive sampling and snowball method. Legal experts of the Council are selected based on the experience they had in the Council and their related educational background. Considering the number of the Council's member it can be possible to interview the whole population, however, they were inaccessible due to another official duty. Thus, the selected members are purposively nominated based on their experience and availability.

6.2. Methods of Data Collection

To achieve the objective of the study, by applying a qualitative research method, both a primary and secondary sources are used to collect the required data. The following is a brief description of data collection methods used to gather information from primary and secondary sources.

6.2.1 In-Depth Interview and Cases Files Examination

In-depth interview was conducted as a primary source with key informants; from the member of the Council, legal experts, attorneys, and individual complaints. *'In-depth interviewing is a qualitative research technique that involves conducting intensive individual interviews with a small number of respondents to explore their perspectives on a particular idea, program, or situation'*⁴² Thus, for this particular research it helps to explore interviewees' perspective for the increment and to find the triggering grounds. The Interview was based on unstructured questions because it is the best way to develop a real sense of the respondents understanding of the situation.

For the purpose of determining the pattern of the increment and the rejection rate, the Councils' cases files were examined. An examination of the Council's decision files was essentially rests

⁴²Carolyn Boyce, "A Guide for Designing and Conducting In-Depth Interviews for Evaluation Input" Pathfinder international, May 2006, p 3

on the reviling cases. By identifying the year that the increments start to ascend, cases are examined based on purposive sampling.

6.2.2. Desk Review

As a secondary resource, literatures are reviewed from countries' experience in related issues to demonstrate illustrative recommendations on best practices and mechanisms to improve the practice of the system. Since Ethiopian's constitutional interpretation model by the HoF is unique, it is unlikely to find the same countries that follow this model. For this reason, the selection rests on countries who have a distinctive constitutional interpreter and who have best practices. Accordingly, experience of Constitutional Court of Germany and South Africa were reviewed.

Generally, the analysis rests on relevant concept, legislations and mode of constitutional interpretation of countries. Additionally, it considers books, journals, and scholarly articles as a secondary source.

6.3. Ethical Consideration

The research by following qualitative method, it conduct interview with 15 complainants, 5 attorney, 9 member and expert of the Council totally 29 respondent were interviewed. In the courses of conducting this research, the researcher tried her best to avoid unnecessary biases and ensure the objective analysis and interpretation of the collected data consider the rights, needs, values and desire of respondents. Informants were also provided with detailed explanation about the overall objective of the study ahead of time. Interview was administered on free will of interviews. Respondents were informed that they can decline if they don't want to be interviewed. Moreover, informant was assures about the confidentiality of information they gave.

7. Scope of the Study

This study is basically concerned with exploring the triggering grounds of submission of human rights complaints before the Council of Constitutional Inquiry. For this reason, it gives particular emphasis to the submission of complaints before the Council hence; exclude complaints submitted directly to the House of Federations. Moreover, the case file review is limited to March 2018 due to resource constraint to address the entire case flow of the Council.

8. Organizations of the Study

The research is organized in four chapters. In the first chapter which is the proposal contains the background of the study, the statement of the problems, research questions, objectives of the research, the methodology, scope of the study, and the significance of the study has been discussed. In the second chapter of the study, literature is reviewed in relation to the subject matter of the study. In the chapter mainly the conceptual framework of the constitutional interpretation and its role in human right protection is reviewed. In relation to these mainly, the concept of constitutional interpretation, triggering grounds for the interpretation, models of constitutional interpretation, constitutional review organs, the role of constitutional interpretation on protection of human rights and the Ethiopian constitutional interpretation system with a special focus on the CCI has been discussed along with the experience with Germany and South Africa. In chapter three the analysis rest upon data collected from the key informants. Based on the data, mainly the triggering grounds are discussed in related with complaints, the subject matter of the submitted cases and related with the Council. In chapter four conclusion and recommendations is made based on the findings of the study.

Chapter Two

2.The Conceptual and Institutional Framework of the Constitutional Interpretation and its role in Human Right Protection

2.2. The Concept of Constitutional Interpretation

The concept and nature of Constitution are among reasons that necessitate constitutional interpretation. The Constitution incorporates core values, fundamental political and legal principles that play a foremost role in the process of building a nation-state. As a supreme political and a legal document, it defines powers and responsibility of the state, the relationship between state and its subject, and legitimatizes the authority of the government⁴³. It also serves as the regulator of the fundamental economic, social and political relations within the state and can incorporate the basic rights and freedoms of the citizens.⁴⁴ It delineates the principal function of political institutions, and the procedural boundaries that preside over the relationships between different political actors.⁴⁵The effect of its nature of supremacy makes any laws and practices null and void when it contravenes the constitutional provisions.

Constitution as a fundamental law of the state is usually intended to serve for longer period of time. For this aspiration, its provisions are stated in vague appearance. This may lead to the subjectivity of understanding of constitutional provisions and difference in interpretations. Thus, it's significant to know and understand exact meanings and intentions of the legislator, to

⁴³Blerton Sinani, "A Critical-Legal Overview of the Concept of Constitution as the Highest Legal-Political Act Of the State In The Light Of Constitutional-Juridical Doctrine, Faculty of Law of the South East European University (undated), p244

⁴⁴accessed at <http://www.theartofgoodgovernment.org/constitution.html#1>(last visited January 30/2018)

⁴⁵ *Supra note 43, P4.*

examine and interpret the words of the document and ascertain its core values, principles and meanings.⁴⁶This necessitates constitutional interpretation. Constitutional Interpretation denotes the ascertainment or determination of the meaning of constitutional provisions and used as a main tool to ascertain constitutional order and justice.⁴⁷

The notion of constitutional interpretation can be categorized in line with its goal and objective⁴⁸and it denote different processes.⁴⁹In some aspect, it indicates the procedure of determining the meaning of the Constitution, revealing or clarifying and constructing the authentic meaning of the text.⁵⁰In such a way it signifies the finding of the intentions of the drafters corresponding with changing circumstances and altered values. Conventionally speaking, the interpretation essentially has to be done by the authoritative organ of the state.⁵¹For Originalist⁵²written Constitution is a precondition of constitutional interpretation. The rationale they state is " *if no written text is given a specific status (primacy), there would be no need and no possibility for any organ, whether the Parliament or a court, to distinguish between legal and constitutional matters and thus to review the former using the latter as the standard, which could lead to the annulment of ordinary laws.*"⁵³They believe such a Constitution has a supremacy over any normative acts and laws of the country.⁵⁴

⁴⁶ Walther Sinnott-Armstrong Susan J. Barison, "The philosophical introduction to constitutional interpretation", (undated), p122

⁴⁷ Adem Kassie Abebe, "Human Rights under the Ethiopian Constitution: a descriptive overview", Mizan Law Review Vol. 5 No.1, 2011, P46

⁴⁸ Dejonghe Matthias, "Model of constitutional review Constitutional Courts: Democracy vs. Juristocracy?:" Faculty of Law Ghent University, 2014/ 2015, p 2

⁴⁹ *Ibid*

⁵⁰ TerranceSadalow, "Constitutional interpretation Legal memorandum", University of Michigan Law School, January 2013, p45

⁵¹ Houses of the Imperial Parliament "The Union of South Africa South Africa Act", May 1909, Article VI 95

⁵² Originalism theory Advocates that the Constitutional interpretation should be based on finding the original public meaning that it would have had at the time that it develop in to law. Stevine G. Calaberesi "the originalism in constitutional interpretation. Accessed at <https://constitutioncenter.org/interactive-constitution/white-pages/on-originalism-in-constitutional-interpretation>, last visited on April 19, 2018.

⁵³ Gagik Harutyunyan, Ms. Angelika Nussberger, and Mr. Peter Paczolay "Study on individual access to constitutional justice" European commission for democracy through law, Venice Commission, Strasbourg, 27 January 2011, p85.

⁵⁴ *Ibid.*

Constitutional interpretation is generally activated by an abstract review, concrete review and the individual constitutional complaint.⁵⁵ The abstract review or ‘preventive review’ initiated pre enforcement of legislation or before the promulgation of laws. Constitutional interpretation took place prior to the promulgation of laws (*priori review*) when the adjudicator has an authority to interpret prior to the promulgation of laws and examines the constitutionality of the law before it came into force. For instance, The Constitutional court of Germany has the power for prior review.⁵⁶ The foremost rationale for *priori review* is it deemed necessary to reduce prospective constitutional violations. On the other hand, a concrete review is instigated when referred by the courts in the course of normal litigation. Concrete review can be applicable when actual contention arises after the enactment of legislations (*posteriori review*).⁵⁷ According to Katherine Glenn, the most applicable review is the *posteriori review* by which the constitutionality of laws is examined after they come into force.⁵⁸ There are different constitutional interpretation theories, principles and models.

The accepted constitutional interpretation theories can be mainly categorized as descriptive or prescriptive.⁵⁹ The descriptive theory stipulates that the interpreter should focus on finding the meaning of the Constitution, the intention of the legislator, the precedent set by previous decisions and values of the judgment. Based on this there are different sub theories of constitutional interpretation, which continuously evolve and include numerous sub-theories. The major are Originalism, pragmatism, and natural law theory.⁶⁰ Originalism theory advocates that the interpretation should essentially focus on finding the original meaning of the Constitution and exploring the intention of the legislator. The theory is criticized for the reason that it discards the idea that constitutional interpretation in accordance with contemporary meanings, values or understandings.⁶¹ Pragmatism, on the other hand, emphasizes that the interpreters’ role in the

⁵⁵Katherine Glenn Bass and Sujit Choudhry "Constitutional review in new Democracies", Democracy Reporting International, *September 2013*, P8.

⁵⁶ The Federal Constitutional Court Of Germany Website http://www.bundesverfassungsgericht.de/EN/Das-Gericht/Aufgaben/aufgaben_node.html/ last visited on February 12/2018

⁵⁷*Supra note 55*, p8.

⁵⁸*Ibid*

⁵⁹Keith E. Whittington, "Originalism within the Living Constitution", American constitution society for law and policy", July 2007, p2.

⁶⁰Dejonghe Matthias, "A Theory of Delegation "Constitutional Courts: Democracy vs. Juristocracy?:" Faculty of Law Ghent University, 2014/ 2015, p28

⁶¹Jeffrey Goldsworthy, "Constitutional Interpretation: Originalism" Monash University, 2009, p2.

process and conveys the philosophy that there is no constitutional meaning apart from the interpretation given by the institutions that enforce and adjudicate the constitution. Natural law theory demands that the constitutional interpretation should be based on an unwritten moral code or “higher law,” such as equality, human rights, and privacy.⁶²

Based on this theory of interpretation, there are accepted constitutional interpretation principles. The textual interpretation model endorses that the interpreter needs to focus on the statutory provisions of the Constitution or on what the law basically asserts. The plain meaning of text principle requires that the interpreter should mainly focus on the literal meaning of the provisions and may also consider the technical meaning of the term which is applicable in Kenyan⁶³ constitutional Court. The second principle focuses on finding the intention of the legislator. In this principle, interpretation should be made as to search the intent of the drafter, which is reflected in the history of drafting and adopting the law. When state interprets its Constitution based on past interpretations format of the Constitution, the principle it applies is the history and prior case interpretations principle. In this principle, interpretation takes into account circumstances which gave rise to the adoption of the Constitution.⁶⁴ For instance, in the South African constitutional court, *the interpretation takes place in matters that stand in a logical relationship to those matters that are primary.*⁶⁵ In underlining principle model, the interpreter needs to interpret the Constitution as one consistent document to maintain its regularity. States that apply the principle of Constitution as a structural document, consider interpretation as a tool to promote harmonious and effective relationship among the different government bodies and regions. On the other hand, it urges that the interpretation to be based on the intention of the legislator.⁶⁶

⁶² *Ibid*

⁶³ MuthomiThiankolu, "The Constitutional Review Cases: Emerging Issues in Kenyan Jurisprudence" Nairobi, October 2006, P28

⁶⁴ *Ibid*

⁶⁵ Constitutional Court Of South Africa, accessed at <http://saflii.org/za/case/ZACC/2006>, South African legal information institute, last visited on January 15, 2018.

⁶⁶ A.S. Sweet, “Constitutions and judicial power; Comparative Politics”, Oxford University Press, 2008.p578.

The avenues that trigger the constitutional interpretation depend on the model and policy that particular state follows. Even though, the triggering grounds⁶⁷ can be several and different from one country to the other, in the section below the foremost legal ground to initiate constitutional review will be discussed.

2.2.1. Grounds that Triggers Constitutional Proceedings

Constitutional proceedings can be initiated by parties who have standing to submit their constitutional complaints before the organ entitled to review the Constitution. Individuals or legal entities who have standing may lodge a petition to initiate the procedure for the constitutional adjudication and interpretation whenever they demonstrate they have interest for such. The interest can be associated with violation of human rights and fundamental freedom entrenched in the Constitution. There are different avenues that trigger constitutional review.⁶⁸

The triggering ground determines who have standing to bring the case and the subject matter of the cases. The constitutional proceedings can be initiated as to invalidate unconstitutional law, policies, claiming certain act violate the constitutionally entrenched right, on the jurisdiction of state power or based on the constitutional complaint.⁶⁹ Basically they can be categorized as the constitutional challenge, constitutional questions, and constitutional compliments.⁷⁰

Constitutional challenge is brought by public institutions on abstract claim against legislations without concrete case that trigger the proceeding.⁷¹ These kinds of complaints are applicable as triggering ground in countries like Australia and Germany.⁷² In Germany abstract review of statutes involve the review of a statutes constitutionality under all relevant aspects. This means

⁶⁷ The legal triggering ground denotes the legally specified reasons that can be a ground to initiate constitutional review. For instance, constitutional review can be triggered by alleging the specific law or the decision of the court contravenes the constitutionally recognized rights. (Ferrerres Victor, "The Consequences Of Centralizing Constitutional Review In A Special Court Some Thoughts On Judicial activism", Yale school of Legal Scholarship Repository Standing on the other hand is concerned with whether a person who approaches for constitutional review is a proper party to present the mater for adjudication. From Mattew Chaskalson, "constitutional law of south Africa", 1998 p3. From Mattew Chaskalson, "constitutional law of south Africa", 1998 p3.

⁶⁸ FerreresVictor, "The Consequences Of Centralizing Constitutional Review In A Special Court Some Thoughts On Judicial activism", Yale school of Legal Scholarship Repository, 2004,p 464

⁶⁹ *Ibid*

⁷⁰ *Ibid*

⁷¹ *Ibid*, p 465.

⁷² *Ibid*

applicants are not expected to be affected by the contested statutes. A Constitutional review can be identified as constitutional questions when a particular legal issue requires the interpretation of the Constitution to resolve an issue rather than the interpretation of a statute.⁷³ This kind of the constitutional proceedings is applicable in countries like Germany and Spain. In constitutional complaint person who have a standing to initiate the case when they believe fundamental rights and freedom provided under the Constitution is violated.⁷⁴ This means any person can be triggered to apply their cases for concrete review whenever they contend their rights are violated. The violations can be instigated by incorrect interpretation of the particular legislations rather than review the law itself or may be directed against any intervention by the final decision of public organ resulting in the violation of a fundamental right of the complainant. In exceptional cases, it can challenge legislation after executed and it's proved the right of the complaint is particularly affected.⁷⁵ Constitutional proceeding related to jurisdiction is issued when disagreement arises between state organs on their respective rights and obligation is occurred.⁷⁶

The effectiveness this constitutional adjudication depends on the institution that interpret the Constitution and the procedural modalities they employ in the adjudication process. The institutional framework of the country depends on the model that the country follows. In the section below, the significance of the institution that interprets the Constitution and the major constitutional interpretation models is reviewed.

2.2.2. Institutions and Procedures of Constitutional Interpretation

Establishing constitutional review organs considered as a sign for rule of law and intended for equal application of constitutional provisions.⁷⁷ It is regarded as a “*means of institutionalizing the commitment made by all parties when drafting the constitution to abide by its provisions*”.⁷⁸ For these reason, in a contemporary democratic society, one of the conventional mechanism to

⁷³*Ibid.*

⁷⁴*Ibid*

⁷⁵ The Federal Constitutional Court of Germany, “ constitutional complaints”, accessed at <http://www.bundesverfassungsgericht.de/EN/Verfahren/Wichtige>. last visited April 20/2018

⁷⁶ The Federal Constitutional Court of Germany, “Organs treatProceeding”, <http://www.bundesverfassungsgericht.de/EN/Verfahren/Wichtige> last visited April 20/2018

⁷⁷*Supra note46.*

⁷⁸*Supra note47.*

uphold rights and freedom is to hand over the power of constitutional adjudication to a specialized constitutional Court or organ that can issue a binding determination on the constitutionality of laws, state actions and on the interpretation of the constitutional provisions.⁷⁹ In doing so, these organs have a paramount role in protecting and promoting constitutionally entrenched individual and group rights and concede remedy for constitutional violations by addressing a wide range of mechanisms by providing a forum for disputes resolutions.

One of the foremost features of modern constitutional democratic states is the appreciation of human rights and the establishment of strong and independent constitutional review systems capable of resolving constitutional disputes, mainly issues related to constitutional rights.⁸⁰ Thus, constitutional states have established constitutional courts or other organs with equivalent mandates in order to interpret their Constitutions.⁸¹ These organs are responsible to ensure the activities of the states, laws, decisions, and practices are in compliance with the Constitution and are mandated either to invalidate or endorse them. Additional to the interpretation of the provisions, they also shape public policy and awareness.⁸² Experience of different state demonstrates that constitutional interpretation can be a means to challenge structural repression which is based on policies, legislation, and practices. For instance the South African Constitutional Court⁸³ "in its landmark judgment of 1995, concluded that capital punishment as such, irrespective of the method of execution or other circumstances, was inhuman and violated the prohibition of inhuman punishment in South Africa". The United State Supreme

⁷⁹Katherine Glenn Bass and Sujit Choudhry "Constitutional review in new Democracies", Democracy Reporting International, September 2013, *PI*.

⁸⁰Abebe, A., "Rule by law in Ethiopia: Rendering constitutional limits on government power nonsensical", CGHR Working Paper 1, Cambridge: University of Cambridge Centre of Governance and Human Rights. April 2012, *PI6*.

⁸¹Konrad-Adenauer-Stiftung, "Constitutional Review and separation of powers", Sixth Conference of Asian Constitutional Court Judges, 2009, p3.

⁸²John Graham & Elder C. Marques, "Understanding Constitutions: A Roadmap for Communities", Institute on Governance Ottawa, Canada. October 2000, *p27*.

⁸³ The Constitutional Court of South Africa, "The Makwanyane case, case no cct/3/94", accessed at, <https://www.concourt.org.za/>, last visited March 20, 2018. In the case the court established that capital punishment was inconsistent with human rights expressed in the Constitution. The Court *inter alia*, concluded that "the death sentence ruled by ordinary courts destroy life, which is protected without reservation under section 9 of the Constitution, it annihilates human dignity which is protected under the Constitution."

Court⁸⁴ abolishes discrimination against race and ethnicity⁸⁵. The constitutional Court of the above countries shows the contributions of the constitutional interpretation on determining the broad-spectrum of legal and policy frameworks of the state concerning human rights.

However, the effectiveness of constitutional interpretation depends on the existence of an independent forum for alleged constitutionally entrenched rights, the structure of the organ and the impartiality of its members.⁸⁶ Constitutional adjudicator which is independent from political influence is believed to be effective in manner of adjudicating constitutional issues because they place a limit on the mandate and power of the executive branch of the state. For this reason, in a democratic society, among other things, the independence of this organ is considered as a fundamental element for effective constitutional adjudication.⁸⁷ The effectiveness of constitutional adjudication also depends on the tendency of claimants to be able to articulate their alleged rights. This relies on the existence of consistent and organized demand for right by claimants.

There are two major constitutional interpretation models; the decentralized (the American model) and the centralized model (the European model).⁸⁸ The decentralized model is the oldest model in which ordinary courts interpret the Constitution in the course of judicial litigation.⁸⁹ Thus, all ordinary Courts have a parallel power to invalidate or decline to apply statutes and practice claiming they are unconstitutional. The Supreme Court of the state has the appellate jurisdiction over every ordinary judicial matter including constitutional matter. In this model

⁸⁴ Supreme Court of the United states, Com “Race Discrimination: U.S. Supreme Court Cases” accessed at <https://civilrights.findlaw.com/discrimination/race-discrimination-u-s-supreme-court-cases.html>, last visited on 4/18/18 The most prominent cases were *Pacev. Alabama (1883)*, *The civil Rights Cases(1883)*, *Plessy v Ferguson*.

⁸⁵ The United States Supreme Court over rule laws and practice by its decisions involving racial discrimination starting form 1944. For instance, in *Brown v. Board of Education* in 1954 the Court prohibited racial segregation of public schools. In *Loving v.*, case in 1967, the court over rule state laws prohibiting inter-racial marriage is unconstitutional.

⁸⁶Supra note 24, p37.

⁸⁷*Ibid*

⁸⁸*Supra note 53, p20*

⁸⁸*Ibid, p22.*

⁸⁹*Ibid, p20.*

"concrete"⁹⁰ review methods are usually applied to interpret the Constitution. African states, like Nigeria, Botswana and Malawi following this defused system, give the power of constitutional review to the ordinary courts.⁹¹ In the centralized model, specialized organs or Courts are mandated to interpret the Constitution.⁹² This organ usually stands apart from the legislative, executive and judicial branches of government. In this model, especially in the European model, the constitutional courts or the Supreme Court possess a monopolistic power to invalidate legislation and practices as unconstitutional.⁹³ These organs resolve disputes concerning the interpretation and application of the constitutional provisions. They also have the power to employ "abstract review"⁹⁴ by which they endeavor to lessen unconstitutional legislation before it enters into force.⁹⁵ The two main advantage of this model is its unity on jurisdiction and the tendency to lessen conflicting decision of conflicting decisions thus, and legal security become high.⁹⁶

The procedural and admissibility requirement of this institution are different with in different constitutional state. Constitutional Courts such as the constitutional Court of Germany and South Africa demand different admissibility requirement for initiating compliant or set procedures in the process of review.⁹⁷ These procedures usually determined by the merit of the cases or based on the nature of the complaint. As for admissibility condition, the requirements are associated

⁹⁰The abstract review this ordinary courts exercise their mandate in pursuant to ordinary litigation. (Ferrerres Victor, "The Consequences Of Centralizing Constitutional Review In A Special Court Some Thoughts On Judicial activism", Yale school of Legal Scholarship Repository, 2004,p 469)

⁹¹Yonatan Tesfaye Fessha, "Judicial Review and Democracy: A Normative Discourse on The (Novel)", Ethiopian Approach To Constitutional Review, HEINOLINE, 2011, p 6.

⁹²*Supra note 53.*

⁹³*Ibid*

⁹⁴ In the abstract review the courts have the mandated to examine legislation without the need to scrutinize factual circumstances of the case. Some countries considered an Abstract review as the greater guarantee by which individual may petition to the constitutional court as a right for every citizen. (Ferrerres Victor, "The Consequences Of Centralizing Constitutional Review In A Special Court Some Thoughts On Judicial activism", Yale school of Legal Scholarship Repository, 2004,p 470)

⁹⁵A.S. SWEET, "Constitutional Courts", in M. Rosenfeld and A. Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford, Oxford University Press, 2012, p 818.

⁹⁶Mr. *Virginia* Harutyunyan, Ms. Angelika Nussberger, Mr. Peter Paczolay (27 January 2011) "Study on individual access to constitutional justice" European commission for democracy through law, Venice Commission, Strasbourg, p8s.

⁹⁷Andrea Lollini, "The South African Constitutional Court Experience: Reasoning Patterns Based on Foreign Law" *Utrecht Law Review*, Volume 8, May 2012, p83

with time, legal representation, exhaustion of remedies, and on the fulfillment of the required forms.

In the section below the centralized model of constitutional interpretation will be discussed. One of the main features of this model is endowing the power to adjudicate constitutional dispute to one specialized organs or Courts. Even though it cannot be plausible to conclude the Ethiopian system follow this model, it share one feature of the model by giving the power to interpret the Constitution to a distinct organ. Thus, discussing the structural features of the centralized model *visa a vise* its prospect and challenge can give certain comparative incite about the Ethiopian constitutional review system.

2.2.3 Centralized Model of Constitutional Interpretation

The centralized model is usually addressed as a European model. The model is initially started in 1920 in Australia and adopted by Germany in 1951.⁹⁸ In the model, Constitutional interpretation is distinguished from ordinary litigation and concentrated in a separate organeither to the highest the judicial organ, or situated outside the ordinary justice system. This model in its initial viewpoint divides the court in to ordinary and constitutional Court or other judicial or non-judicial organs⁹⁹ by assigning different tasks.¹⁰⁰ Thus, the ordinary Courts are only mandated to decide on concrete cases by applying statutes. The institution that interprets the Constitution is uniquely established and empowered to set aside legislations and practices that are in conflict with the Constitution of the country. European states especially countries that belong to the European Union like Germany, France, Austria, and Belgium adopt this model.¹⁰¹ African states like South Africa, Egypt, and Sudan also adopted this constitutional review system within different structure.¹⁰²

⁹⁸Susan Newman, "Comparing Courts", article presented on the School of Law conference on Constitutional Courts examine different system of constitutional court, (undated), p9

⁹⁹ The other judicial organ expressed in this denotes the organ that interprets the constitution other than court. As an example, the Ethiopian House of Federation can be mentioned.(The Ethiopian system share one feature of the model; A specific organ interpret the Constitution.

¹⁰⁰*Supra note 65*

¹⁰¹Victor Ferreres Comella, "The European model of constitutional review legislations; toward decentralization?", Oxford University Press and New York School of law, volume 3, 2004, p 461

¹⁰²*Ibid*

The model has its own main features. A specific organ; the court or the mandated institution is entitled to interpret the Constitution, examines statutes based on the abstract review and invalidate them with general effects of the Constitution.¹⁰³ Its two main avenues to trigger constitution review of legislations are the constitutional challenge and constitutional questions.¹⁰⁴ The constitutional challenges are brought by public institutions such as the state organs, ombudsman, the parliament and the prosecutor offices; in this case there is no concrete case that triggers the procedure.¹⁰⁵ Constitutional questions on the other hand, are initiated by ordinary judges whenever they believe the applicable law is unconstitutional, in doubt with its validity. In countries like Constitutional court of Germany and Spain the procedure allow individual complaints to submit their cases before the Court.¹⁰⁶

On the prospect of centralized model, different argument has been raised.¹⁰⁷ It's argued that, since one organ is solely entitled to interpret or review the Constitution, it decreases the tendency of conflict among ordinary court. Unlike the decentralized model, the appointment of judges is usually politically motivated and the tenure of judges in this model is for a specific period of time. On different settings, the Constitutional interpretive organs may have a different function other than reviewing the constitutionality of legislation.¹⁰⁸ In some country that follows this model such as Germany and Spain the interpreter also have the power to review judicial decisions when fundamental rights and freedoms are violated. This somehow can create scheme and option for complaints.¹⁰⁹ The other advantage of specializing constitutional courts is their tendency to offer relatively enhanced and classic method for determining the constitutional validity of laws and practices.¹¹⁰

¹⁰³ *Supra note 91.*

¹⁰⁴ *Ibid*

¹⁰⁵ *Supra note 101, p 461.*

¹⁰⁶ *Ibid*

¹⁰⁷ *Ibid*

¹⁰⁸ For example, the Constitutional Court of Italy and France other than reviewing legislation, they perform additional tasks like; enforcing the criminal law on higher state authorities may have jurisdiction to supervise the regularity of the elections, to check the constitutionality of administrative decisions and policies and to protect fundamental rights against administrative and judicial decisions, etc. (Ferrerres Victor, "The Consequences Of Centralizing Constitutional Review In A Special Court Some Thoughts On Judicial activism", Yale school of Legal Scholarship Repository, 2004,p 464)

¹⁰⁹ *Supra note 101,p6.*

¹¹⁰ *Supra note 79, P2.*

2.3. The Role of Constitutional Review in Human Rights Protection

In contemporary global setting, incorporation of human rights provision in a Constitution is taken as one step towards human rights protection and promotion. For this reason, in the new model of constitutionalism¹¹¹, the foremost concern becomes human rights issues rather than the issue of state sovereignty.¹¹² Thus, democratic states have incorporated fundamental rights and freedoms in their Constitution and promulgated other laws which formally protect these fundamental human rights.¹¹³ As human rights enshrined in the Constitution sets out the norms and serves as the framework for all other national legislation, must conform to the intent and principles of the Constitution.¹¹⁴ For effective protection of human rights in the ground, apart from international normative human rights standards, domestic legal framework, state practices including national adjudicatory bodies have a significant role. International adjudicatory bodies are deliberated and designed to play a supplementary and complementary role for the realizations human rights and freedoms.¹¹⁵ One of the demonstrating reasons for this fact could be the demand of international and regional sphere for resolution for exhaustion of local remedy before entertaining cases. One of the adjudicatory body concerning constitutional dispute is the organ that is mandated to interpret and adjudicate constitutional dispute. For this reason, constitutional states create protections mechanisms by establishing an independent constitutional adjudicator as to resolve constitutional dispute.¹¹⁶

Experiences of different constitutional state demonstrate that constitutional interpretation can be a means to challenge structural repression which is based on policies, legislation, and practices. For instance, In the Grootboomcase (*Government of the Republic of South Africa v. Irene Grootboom and others*, CCT 11/00), the country's Constitutional Court *inter alia*, set a precedent

¹¹¹ The new model of constitutionalism for this purpose refers to the incorporation of fundamental rights and freedom as indispensable part of the Constitution rather than state sovereignty. This concept was not the essential part of the constitution at the time beginning of the constitutions and constitutionalism.

¹¹² Lisbeth A.N. Thonbo, "The constitutional Protection of rights" the Danish Institute of Human Rights, 2012 p6

¹¹³ *Ibid* p18

¹¹⁴ *Ibid* p28

¹¹⁵ Fiyonalde Londras "International Human Rights law and constitutional rights: in favor of synergy" Osgood Hall Law School, Toronto vol6 no8, p6.

¹¹⁶ *Ibid*.

in adjudicating economic, social and cultural rights.¹¹⁷ In April 2004, the Constitutional Tribunal of Peru ruled "economic and social rights were not simply programmatic rights, but required implementation of their core content as this was not only necessary for the enjoyment of political and civil rights, but was also a requirement of solidarity and respect for human dignity." Thus, it rules upon the petition (amparo action) of a person living with HIV requesting full medical care.¹¹⁸

In the international and regional human rights regime, human rights implementation mechanism is recognized in different instruments¹¹⁹. According to the Universal Declaration of Human Rights Article 8, "*Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.*" For this reasons, the mechanisms in which individual and groups invokes their rights become the essential element for actual realization of these rights.¹²⁰ Institutions that adjudicate constitutional disputes can be taken as one organ that gives remedy when dispute arise in constitutionally entrenched right. Thus, constitutional interpretation can be a scheme for realization of human rights. Constitutional review is usually focused on human rights provisions of the Constitution.¹²¹ As the rights indicates the existence of a corresponding duty, in this regard state have a duty to provide effective remedy for violation of constitutionally entrenched fundamental rights.¹²²

The effectiveness of these organs is determined by their structural independency and competence. An independent and a strong constitutional interpreter serve as a core watchman to

¹¹⁷ The constitutional court of South Africa, "Irene Grootboom and others", accessed at <http://www.constitutionalcourt.org.za/site/thecourt/role.htm/> last visited 2/21/18.

¹¹⁸ UN, "Handbook for Parliamentarians" , Inter-Parliamentary Union and the United Nations (Office of the High Commissioner for Human Rights), 2016, p204

¹¹⁹ Article 8 of Universal Declaration of Human Rights, Article 6 of International Convention on the Elimination of All Forms of Racial Discrimination, Article 13 and 14 of Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment and Article 7 of African Charter On Human And Peoples Rights, recognize the as the individual right and state responsibility.

¹²⁰ *Supra note 53, p6.*

¹²¹ *Supra note 24, p85.*

¹²² Danwood Mzikenge Chirwa, "The Doctrine Of State Responsibility As A Potential Means Of Holding Private Actors Accountable For Human Rights State Responsibility, Private Actors And Human Rights", Melbourne Journal Of International Law, 2004 ,P5.

curve eventuality related with human rights violations by state actors.¹²³ Additional to their independency, the design of these organs, the procedure it follows and the powers it is given is worthy of careful attention from the state and its policymakers.¹²⁴

2.4. The Ethiopian Constitutional Review System; FDRE Constitution

In constitutional democratic society, an institution that umpire constitutional dispute has become an essential attribute¹²⁵ The Ethiopian constitutional system, using non-judicial adjudication pattern it grants the power to review the Constitution to a political entity which consists of representatives of ethnic groups.¹²⁶ This prototype has been applicable in the former Soviets Union.¹²⁷ In USSR, the interpretation of the Constitution is considered as a political function rather than legal.¹²⁸ The effectiveness of the constitutional interpretation depends on the impartiality and independency of the system.¹²⁹ According to *AdemKasse*, the reason that their independency is questionable at best, because as "they are dominated and lining towards the winning political or the political party they belongs to and they are not ideologically committed or institutionally suited to search the meaning of the constitutional values."¹³⁰ However, a country like Finland, whereby a democratic culture and human rights protection are well developed uses non-judicial adjudication model.¹³¹

¹²³ *Supra note 47*

¹²⁴ *Ibid*

¹²⁵ Assefa Fiseha, "Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HoF)", Nairobi, April 2007, p8

¹²⁶ FDRE Constitution Article 62(1) and 83(1)

¹²⁷ Christopher Osakwe, "The Theories and Realities of Modern Soviet Constitutional Law: An Analysis of the 1977 USSR Constitution" (undated), p21

¹²⁸ The 1977 Constitution on article 147 of the country gives the mandate to interpret the Constitution to the Central Committee of the Communist Party of the Soviet Union (CPSU) which is the legislative organ of the state. Thus, the Soviet Constitution affords the CPSU a legal platform for the execution of its political designs for the entire Soviet society.

¹²⁹ Independence and impartiality for this study denotes freedom of member of the adjudicating organ in adjudicating, interpreting or reviewing free from improper influences and bias.

¹³⁰ *Supra note 24, p81.*

¹³¹ Dawit, (18 June 2015), "Adjudication of FDRE Constitution", <http://www.abysinnialaw.com/> last visited 1st March 2018

The FDRE Constitution bestowed the power to interpret the Constitution and to decide in all constitutional disputes to the HoF which is a political organ.¹³² Thus, the judicial wing of the state has no jurisdiction to interpret the Constitution and adjudicate Constitutional issues. "The granting of the power of interpreting the Constitution to the HoF is intended to reinforce, and a direct implication of, the conferring sovereignty on the ethnic groups."¹³³ For HoF is a pure political entity¹³⁴, it is less expected to be impartial because as a political organ it's under the influence of the legislator and the executive.

One of the structural features of the Ethiopian constitutional system is centralizing the power of interpretation to a particular organ. In this centralization, only HoF holds the power as to review constitutionality of Federal and State laws and acts. The case entertained is based on concrete issues. In the system the HoF does not examine statutes in the abstract and invalidate it with general effect when it violates the constitutional provisions. It is contended that, endorsing this power to HoF, which is a political organ escort the countries review system to a structural ineffectiveness.¹³⁵ The empirical evidence advocator of this argument demonstrates is that, despite the adoption of laws that clearly contravene the constitutional provisions¹³⁶, those invalidated by the House were very limited in number.¹³⁷ On the contrary, the constitutional assembly argues that endorsing this power to the House is the best way to ascertain constitutionality of laws and to settle disputes.¹³⁸ The rationale it raised was that, the Constitution is a political contract and the reflection of the interest of Nation, Nationalities and People of the

¹³² FDRE Constitution Article 62(1) and 83(1)

¹³³ *Supra note 24, p73.*

¹³⁴ The HoF is considered as a political because the members are the elected representative of nation nationalities and people of Ethiopia

¹³⁵ The two prominent case were *KedijaBeshir's* case and *BenhishangulGumuz* case, The House of Federations Journal of Constitutional decisions, March 12 2003, p35-41 and 14-34 respectively

¹³⁶ According to a report Amnesty international on 2011, after the promulgation the Ethiopian anti-terrorism proclamation in 2009 the right of citizen such as their freedom expression and the right to fair trial have been denied. (accessed at <https://www.amnesty.org/>) "Disseminating Dissent; interfered crackdown speech in Ethiopia", Last visited on April 20, 2018. The Charities and Societies Proclamation No. 621/2009 of Ethiopia (Civil Society Law or CSO law) enacted on January 6, 2009 was claimed to be among the law that narrow human right protection platform.

¹³⁷ *Supra note 24*

¹³⁸ የኢትዮጵያ ሕገ መንግስት ጉባዔ፣ ቃለጉባዔ ጥራዝ 5፣ አዲስአበባ፣ ሕዳር 21-24 1987 ዓ.ም ገጽ 12

country.¹³⁹ For this reason, the institution eligible to review Constitution should be the House along with the Council of Constitutional Inquiry. They assert that the establishment of the Council is to cover the legal gap of the House. The other reason they raised was giving the power to the judiciary leads to "judicial adventurism".¹⁴⁰

The Constitution establish the Council of Constitutional inquiry, composed mainly of legal experts, to assist the HoF in determining whether there is a need for constitutional interpretation and, if so, to give recommendation to the it.¹⁴¹ Thus, the Council considers both justiciable and non-justiciable matters. It admits cases when the unconstitutionality of any law or customary practice or decision of government organ or decision of state official is claimed unconstitutional and submitted in writing to it.¹⁴² The Courts refer constitutional issues in judicial proceeding, either on its own motion or at the request of party in the proceeding.¹⁴³ Upon consideration of the matter, the Council finds it necessary to interpret the Constitution; it submits its recommendation thereon to the HoF.¹⁴⁴ After cases brought and heard by the court having jurisdiction. On the other hand, justiciable matter of administrative organ brought to the Council after a final decision has been rendered by the competent executive organ.¹⁴⁵ On any non-justiciable matter cases may be submitted to the Council when one-third or more members of the federal or state Councils or by federal or state executive organs claiming constitutional interpretation.¹⁴⁶ Additional to the aforementioned institution, person who claims that his/her fundamental right and freedom provided in the Constitution have been violated due to the final decision rendered by government organ or official may submit his case to the Council for constitutional interpretation.¹⁴⁷ When a case submitted by the Court and the Council believes no need of Constitutional interpretation it remands the matter to the Court that referred the case. Since recommendation given by the Council is nonbinding the HoF can accept or reject the suggestion. When the Council rejects their application parties have the right to submit their appeal to the HoF. The procedure and the

¹³⁹ *Ibid*, p 11

¹⁴⁰ *Ibid*

¹⁴¹ FDRE Constitution , Article 62(2) and 83

¹⁴² Council of Constitutional Inquiry Proclamation, Proclamation No. 798/2013; (August 2013), Article 3 (1)

¹⁴³ *Ibid*, Article 4(2)&3

¹⁴⁴ *Ibid*, Article 2(a)

¹⁴⁵ *Ibid*, Article 2(b)

¹⁴⁶ *Ibid*, Article 3 (2)(c)

¹⁴⁷ *Ibid*, Article 5(1)

process of the constitutional review are addressed in the Constitution and the Council's establishment proclamation.¹⁴⁸From the cases submitted to the Council; human rights issues are significant in number (98%).¹⁴⁹

As an institution responsible to interpret and review the constitutionally entrenched rights; the Council is identified as a vital institution for the realization of human rights. However, it is contended that competence and composition of the HoF and the Council as one major problem in the constitutional review system of the country.¹⁵⁰*Yonnatan Tesfaye*, argues that the House and the Council "does not have the capacity to engage in the often complex and technical arguments that any examination of the constitutionality of a law or any interpretation of the Constitution, and its impartiality very questionable."¹⁵¹Considering the constitutionally endorsed mandate of the CCI, it is possible to contemplate that the role of the Council in Ethiopian Constitutional adjudication is very decisive. Thus, the effectiveness, competence and autonomy of the organ have significant impact on the realization of fundamental rights and freedom incorporated in the Constitution.

2.5. Comparative Experience in Countries that Follows the Centralized Model of Constitutional Interpretation

In this section, experience of the Federal Constitutional Court of Germany and the South African Constitutional Court is reviewed. Their experiences are selected based on their relative similarity with the Ethiopian Constitutional review system. Germany and South Africa give a mandate to review and adjudicate constitutional disputes to a distinctive organ. Based on this essential similarity, discussing their experience on case management and general structure might show certain advantage in the constitutional system of Ethiopia. However, in the discussion below the difference between the two with the Ethiopian Constitutional review systems have given due regards.

¹⁴⁸*Ibid*

¹⁴⁹*supra note 28*

¹⁵⁰ For further discussion on this subject it can be refer to Adam kasse's "The potential role of Constitutional review in the realization of human rights in Ethiopia", In the faculty of law university of Pretoria, 26 October 2012, p89-90

¹⁵¹*Supra note 91, p78.*

2.5.1. Experience of the Federal Constitutional Court of Germany; overview of Case Load and Management

The Federal Constitutional Court of Germany is established in 1951.¹⁵² By acting as both a Court and Constitutional organ, it works as to ensure for the Constitution of the Federal Republic of Germany (Grundgesetz – Basic Law) is obeyed and fundamental rights and freedom are enforced.¹⁵³ The Court is an autonomous and independent constitutional organ.¹⁵⁴ As to protect its independence, it becomes independent from supervision of ministerial offices. Considering this essential feature of a modern democratic state is delimitation of the state power, the Court uses this as an underlining principle in the interpretation of the Constitution and as to review state practices.¹⁵⁵ Consequently, in entertaining cases it focuses on the basic law of the country rather than on the political expediency.¹⁵⁶ The court comprises two senates with eight judges each. The first Senate entertains cases related to fundamental human rights issues or constitutional complaints.¹⁵⁷ Every decision of the Court is expected to be published. The Court has jurisdiction over complaints against state action, on the forfeiture of fundamental rights, on the interpretation of the Basic Law and other related issues.¹⁵⁸ On account of constitutional complaints, the Court did not issue decisions or undergo complete judicial reviews, rather it remands to the ordinary Courts. Thus, issues like damages award or criminal prosecutions initiation will be remanded to ordinary Court.¹⁵⁹

According to Article 1 and 19 of the Basic laws of the country, any person has the right to lodge its constitutional complaint in the federal constitutional Court; if such a person believes his/her fundamental rights and freedom have been violated. However ordinary Courts are eligible to apply when entertain in the course of litigation examines only when a specific constitutional law

¹⁵² The Federal Constitutional Court Of Germany, accessed at http://www.bundesverfassungsgericht.de/EN/Das-Gericht/Aufgaben/aufgaben_node.html/ last visited on February 12/2018

¹⁵³ *Ibid*

¹⁵⁴ Federal Law Gazette (I p. 2730)", "Act on the Federal Constitutional Court (Bundesverfassungsgerichtsgesetz – BVerfGG)", July 18 2017, Part1 § .

¹⁵⁵ *Supra note 152*

¹⁵⁶ *Ibid*

¹⁵⁷ *Supra note 154*

¹⁵⁸ *Ibid, Part1 § 13*

¹⁵⁹ *Ibid*

was violated. The Court admits cases if it has a general constitutional significance, it appears necessary to enforce fundamental rights and if violation poses a particular grave disadvantage to the complaints.¹⁶⁰ To deal with the general and specific types of proceedings, the Court sets rule of procedure. Hence, it applies different substantive and procedural rules on violation of rights resulted due to a Court hearing, state action, and constitutional complaint challenges promulgations.¹⁶¹

The caseload of the court is at increasing rate.¹⁶² According to the official website of the Court, at the beginning of the Court's work, in 1951, *less than 500 constitutional complaints per year were brought before it. Until 1980, this number increased to 3,107, reaching its all-time peak in 2013 with 6,477 proceedings. Currently (in 2017/18), it receives 6,000 constitutional complaints.* As to manage it the Court applies internal and external mechanisms. Internally, the Court is organized with highly qualified experts and administrative staffs, registrars, justice outer offices, the court office, library, Information Technology experts and experienced judicial Clerks who assist each judge.¹⁶³ Until, the last visit of the court website, it has around 260 employs.¹⁶⁴ As to deal with the upcoming complaints the separate senates primarily decide on cases which do not have a general constitutional significance or do not entail constitutional interpretation.¹⁶⁵ The Court made its service accessible to its citizens in terms of place, cost, and its procedure. As an external measure, it publishes its decision annually; disseminate its rules of standing and procedures. In developed country like Germany, it can be predicated that most of its population have a pretty much access to internet service. By utilizing this resource; issues related with the jurisdiction of the court, admissibility requirements and procedures, and rules of standing of the court, the required form and content of constitutional complaint, grounds considered as constitutional complaint and rules applicable in the court are posted in the webpage of the

¹⁶⁰"Rules of Procedure of the Federal Constitutional Court (*geschäftsordnungdesbundesverfassungsgerichts*)", The Plenary of the Federal Constitutional Court, Supplementary procedural provisions, 2015,(§ 23

¹⁶¹*Ibid.*

¹⁶²*Supra note 152*

¹⁶³EliškaWagnerov, "Role Of The Constitutional Court In The Maintenance Of The Stability And Development Of The Constitution" Á European Commission For Democracy Through Law , Strasbourg, 19 February 2004, p7

¹⁶⁴*Supra note 152*

¹⁶⁵*Ibid*

court.¹⁶⁶ This enables the complaints to easily refer to pre-stetted form and the content of constitutional complaints before lodging their application.

2.5.2. Experience of the Constitutional Court Of South Africa; Case Load and Management

The first written Constitution South Africa was promulgated in 1910.¹⁶⁷ But until 1994 of the Constitution of South Africa, the Constitutional Court did not become operational.¹⁶⁸ The Court is the highest organ on issues related to interpretation, protection and enforcement of the Constitution.¹⁶⁹ The Court comes across in different reformative stage and handled judgments which have a profound impact on the country.¹⁷⁰ "The Constitutional Court adjudicative role is politically sensitive because it exercises judicial review power over the democratically-elected organs of state and makes orders that impact on state resources".¹⁷¹ According to the Constitution¹⁷², the Court has exclusive jurisdictions, including; disputes arise between the organs of the state; decide on bills enacted by the parliament, on constitutional duty of the parliament or the president and can strike out any law on the ground of unconstitutionality.¹⁷³ When ordinary Courts receive cases that are the exclusive jurisdiction of the constitutional Court they are mandated to refer the case to the Constitutional Court.¹⁷⁴ Thus, application of complaints comes through by reference, as an appeal, or by virtue of a direct application by the

¹⁶⁶ *Ibid*

¹⁶⁷ Brice Dickson, "Protecting Human Rights Through a Constitutional Court": The Case of South Africa" Fordham Law Review, 1997, P534

¹⁶⁸ "The Constitution of the Republic South Africa", December 1996, section 167

¹⁶⁹ Article 167 of the South African Constitution, December 1996

¹⁷⁰ The constitutional court of South Africa, accessed at "the role of the Constitutional Court" <http://www.constitutionalcourt.org.za/site/thecourt/role.htm/> last visited 2/21/18.

¹⁷¹ <https://www.concourt.org.za/index.php/about-us/history> last visted 2/21/18

¹⁷² "Constitution of the Republic of South Africa", Act 108 of 1996", Constitutional Assembly, December 1996, Section 167.

¹⁷³ Andrea Lollini, "The South African Constitutional Court Experience: Reasoning Patterns Based on Foreign Law", Utrecht Law Review, May 2012, p60.

¹⁷⁴ *Ibid*

complaints.¹⁷⁵ The court only admit evidence and witness which were accepted in the ordinary Courts, thus, it does not hear evidence or question witnesses.¹⁷⁶

The Court applies two testing mechanisms as to determine the constitutionality of the matter.¹⁷⁷ On its first step, it examines whether a violated right is a constitutionally protected right and subsequently, it determines whether the alleged violation constitutes a permissible limitation of the right in question by the Constitution.¹⁷⁸

With a view to creating a social order by which equality, fundamental rights, and freedoms are appreciated, the Court set different procedural and substantive interpretation principles for constitutional provisions and its preamble.¹⁷⁹ Apart from this general statutory interpretation rules, the Court set separate jurisprudential approach that deals with the bill of rights.¹⁸⁰ Accordingly, the bill of rights entrenched in the Constitution is interpreted as to promote the values of a democratic society based on freedom and equality and with regards to public international laws applicable to the protection of rights and freedom and also by referring developed comparable foreign case laws. According to the case flow summary of the court, the court case flow is at increasing rate.¹⁸¹

From the comparative review of the selected countries; South Africa and Germany Constitutional Court, it can be observed that the case flow is increasing. To manage this they apply internationally accepted case flow management tools¹⁸² for the judiciary which can be also useful for the constitutional adjudicators. From these different tools, early and continuous control of cases is forwarded as one solution. This means to manage the case flows effectively, the adjudicators are expected to scrutinize case initiation, screen cases, achieve event date certainty through the control of schedules and adjournments, and manage its assessment.¹⁸³ The Germany

¹⁷⁵ Constitutional Court Of South Africa, accessed at <http://saflii.org/za/case/ZACC/2006>, South African legal information institute, last visited on January 15, 2018.

¹⁷⁶ *Ibid*

¹⁷⁷ *Supra note 167, p550*

¹⁷⁸ *Ibid, P566.*

¹⁷⁹ Janet Kentridge and Derik Spitz, "Constitutional law of South Africa, Interpretation", 1999, p12.

¹⁸⁰ *Supra note 168 Section 35(1).*

¹⁸¹ *Supra note 170(case flow summary 2015-2017)*

¹⁸² The State Court Administrative Office, "Case flow Management Guide", American bar Association, 2013, p19.

¹⁸³ *Ibid*

Constitutional Court for stance applies separate application procedure.¹⁸⁴ This means the Court have preliminary and ordinary application Procedure and have separate registrar. In the preliminary application complaints which are clearly inadmissible will be entertained and the applicants will be notified about the possible result. Due to this lots of application will be closed at initial stage.

¹⁸⁴*Supra note 152*

2.6. Conclusion

In the chapter, mainly the concept of the constitutional interpretation, the institutional framework of interpretation and its role in human right protection is reviewed. The Ethiopian constitutional interpretation system has been reviewed with main focus on the Council of Constitutional Inquiry.

The nature the Constitution is among the reason that necessitates constitutional interpretation. To serve for a longer period of time its provisions are mostly stated in vague manner. This vagueness usually creates controversy and difference in application. As to solve this, a Constitutional state often crafts an organ with a mandate to interpret the Constitution, and adjudicate a constitutional dispute. These organs clarify the meaning, implications and consequence of the provisions of the Constitution. Modes of interpretation depend on the model of the state follows and the policy that particular state follows. The centralized model have different feature. One of its features is giving a mandate to interpret the Constitution to a particular organ. Based on this the experience of countries that follow this model is reviewed.

The Ethiopian constitutional review following a unique model, gives a mandate to review the Constitution to the HoF along with CCI. The Council is established according to the FDRE Constitution and proclamation 251/2001. After the enactment of this proclamation and it separately operate as a secretariat complaint submitting to the Council is at increasing rate.

Chapter Three

Triggering Grounds for the Increments of Human Rights Complaints before the Council of Constitutional Inquiry

3.1. Introduction

As it has been discussed in the previous sections, the Council of Constitutional Inquiry is established by virtue of Article 82 of the FDRE Constitution to conduct constitutional inquiries and to investigate constitutional disputes and present its findings to the House of the Federation which is empowered to interpret the Constitution.¹⁸⁵ Based on these normative frameworks, the Council investigate constitutional dispute including human rights related complaints. This mandate of the Council has a significant role for the realization of fundamental rights and freedoms incorporate in the Constitution. In the past three years, the complaints submitted in the Council have been increasing.

This section is primary concerned on exploring the triggering reason for the increment of submission of human rights complaints before the Council. To explain the general reason for the increment, data on the triggering grounds are analyzed from the point of view of the nature the subject matter of the case, issues related with the complaints and the Council. This part, therefore, is devoted to demonstrate and analyze the data obtained from primary and secondary sources. Accordingly, the essential data collected from document review and via in-depth interview is presented and analyzed.

¹⁸⁵Article 84 of the FDRE Constitution.

3.2. Overview of the Increment trend of Human Rights Complaints

The Council starting from the time of its establishment, receives many complaints and up on investigation find necessary, gives recommendation to the HoF.¹⁸⁶ The submission of complaints starts to ascend radically from 2007 E.C.¹⁸⁷ For the purpose of understanding the increment trends of complaints; the case file of the Council has been reviewed. In the table below case file description is made starting from the establishment of the Council to March 2010 EC. The data is limited until March 2010 because during the time of data collection, the cases were only filed in the Council from the time of establishment until March 2010.

Figure1¹⁸⁸, Pattern of complaints submission before the Council

Submitted Complaints to the Council	No of cases submitted	Cases decided with no need of Constitutional interpretation	Cases Recommended to the HoF	Pending cases
From 2000 to June 2007 (File No 001-1435/07)	1435	1398	31	6
From July 2007- June 2008 (File No 1436/07-1824/08)	388	313	15	60
From July2008-June 2009	572	128	1	443
From July2009-March 2010 (File No 1825/08-2396/09)	389	3	0	389
New cases opened in, 2010	642	-	-	642
Total complaints presented starting from its establishment to March 8 2010	3935	-	-	
Total	3935	1842	47	2046

¹⁸⁶Proclamation No. 798/2013, Council of Constitutional Inquiry Proclamation, Article 3

¹⁸⁷የሕገመንግስት አጣሪ ጉባኤ የጉዳዮች ፍሰት ዳይሬክቶሬት፣ የሕገመንግስት አጣሪ ጉባኤ የመዝገብ ማጠቃለያ ከሰኔ 2007 እስከ መጋቢት 2010, May 17-18 2018

¹⁸⁸ The data are obtained from Five decided case review made in the registrar of the Council. 17 May 2018.

different instance such as the cases rejection rate, the cases file review and the complainants' awareness toward the element of constitutional interpretation and the power and mandate of the Constitution.¹⁹⁴ From the submitted applications, 97 % were rejected declaring that they do not need a constitutional interpretation.¹⁹⁵ However, in the past three years the recommendation the Council is giving relatively increasing compared to the past decision of the Council.¹⁹⁶

The cases file review show that, the constitutional principle that the Council is applying is not specific and clear.¹⁹⁷ For the interpretation of fundamental rights and freedom stated in the Constitution, the Council generally apply the general principle laid down in article 13(2) of the Constitution which provides "*The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia.*" Additionally, the modalities of interpretation focus on finding the original meaning of the Constitution and exploring the intention of the legislator.¹⁹⁸ For some cases the decision reveals that it is applying the plain meaning of text principle by mainly focus on the literal meaning of the provisions and also considers the technical meaning of the term.¹⁹⁹

According to the Constitution and Proclamation No. 798/2013, the Council shall consider constitutional complaints whenever the specified person submits its complainants.²⁰⁰ The complainants are categorized as follows.

¹⁹⁴ The discussion on the awareness of the complainants is discussed in the next section.

¹⁹⁵ *Supra note 187, የሕገ መንግስት አጣሪ ጉባኤ የመዝገብ ማጠቃለያ*: table 2.

¹⁹⁶ . The total number of recommendation the Council give form 2000-2007 is 31 in number but From July 2007- June 2008 it recommend 15 complaints were recommended. According to the HoF, in 2010 EC the Council gives recommendation to 44 cases. accessed at [www.ethiopia.gov.et/the-house of federation](http://www.ethiopia.gov.et/the-house-of-federation), last visited 19 September 2018.

¹⁹⁷ Interview with Mr. YadetaGezaw, Tekelewold Tilahun senior legal experts at the Council, 7 May 2018,

¹⁹⁸ Interview with Mr. MilionAssefa, and Desta Geberu May 21 2018 and 9 May 2018 respectively and verified through 10 decided case file review made in the council

¹⁹⁹ *Supra note 187, የሕገ መንግስት አጣሪ ጉባኤ የመዝገብ ማጠቃለያ*: table 4.

²⁰⁰ Article 5 of proclamation No. 798/2013

Figure 2. Category of Complainant

Complainants	Number of cases
Individual	3909
Court referral	5
Other*	21

*NGOs, State and religious organs

The table²⁰¹ shows that more than 99% of the complaints are submitted by individual complainants. Until March, 8 2018 around 3935 cases were submitted. From these, 3909 were from individual complainants, 5 of them are submitted by court referral, 21 by government and private institutions and 1 is submitted by the referral of the state council. These shows more than 99% of the complaints were submitted by individual complainants. Individual complainants come from the judicial channel after exhausting the local remedy.

From the cases submitted, human rights related complaints accounts significant in number (more than 95%). From the human rights complaints, the most frequently submitted is socio economic in nature and from this property rights are significant in number.

Figure3 Human Rights Complaints (September 2016- March 2018)

Case type	Total Number of cases opened from 2016- March 2018
Property related complaints	3538 (90%)
Right related with Children and Women	78
The right to equality	3
Other cases*	316

²⁰¹Supra note 187, የሕገ መንግስት አጣሪ ጉባኤ የመዝገብ ማጠቃለያ፣ የሕገ መንግስት አጣሪ ጉባኤ የጉዳዮች ፍሰት ዳይሬክቶሬት፣ table 4.2010

Total	3935
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* Cases such as labor cases, access to justice and tax related claim can be mentioned.

The table shows that more than 90% of the cases are property rights complaints. Since, it account very significant submission of complaints, exploring the reasons that trigger the increment submission of this particular human rights issue will address the research question in sufficient manner.

3.3. Triggering Grounds for the Increments of Human Rights Complaints

Constitutional interpretation is generally activated by abstract review, concrete review and the individual constitutional complaint.²⁰² The experience of the Council demonstrates that in Ethiopian constitutional system, constitutional interpretation is mainly initiated based on concrete claim.²⁰³

The legal avenues that trigger constitutional review are different with different constitutional systems.²⁰⁴ These triggering grounds determine the elements that constitute the constitutional interpretations. The legal grounds that trigger constitutional interpretation can be categorized as the constitutional challenge, constitutional questions, and constitutional compliments.²⁰⁵ In Ethiopian constitutional review system, with combine reading of FDRE Constitution and Proclamation No. 798/2013, it can be understood that constitutional adjudication can be initiated where any Federal or State law is contested as being unconstitutional, when the decision given by any government organ or official alleged to be contradictory to the Constitution.

Practically, from the submitted complaints 98% came from courts after exhausting the specified local remedies.²⁰⁶ In ordinary court, cases are initially started as individual dispute but when they

²⁰²Katherine Glenn Bass and SujitChoudhry "Constitutional review in new Democracies", Democracy Reporting International, *September 2013, P8.*

²⁰³*Supra note 188*, case file review on 2 file case. Interview with the Million Assefa.

²⁰⁴Ferreres Victor, "The Consequences Of Centralizing Constitutional Review In A Special Court Some Thoughts On Judicial activism", Yale school of Legal Scholarship Repository, 2004,p 464

²⁰⁵*Ibid.*

²⁰⁶*Supra note 193.*

brought to the Council, the alleged claim is against the final decision of the court along with the specific defendant.²⁰⁷ This is verified through interview with the complainants, attorneys and cases review made in the Council. From the interviewed complainants, half lodged their complaints against state organs and the remaining against both state organs and individuals jointly. By investigating the submitted cases, the Council rejected more than 97% of them.

Complaints submitted as of court referral to invalidate the unconstitutional law is very limited in number. According to the Council's case flow data, complaints submitted contesting constitutionality of laws is only 5 out of 3935.²⁰⁸ These kinds of complaints are usually submitted by court referral. As per the FDRE Constitution and the Proclamation²⁰⁹ complainants can be triggered to apply their cases for concrete review whenever they contend their rights are violated and they believe that the interpretation of the Constitution is necessary.

For the purpose of the research, the triggering grounds are other than the legally specified avenues that trigger constitutional disputes. These means the study explores the practical triggering reasons rather than the legally specified avenues that trigger constitutional disputes. According to the finding of the study, triggering factors for the increment are categorized into issues related with complainant, the subject matter of the case and the Council

3.3. 1.Triggering Grounds Associated With Complainants Disposition

Complainant can be triggered to apply their complaints due to different factors including their understanding and perception toward the institution.²¹⁰ According to the finding, triggering grounds in relation to the complainant's disposition can be categorized in to issues related to awareness and complainant's perspective toward justice system.

²⁰⁷Interview with Mr.TsegayeAsmamaw, The vice-president of the Federal Supreme Court and the Council Vice-President, 21 May 2018

²⁰⁸*supra note 187*

²⁰⁹Proclamation No. 798/2013

²¹⁰ Article 4 of the proclamation No. 798/2013

3.3. 1.1. Issues Related To Understanding

Constitutional interpretation denotes the ascertainment or determination of the meaning of constitutional provisions and used as a main tool to ascertain constitutional order and justice.²¹¹

In Ethiopian constitutional system, constitutional interpretation can be initiated when unconstitutionality of any law, customary practice, and decision of government organ or state official is claimed to be unconstitutional. Accordingly, the Council is mandated to assist the HoF in determining whether there is a need for constitutional interpretation and, if so, to give recommendation to it.²¹²

One of the triggering reasons for the increment of complaints in the Council is lack of understanding of the complainants toward issues that constitute constitutional interpretation and the misunderstanding they have toward the power and responsibility of the Council.²¹³ This can be understood from the interviewee's response, case file review and the rate of the rejection of the complaints submitted to the Council.

According to the data from the Council's registrar, from the case submitted to the Council, 95% of complaints were rejected alleging the complaints do not constitute constitutional issue. By referring this data, the interviewed experts and members of the Council argues that the rate of rejection in some aspect demonstrate the submitted complaints is do not have constitutional cause of action. From the individual interviewed complainants more than half responded that they do not know what constitute constitutional interpretation. The rest believe they know what constitute constitutional interpretation; however, they claim that constitutional interpretation is made as to invalidate error of law, factor any decision of the court. They consider constitutional interpretation as a tool to review any decision of the court. One respondent declare that 'Constitutional interpretation is the law that protects the right of citizens and it bridges the gap

²¹¹ Elliot Bulmer "what is a Constitution? Principles and concepts", International Institute for Democracy and Electoral Assistance, Sweden, 2017, p2

²¹² Proclamation Article 3, No. 798/2013

²¹³ Interview with Dr. Menbere Tsehay, former member of the Council, 24 May 2018

between governments and its citizen"²¹⁴. Other respondent believes he knows what constitutional interpretation is and he alleged that 'Constitutional interpretation is interpretation of constitutionally endowed human and citizens' rights. It is meant for searching the truth when the rights of individual are infringed by state made laws".²¹⁵This shows that the interviewees do not exactly know what kind of issues constitutes constitutional interpretation or not.

The other misunderstanding of the complainants is on the mandate, function and responsibility of the Council.²¹⁶ Most of the complainants do not know the legal mandate of the Council and the HoF.²¹⁷They bring case to the Council believing the Council is the highest in the judicial channel or the supervisor over the judicial organ. Thus, they submit their application considering the Council has an appellate jurisdiction.²¹⁸From the interviewed complainant half of them believe that the Council is the highest judicial organ which reviews any decision of the Court. For this reason, they believe it entertain question of fact, law and examine evidence like ordinary courts. And they believe it will solve their case by reversing the decision of the Courts according to the law of the country. The interviewed complainant believes that complaints do not necessarily attach to constitutional issues so long as there right as a citizen is jeopardized by the court order and individual action. Assuming²¹⁹the Council is the superior over ordinary Courts it sees constitutional issues and has the power to reverse every decision of the Courts. They contend that, the mandate of the Council is to protect the right of the citizen, and bridges the gap between government and citizen.²²⁰Accordingly, they believe the Council has a responsibility to review all judicial decision and bring justice to the citizen. These shows the interviewed complainants have a misunderstanding towards the mandate of the Council. This misunderstanding can be verified form the number rejection the complaints by the Council.

Since the complainants do not have a clear understanding towards the elements that constitute constitutional interpretation and the mandate of the Council, they tend to submit any dispute considering the Council as a forum to resolve every justiciable matter. Due to this confusion and

²¹⁴ Interview with Mr. Worku Shebeshe, from Amhara region, 8 May, 2018

²¹⁵ Interview with Mr. Wesen Beyene , from Oromia region, 9 May, 2018

²¹⁶ *Supra note 213*, Interview with Dr. Menbere Tsehay.

²¹⁷ *Ibid*

²¹⁸ Interview with Mr. Geta Afework, from Amhara region, 10 May 2018

²¹⁹ Interview with Mr, Fekede Zewede, from Amhara region 11 May 2018 (annex partII, question number four)

²²⁰ Interview with Seboka Regasa from Oromiya region 10 May 2018(annex partII, question number four)

with a view of exhausting all available remedy, complainants bring every contention that is clearly inadmissible without ascertaining the appropriateness of the merit of the cases. Thus, lack of understanding of the complaints paves a way for complaints to bring every case as to try their chance.

Contrary to the above assertions, awareness and assertiveness increment on the power and responsibility of the Council is presented as one ground that triggers the constitutional complaints. Rather than lack of awareness, the increment about the legal system and particularly constitutional dispute is among the reason that contributes for the increment of submission of complaints. The Council has a mandated by law to provide public awareness activities regarding the Constitution, constitutional interpretation by using various means and methods.²²¹ For this reason after the Council is autonomously established as secretariat, different awareness creation measures have been made by disseminating information through publications and using air time.²²² The Council has its own air time in Fana Radio; disseminate information through brochures, and blog in *Addis Zemen Gazette*.²²³ This enables the public to know about the element of constitutional litigation, mandate and function of the Council.²²⁴ For this reason, the complaints have been increasing because the Council is considered as one forum to bringing the grievances. However, all of the interviewed complaints said that they did not hear about the Council through either from printing or mass media. From the interviewed complaints, 60% responded they heard about the Council from different individuals, 20% from the Supreme Court registrar and the remaining responded that they heard about the Council from the Office of Ombudsman. Given that very significant numbers of cases are brought from the rural part of the country, it is not plausible to contend the printing and the mass media is reaching to the country side. So, it is hard to establish the relation between the increment of awareness of the complainants and the recommendations it gives.

Judicial litigation in general and constitutional litigation in particular is usually triggered by attorneys.²²⁵ However, in case of the Council, even though, the CCI Proclamation allow

²²¹ Article 28(9) of Proclamation No. 798/2013

²²² *Supra note 192*, Interview with Million Assefa

²²³ *Supra note 193*, Interview with Tekelewold Tlahun.

²²⁴ *Ibid*

²²⁵ Interview with Mr. Yadeta Gezaw, senior legal expert at the Council, 7 May 2018,

application by representation, cases submitted by attorneys are not significant in number.²²⁶ This is because even though attorneys have considerable knowledge about the issue, their opinion toward the Council; they do not believe it is the pertinent forum of constitutional litigation limits their involvement in the system.²²⁷ On the other hand other argues that, cases brought by attorneys are triggered by their financial interest rather than the actual believe had on the cases element on constitutional issues.²²⁸ The interviewed attorneys²²⁹ relatively know on issues that constitute constitutional interpretation but they assert that the power and responsibility of the Council unclear. They declare that they bring cases to the Council by the very interest of the litigants need to exhausts all available the remedy. According to the interviewed members of the Council, had it been most cases are brought by attorneys, the application of cases which do not have cause of action or clearly inadmissible cases will be limited. Even though there is financial interest behind involvement of attorneys in litigation, the complaints might be based on acceptable allegations. In Germany and South Africa Constitutional Court one of the method employed to curb the application of clearly inadmissible or which is based ingeniune right violations is by limiting applications only trough legal expertise or civil society organizations.²³⁰ Thus, since it is not expected that the general public knows detail about the litigation in general and constitutional litigation in particular, the involvement of civil societies and attorneys might decrease ingeniune applications.

²²⁶ Interview with Ms. Gebeyanesh Abese, registrar of the Council , May 9/2018

²²⁷ Case #2, from South 9 May/2018 and Mekonnen Redahegn from Tigray region, interviewed 9 May/2018.

²²⁸ *Supra note 213, Interview with Dr. Menbere Tsehay.*

²²⁹ 5 attorneys were interviewed and their background is attached in table 5 attached in the AnnexI

²³⁰ accessed at The Federal Constitutional Court Of Germany, accessed at http://www.bundesverfassungsgericht.de/EN/Das-Gericht/Aufgaben/aufgaben_node.html/ last visited on February 12/2018 and The constitutional court of South Africa, accessed at “cases flow report” <http://www.constitutionalcourt.org.za/site/thecourt/role.htm/> last visited 2/21/18.

3.3.1.2 Complaints Perspective towards the Justice System

According to Proclamation No. 798/2013, constitutional interpretation on issues can be initiated out justiciable or non-justiciable matter. Practically, more than 95% (3739) of the total complaints submitted before the CCI are came from the judicial channel.²³¹ In this regard cases either started from the Worda Court or Social Courts and which obtain final decision in the Federal Supreme Court.²³² For this reason the journey of a single case usually takes years.²³³ Because of this and other factors, more than half of interviewed complainants have grievances in the justice system. These complaints submit their cases alleging the decision of the Court contravene their constitutionally granted rights. They contend that, the judicial system is unfair, corrupted and incompetent to deal there cases.²³⁴ Thus, they apply their grievance to the Council as a last forum to solve their alleged right violation.²³⁵

Complainants tend to explore all possible remedy in the country is raised as a possible triggering ground for the increment.²³⁶ Some of the complainants even though they know they have less chance to win on their cases they submit their application to try their last chance.²³⁷ They believe that the judicial system is not giving the justice they hoped for.²³⁸ So, assuming the Council is the last forum to resolve dispute and the highest judicial organ that is mandated to reverse the decision of the court, they assume to get the justice from it.²³⁹ This shows the problems encountered the disposition of the complainant to try all possible remedy has a contribution for the increment of complains before the Council.

²³¹ *supra* note 187, የመዝገብ ማጠቃለያ

²³² Interview with Mrs. Desta Geberu, attorney and member of the Council, 9 May 2018.

²³³ *Supra* note 226, Interview with Ms. Gebeyanesh Abese

²³⁴ *Supra* note 225, Interview with Mr. Yadeta Gezaw.

²³⁵ Case NO #2

²³⁶ *Supra* note 213, Interview with Dr. Menbere Tsehay

²³⁷ *Ibid*

²³⁸ Case NO #1

²³⁹ *Ibid*

3.3.2. Triggering Grounds Associated With the Subject Matter of Complaints

Complaints submitted to the Council are different in their subject matter. As indicated in table 1, from the general submissions, human rights related complaints which are submitted in accordance with chapter 3 of the FDRE Constitutions account very significant number. Among this the socio economic rights are the most complaints with.²⁴⁰ According to the case flow data of the Council, property rights cases account 97%.

Article 40(4) of the FDRE Constitution provides that "Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession". Based on this constitutional provision, complaints submit their claims by alleging their right to acquire, to use, to dispose of such property by sale, bequest or to transfer has been violated by individuals and the state and its actor did not provide them the necessary protection.²⁴¹ The property right cases are mostly associated with rural land and land attached property related claims. For the significant increment of property right cases in general, land right claims in particular, normative and process related concerns, issues related with the nature of the rights is raised as triggering grounds.

²⁴⁰ Interview with Ms. Rahel Berehanu, Directorate director of cases flow department of the Council, Interviewed at 7 May 2018

²⁴¹ Case files review of the Council, obtained from the registrar of the Council , 17 May 2010

3.3.2.1. Normative and Process Related Triggering Grounds

In Ethiopia legal framework, the right to ownership of rural and urban land is exclusively vested in the State and in the peoples of Ethiopia.²⁴² Besides, the FDRE Constitution grants every Ethiopian citizen the right to ownership of private property.²⁴³ Moreover, under article 51 it states that federal government shall enact laws for the utilization and conservation of land. For their implementation, different proclamations and regulation have been enacted accordingly. This land related laws regarding the use, sales, endorsement, transfer and expropriation laws are among the reason that trigger the constitutional interpretation.²⁴⁴ Land related proclamations and regulations particularly rural land policies and laws are alleged to narrow the rights of citizens to acquire, use, to dispose of such property by sale, bequest or to transfer.²⁴⁵ In this regard, the allegations are usually submitted against individuals for violation of rights and the claim against is associated for not providing the necessary protection. The normative framework is presented as a triggering reason because when laws and policies narrow the rights of citizen the complaints against these laws in general and their constitutionality in particular will also be contested.

According to the member of the Council²⁴⁶, rather than the normative framework, the institutional and process related concern is the main reason to triggering the submission of complaints before the Council. The demonstrating reason for this is most of complaints is submitted claiming their legally recognized right is contravened by the state actors or the decision of the court rather than laws. This shows that the claimants usually do not have grievances against the legal framework rather their inapplicability. According to case flows data

²⁴² Article 40(3) of FDRE Constitution

²⁴³ Article 40(1) of FDRE Constitution

²⁴⁴ Interview with Mr. Getachew Gudina, Directorate director of the research team , 7 May 2018

²⁴⁵ Ibid

²⁴⁶ *Supra note 213*, Interview with Menbere Tsehay

of the Council most of the complaints are submitted claiming the decision of the court contravene their constitutionally endowed rights. This shows most of the allegation is not submitted against laws and polices rather against the decision of the Court. Thus, the likelihood of contention on laws to trigger submissions of violation is immaterial.

Members of the Council²⁴⁷ argues that cases increased in ordinary courts are also tends to increases in the Council. This can be due to several factors including most complaints in the council are justicable in nature. Thus, Respondent argues that "rather than stringent laws the triggering reasons could be absence of developed registration law and systems"²⁴⁸ In the country especially in the rural part there is no developed vital registration system. Thus, birth, marriage and death are not registered. For this reason, most litigation in court take time ascertaining this fact and this issue came to the Council after exhaustion of the possible remedies. Different litigation concerning the use right of land brought to court frequently.²⁴⁹ Apart from the absence of vital registration system, problems related to the land administration particularly agriculture land administration contribute to the increment.²⁵⁰ Even though, it needs further research, the impartiality and lack of transparency of the land administration is raised as one triggering ground for plenty of application of land rights complaints.

Problems associated with informal dispute resolution method particularly in land related litigation are among the reason that triggers the increment of submission of complaints.²⁵¹ In different regional states, the social courts are entitled to entertain land related dispute.²⁵²"This show the legal system allows the most important resource to be handled by the least competent institution".²⁵³ For this reason the inefficient fact finding process and poor legal interpretation contributes for the increment of cases in ordinary court and in Council.²⁵⁴

²⁴⁷ In the interview with Dr.Menbere Tsehay , DestaGeberu, and Tsegaye Asmamamaw

²⁴⁸*Ibid*

²⁴⁹*supra note 192*, Interview with Mr. Million Assefa

²⁵⁰*supra note 213*, Interview with Dr.Menbere Tsehay

²⁵¹ *Ibid*

²⁵²*Ibid*

²⁵³*Ibid*

²⁵⁴*Ibid*

3.3.2.2. Issues Related With the Nature of the Right

Inter alia, the nature of the right is among the reason that the trigger the increment. This is due to the right is fundamental in nature, the sentimental attachment the rural community have toward land and the population growth are among the reason that trigger the increment.

According to the experts and members of the Council²⁵⁵, property right related complaint specifically issues related with land right complaints are significant because the subject matter of the right is fundamental rights in nature. For agriculture is a fundamental source of livelihood for the majority of population in Ethiopia, the rights and security of rural land is the matter of life and death for the rural community. Since population is increasing in geometric terms, land has becomes the scarcest resource.²⁵⁶ This is because the population growth increases the demand for land whereas the resource is limited. Moreover, the population has a sentimental attachment to their land. Accordingly, there is lots of dispute concerning the matter and when contention arises, the litigants tends go until the last resort. For this reason dispute in general are increasing objectively. The reveling illustration for this is the increment of litigations on land and land attached issues before the Court of law. The population growth on the other hand creates scarcity on plotted land. Thus, controversies are occurring on acquisition, possession, and use of land because fragmented and becomes smaller.²⁵⁷ This indicates that, since property right particularly, lands related right are fundamental in nature complaints can be trigger to apply their dispute in available forum including the Council.

The development of economic activities of the country also is one of the triggering grounds for the increment of constitutional disputes; this is due to the investment interest on property especially on land and its utility are one reason for the increment. The above several reasons reveals that the nature of the right itself has contribution for the increment o complaints.

²⁵⁵ All of the Interviewed expertise and members of the Council especially Desta Gberu, Getachew Gudina and Million Assefa argues that triggering ground in relation to property case the fundamental nature of the right.

²⁵⁶*Supra note 192*, Interview with Mr. Million Assefa

²⁵⁷*Supra note 232*, Interview with Mrs.Desta Geberu.

3.3.3. Triggering Issues associated with the Council

The Council has been established as a secretariat in pursuant to Proclamation No. 250/2005 since it needs to have its own supporting office so as to discharge its duties efficiently while maintaining its constitutional independence.²⁵⁸ From this time onwards, the increment of submission of complaints before the Council starts to ascend particularly starting from 2007 E.C. Until the 2006 E.C, the office of the Council was under the compound of the House of Federation as one directorate.²⁵⁹ After the enactment of the repealed proclamation number 250-2001, the Council open its own office and it established as a secretariat. One of the main reasons for the increment of submission is the establishment of the Council as secretariat. One of the demonstrating reasons is the increment start to ascend in the particular year where the Council is established as a secretariat.

Apart from the aforementioned factor, different procedural and operational reasons have been raised as a major triggering ground for the increment of complaints before the Council on the side of the Council. The procedural reasons are related mainly accessibility, whereas the operational reasons are related with the decision of the Council.

3.3.3.1. Issues related with Accessibility

The ability of citizens to access to justice institutions to address their grievance and complaints has become the essential elements for rule of law and realizations human rights.²⁶⁰ Accessibility enable citizens demand their rights are upheld. Accessibility has different dimensions. However, for the purpose of this research, accessibility is reviewed interims of place, cost and procedure.

²⁵⁸ This proclamation has been repealed by proclamation No. 798/2013, which is enacted as to proclamation to re-enact for the Strengthening and specifying the powers and duties of the council of Constitutional inquiry of the federal Democratic republic of Ethiopia.

²⁵⁹ *Supra note 193*, Interview with Mr. Teklewold Tilahun.

²⁶⁰ Terrea Marchiori, "A framework for Measuring Access to Justice including specific challenge Facing Women Report commission by UN women, 2015

3.3.3.1. 1. Procedural Accessibility

The substantive recognition of rights achieves its goal through the procedural applications.²⁶¹ Different countries constitutional organs have developed their own procedure complaints rather than adopting the procedure of the court. This procedure determines rules including rules of standing, about hearing, and limitation of actions.²⁶² The procedure of constitutional interpretation determine as to how and where constitutional complainants are presented, determined, and enforced by the concerned organ.

The FDRE Constitution set a general procedure to be employed in the process of adjudicating constitutional issues.²⁶³ Proclamation No. 798/2013 on the other hand, sets application procedure regarding the concrete review and individual complaints procedures that should be applicable by the Council.²⁶⁴ Thus, the Council in its concrete reviewing mandate, any interested party cannot lodge its complaints before the Council rather before exhausting the remedy provided under the proclamation.²⁶⁵ And the Court is at authority either to refer the case to CCI or reject the complaints demand on this regard, subject to be appealed by aggravated party. In the individual complaints procedures, any person whose fundamental rights and freedom recognized in the Constitution is violated by state and its actors shall have the right to submit its case to the CCI.²⁶⁶ However, one of the inadequacies of the Council's constitutional interpretation mandate is the absence of rule of procedure.²⁶⁷ For these reason the objective and subjective purposes of the constitutional complaint is not clear as it supposed to be and there no detailed standing rule.²⁶⁸ The practical case for this scenario is the unpredictable application of procedure in different complaints. According to the experts and the member of the Council, there are legal and operational grounds that lead to the increment of the complaints.

261Dessalegn BerhanuWagasa, "All About Words on The Procedure of Constitutional Interpretation In Ethiopia: A Comment On Melaku Fanta Case", Oromia Law Journal [Vol.4, No.1], Abyssinia law,(undated), P207.

²⁶² Ibid

²⁶³ Article 84(3) of FDRE Constitution

²⁶⁴ Article 10(2)

²⁶⁵ Council of Constitutional Inquiry Proclamation, Proclamation No. 798/2013; (August 2013), Article 4(2)

²⁶⁶ *Ibid*, Article 5(1)

²⁶⁷ *Supra note 213*, Interview with Dr.MenbereTsehay.

²⁶⁸ *Ibid*

According to the Constitution, the Council is expected to draft rules of procedure and implement them up on the approval of the HoF. According to Article 10(2) of proclamation No 798/2013, ‘the application procedure for constitutional interpretation to be submitted to the Council shall be pursuant to the directive to be issued in accordance with this Proclamation. Thus, the Council is expected to present the procedure of the matter to the House of Federation and the decision of the House is based on the proposal and the procedure received from the Council of Constitutional Inquiry. The directive or procedural manual is not declared by the Council until the interview is made. Practically, the Council follows the rule of procedure of the civil procedure code in some cases. For instance, like that of the civil procedure, the application procedure is required to be in written form and hearing procedure can be mentioned.

In most legal system question of fact and question of law is only examined by the ordinary courts.²⁶⁹ According to the principle finality, the power to see justiciable matter is only reserved to the ordinary court.²⁷⁰ So, the decision of the highest Court is considered the final decision. However, in Ethiopian constitutional interpretation system, even though the Council has a strict mandate to interpret the Constitution, it practically involved in examining question of fact and law.²⁷¹ This trend is become normal due to several factors including the misunderstanding the members and expertise have on the Constitutional interpretation.²⁷² The effect of this misunderstanding on the power and function of the Council is one of the triggering factors for the increment of cases. In contrary, rather than the misunderstanding of the members on the power and responsibility of the normative ambiguity on constitutional interpretation and the rules of standing is presented as a reason for the Council involvement on examination of fact and law.

Additionally, absence of period of limitation is raised as a reason for the increment of complaints before the Council. One of the procedure that limit the right of action is period of limitation.²⁷³ When there is period of limitation on the right of action security of legal transaction and

²⁶⁹*Ibid*

²⁷⁰*Ibid*

²⁷¹*Ibid*

²⁷²*Supra note 225*, Interview with Mr. Yadeta Gezaw.

²⁷³ "Merriam Webster Law dictionary" accessed at www.merriam-webster.com, last visited june30

reliability of legal framework will be ascertained.²⁷⁴ The Council of Constitutional Inquiry Proclamation provides limitations for action requirement as an admissibility requirement²⁷⁵ However, the issue of period of limitation is not provided under the proclamation. In practical procedure of the Council, there is no period of limitation as to initiate constitutional litigation in the Council.²⁷⁶ This makes the Council to have an open gate for every case which obtains final decision in any given time. Consequently, "The Council is biting more than it can chew".²⁷⁷ One of the interviewee explains that her cases obtain a final decision in 1978 EC.²⁷⁸ From the interviewed 15 respondents, 4 of them obtain final decision before 3 year. This shows anyone who gets a final judgment any time can submit their cases.

3.3.3.1. 2. Accessibility interims of cost and place

According to Article 27(3) of the proclamation, the office the Council shall have its head office in Addis Ababa and may have branch offices in cities of the states as necessary. Up until the data is collected the office of the Council office is headed in Addis Ababa, Piazza. Considering the majority of complaints are coming from the rural part of the country the Council is inaccessible.²⁷⁹ For this reason the increment of case and the accessibility of the council have inverse relationship.²⁸⁰ However, since most of the complaints are disputant in court, they submit their complaints after they obtain final decision in the Federal Supreme Court. Since the Supreme Court is relatively near to the Council they do not go the extra mile.²⁸¹ This makes the Council is accessible and complaints tended to tray their chance on their way. For this reason, this has somehow direct relation with the increment of cases²⁸². Additionally, since the Council

²⁷⁴ Belew Meresha and Kahsay Debesu "limitation of action" accessed at www.abissinialaw.com, last visited june2/2018

²⁷⁵ According to Article 4 Proclamation No. 798/2013, exhaustion of local remedy, requirement on format are provided as a limitation of action.

²⁷⁶ *Supra note 219 and 209*, Interview with Ms. Gebeyanesh Abese and Interview with Dr. Menbere Tsehay,

²⁷⁷ *Ibid*

²⁷⁸ Wesen Beyene, Oromia, submitted her case a year before. Her case is submitted alleging she is forcefully evicted from urban land. Her cases obtain final decision in 1978 EC.

²⁷⁹ *Supra note, 244*, Interview with Mr. Getachew Gudina

²⁸⁰ *Supra note 225* Interview with Mr. Yadeta Gizaw

²⁸¹ *Ibid*

²⁸² *Ibid*

accepts complaints only in person, complaints expected to come in person from rural part of the country. Given that most applications are submitted from the regional state, if it have branch office in the city of the state as per the proclamation²⁸³, it will be more accessible regional complaints.

On the contrary it is argued that, the physical accessibility the Council do not have a relationship with the increment.²⁸⁴ Even though the Council is situated only in Addis Ababa and given that application for submission is required to be in person it lead to extra costs such as transport and accommodations. However, since there is no hearing procedure and it is possible to check the status of the case trough phone, complaints are expected to submit their application in person only to open their file.²⁸⁵ Consequently, to come to all the way to Addis Ababa for application is not that much inaccessible.²⁸⁶

According to the Article 14 of proclamation No. 798/2013 any case of constitutional interpretation submitted to the Council shall be free of service. These have a direct relation for increment of cases before the Council.²⁸⁷ Since, the service given by the council is free of charge complaints are encouraged to submit their case. Most of the compliant are from lower class of the society. This makes them sensitive to any charge. Thus, making the service free of charge encourage to submit their cases. Additional to service the charge, the Council procedures do not demand hearing suit and examination of witness. For this reason most of the complaints do not hire attorney.²⁸⁸ Consequently they do not incur extra cost. For this reason the Council service is free of charge and does not follow strict procedure it is accessible interims of cost. This is pulling factor for complaints to submit their cases.²⁸⁹

²⁸³ Article 27(3) of proclamation No. 798/2013

²⁸⁴ *Supra note, 213*, Interview with Dr.MenbereTsehay.

²⁸⁵ Interview with Mrs. Zewede Dybisa, from Oromia, Mr.TeshomeTadale and Mr.Birehanu Getis and Oromia, 10 and 11th May, 2018

²⁸⁶ Interview with Mr.Dellelew Derza, South Region 7 May 2018

²⁸⁷ *Supra note 207*, Interview with Mr. Tsegaye Asmamaw.

²⁸⁸ *Ibid*

²⁸⁹ *Ibid*

3.3.3.3. The Decisions of the Council

Where any law or decision given by any government organ or official which is alleged to be contradictory to the Constitution is submitted to it; the Council shall investigate the matter and submit its recommendations thereon to the House of the Federation for a final decision.²⁹⁰

The Council from the 3935 cases submitted to it, after investigating, find it necessary to interpret the Constitution, it submit its recommendation to the House on 47 cases. From this recommendation, 44 of them obtained decision on the past three years.²⁹¹ This increment of the recommendation the Council gives to the House is presented as one of the pulling factor for the increment of cases.²⁹² When the recommendation it gives is increasing the complaints are encouraged to submit their case to the Council.²⁹³ Contrarily it is contended that, the effect this performance of the Council is very unlikely to trigger the increment because most of the complainants came from rural land and it is less probable for them to hear about this performance.²⁹⁴ The interviewed respondents did not know about the recommendation the Council is giving and the rate of rejection.²⁹⁵

3.4. The Effect of the Increment on the Council Performance

Constitutional interpretation can be a tool for protection of human rights recognized under the Constitution.²⁹⁶ Thus, the competence, autonomy and effectiveness the organ that interprets the Constitution has significant role on the realization of fundamental rights and freedom incorporated in the Constitution. As an organ that conducts constitutional inquiries and investigates constitutional disputes, the Council's effectiveness has implication towards human

²⁹⁰ Article 3 of the proclamation No. 798/2013

²⁹¹ *Supra note 187 ጽሑፍ ብሔራዊ*

²⁹² *Supra note 225*, Interview with Mr. Yadeta Gezaw

²⁹³ *Supra note 193*, Interview with Mr. Teklewold Tilahun

²⁹⁴ *Supra note 223*, Interview with Mr. Yadeta Gezaw

²⁹⁵ From the responded 15 complaints, all of them responded that they didn't know how many recommendations it gives.

²⁹⁶ Walther Sinnott-Armstrong Susan J. Barison, “The philosophical introduction to constitutional interpretation”, (undated), p122

rights protection. *Inter alia*, the increment of cases flow has an effect on the effectiveness of the Council and obstructs its focus from clearly admissible cases.

Experience of the Constitutional Courts of Germany and South Africa demonstrates that the increment of complaints by itself is not a problem as long as the institution is at capacity to entertain cases, the complaints are based on clear right violations and the contested issue is recognized under the Constitution. The Council experience in this regard shows that, the increment is creating inconveniences in its performance. Different studies conducted concerning the Council contend that, the Council's capacity to entertain constitutional complaints is questionable due to its structural issues. According to the case review made in this study and in-depth interview with respondents it can be conclude that significant numbers of submission do not entail constitutional issues. For this reason, the increment of the complaints can be identified as a problem.

The Council like that of the Germany Constitutional Court, does not have a preliminary investigation proceeding by which clearly inadmissible constitutional complaints or compliant which will be clearly unsuccessful are identified in separate proceedings.²⁹⁷ For this reason, every applications including demand for injunctions directly go to the members of the Council. Because of the case load, to give a decision to a case it took them more than two years. This intensified due to the structure of the Council.

The increment of submissions of complaints within the existing structure of the Council creates inconvenient.²⁹⁸ The Council performs its mandate to interpret the Constitution by its non-permanent members. The members meet once in a month and give their decision an average of 10 cases. The Council in the past three years accepts on average 700 applications within a year.²⁹⁹ Comparing the application, the time by which one case obtains decisions relatively less. In its current performance it took years to render decision on one case. This delay has an impact on protection of citizens fundamental rights provided under the Constitution.

²⁹⁷ Interview with DR. MenebereTsehay, DestaGeberu and Mrs. Gebeyanesh Abese.

²⁹⁸ All the interviewed members and expertise argue in this manner. (The list is attached in AnnexII)

²⁹⁹ *Supra note 187, የመዘንብ ሰነድ, ቃለ, የ*

3.6. Conclusion

The whole discussion of this chapter specifically focuses on the triggering grounds are related to instigating grounds other than the legally specified avenues that trigger constitutional disputes in Ethiopian constitutional system. To this effect, in-depth interview is made with stakeholders, particularly with individual complaints, attorneys, members and expertise of the Council.

The case flow of the Council is at increasing rate. Based on the finding, different triggering grounds are discussed categorizing in to three sections. The first as pushing factor, triggering grounds is discussed in relation to complaints. The second section discusses triggering issue in relation to the subject matter. For this purpose, property right related complaints are selected because very significant number of the case is property right cases. The last section discusses triggering grounds from the Council as pulling factors.

Chapter Four

4. Conclusion

4.1 Conclusion

Constitutional interpretation by standing in fundamental blocs of the interests and values of a given society that has been formulated into the constitutional provision it can uphold the will of the people and can be a means to challenge structural repression which is based on policies, legislation, and practices. More importantly, it can be a means for realization of fundamental rights and freedom incorporated in international human rights instrument as well as the domestic legal system mainly in Constitution. Thus, the efficiency and effectiveness of the constitutional disputes adjudicatory organs have an effect on human rights protection recognized under the Constitution. In Ethiopian constitutional system, the Council is mandated to conduct constitutional inquiries and to investigate constitutional disputes. Hence, it have very significant role for the protection of fundamental rights and freedoms incorporated in the Constitution.

The Council is empowered to investigate constitutional disputes as per article 84 of the Constitution which necessitates to have a better practice and structure to respond to issues related to the interpretation of the Constitution efficiently. The interpretation practice of the Council is affected by different factors. One of the concerning phenomena in this regard is the increment of complaints.

The increment of general complaints starts to ascend starting from 2007 E.C. From the general complaints human rights related complaints account more than 95% of the submission. From this, property right allegations account 90% of the submission. According to the establishment proclamation of the Council, constitutional interpretation can be initiated by the legally specified parties who have standing to initiate constitutional litigation. Among this specified parties who have standing, practically more than 98% of complaints are submitted by individual complaints

who allege his/her fundamental rights and provided under the Constitution have been violated by due to final decision the Court.

The finding shows that triggering grounds related with the disposition of the complaints are issues related with awareness of the complainants, and their perspective toward justice system of the country.

The lack of understanding of the complainants found out to be one reason for the increment of complaints in the Council. The understanding of the complainants is measured through their knowledge regarding the subject matter of the constitutional interpretation and the understanding they have on the power and responsibility of the Council. Concerning their awareness on the element of constitutional interpretation, it is found that the complainants lack knowledge on what constitute constitutional interpretation. They also do not have a clear understanding on the function, power and mandate of the Council. Most of the complainants believes that the Council is the highest judicial organ of the state and empowered to review any act of the Court including error of law and question of facts. They submit their complaints with the intention to resolve all available dispute resolution remedies in the Country. Hence, they believe the Council as one judicial forum to resolve dispute. Moreover, it is found out that, they are triggered by their perspective toward the justice system. Some of the interviewee believes that the justice system is unfair and corrupted. Thus, they submit their complaint as an appeal considering the Council as a supervisor of the Courts. To curb this, the experience of the Constitutional Court of Germany and South Africa shows that, crafting different application procedures such as preliminary investigations mechanism is applicable. Moreover, they limit submission of constitutional complaints through representation of legal expertise or CSO's.

Concerning the issues related with the subject matter of the case, normative and process related grounds and issues related with the nature of the right are found to be the triggering grounds. As property right is fundamental in nature and the land resource is scarcest resource in the country, there is lots of dispute concerning the matter. The frequently disputed cases in the courts are considered to be the most frequently complained within the Council. Additionally, the poor registration and the dispute resolution system of the Council are found out to be the triggering grounds for the increment.

Issues related with the Council are found out to be a pulling triggering ground. From this, cost, procedural and physical accessibility is found to be the triggering reasons. Since the service is free of charge, the applicants are encouraged to submit their application. However, the physical accessibility does not have a significant impact for the increment.

Even though, the Council is mandated to draft rule of procedure, it did not draft it accordingly. For this reason the objective and subjective purposes of the constitutional complaint is not clear as it supposed to be and there no detailed standing rule. In practical procedure of the Council, there is no period of limitation as to initiate constitutional litigation in the Council. Thus, absence of rules of this procedure also found out to be the most important triggering grounds. Even though, the increment of the recommendation of the Council gives is raised as one of the triggering ground, it do not have significant role for the increment. The increment of complaints has its own implication in the performance of the Council.

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Appendix I: Interview Guidelines

Part I: Interview Questions for Members and Experts of the Council

I am Frehiwot Ararsa, a graduating class at Addis Ababa University Center for Human Rights. I am working on my graduating paper on the research title: “Increasing submissions of human rights violation complaints before the Federal Council of Constitution Inquiry: Issues related to “triggers”. The very purpose of this interview is for academic purpose so; I assure you that every contents of your interview are kept confidential.

1. Respondent Profile (Demographic Data)

1.1 Name of Respondent:

1.2. Educational and occupational Background:

1.3. Represented institution:

1.4. Official title:

1.5. Duration of engagement with the institution represented

Main Questions

2. Do you believe the legal framework of the country is clear on what constitutes constitutional interpretation?
3. What kinds of issues are practically confusing for the complaints on what constitute constitutional interpretation?
4. Data from the CCI reveals that complaints before the council are at increasing rate. What do you think the reason for the increment of cases in general and human rights cases that are frequently submitted in particular?
5. Did the increment of cases create inconvenience on the Council performance? If yes, can you mention some?
6. What kind measure does the Council take to manage the case load? Do you believe the measure is effective?
7. Did the Council have a clear procedure to deal with the case? If no, do you believe the absence of formal procedure is one reason for the increment? (To know the relationship between formality or stringency and increment)
8. Do you believe the Council's decision have the required quality? (To know the relationship between quality and increment)
9. Do you believe the Council is accessible in terms of cost, place and procedure?
10. What possible remedies you personally recommend to curb and manage the case load?

Interview Questions for Complaints and Attorneys

Respondent Profile (Demographic Data)

1.1 Name of Respondent: (optional)

1.2. Educational and occupational Background:

1.3. Represented institution: (if any)

1.4. From which regional state the case is submitted

2. Why do you come to the Council? How do you hear about the Council?
3. On what kind of issue are you submitting your complaints?
4. Do you know the power and responsibility of the Council? if yes, please explain How do you submit your complaints?
5. Is the Council physically, procedurally and in terms of cost accessible?
6. Do you know what constitutes constitutional interpretation? If yes what is it? How do you know?
7. Do you think the council is competent enough to entertain your case? Do you believe you can obtain a proper decision with quality?
8. At what time are you expecting your case obtain a decision?

9. Do you observe any problem on the Council related with the case management? What do you suggest to solve the problem?

Appendix Part II: Profiles of Respondents

Background of the Complaints

No	Name of Complaints	Region	Educational Background
1	GetaAfework	Amhara	1 st Degree
2	WorkuShibeshi	Amhara	Not gone to formal school
3	WesenBeyene	Oromiya	8
4	BedaneArarerso	Oromiya	5
5	MohammedSeid	South	10
6	DellelewDreza	South	12
7	TeshomeTadale	Oromiya	Illiterate
8	BerehanuGetis	South	Illiterate
9	FekedeZewede	Amhara	8
10	ZwedeDybisa	Oromiya	Diploma
11	SolomonNegeri	Oromiya	12
12	SebokaRegssa	Oromiya	10
13	WakjeraGedenebo	Oromiya	Diploma
14	DebreworkZelege	Oromiya	Illiterate
15	SebokaRegasa	Oromiya	1st grade

Backgrounds of the Attorneys

	Name	Title	Region
1	Jafar Gedi	Attorney	Addis Ababa
2	Mekonnen Redahegn	Attorney	Tigray
3	Fetne Kebede	Attorney	Addis Ababa
4	Case #1	Attorney	Addis Ababa
5	Case #2	Attorney	South

Backgrounds of the Expertise and members of the Council

	Name of the Expert	Title	Experience in the Council
1	Mr. Kebebew		
2	Mr. Getachew Gudina	Directorate Director of the Council research Department	Three years
3	Mr. Yadeta Gezew	Senior Legal researcher	Three years
3	Mr. Teklewold Telahun	Senior Legal researcher	Three years in the CCI
4	Mr. Gebeyanesh Abese	Registrar	Four years
5	Ms. Rahel Berehanu	Directorate Director	Four years
6	Million Assefa	Attorney and member of the	3 years

		Council	
7	DestaGeberu	Attorney member of the Council	3 year
8	MenebereTsehay	Former member of the Council	
9	KebebeTadese	Special assistance to the Council members and general secretaries	