

# AN OVERVIEW OF THE ETHIOPIAN LEGAL SYSTEM

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*This paper provides a bird's eye view of the legal system in Ethiopia with particular focus on the current government that came into power in 1991 after a military victory over the dictator Mengstu rule that reigned between 1974 and 1991. This paper looks into the FDRE Constitution, the proclamations and other relevant materials. Thus, the paper gives an insight into the main features of the FDRE Constitution followed by the law-making institutions of the FDRE, the court system at the federal and state levels, Alternative Dispute Resolution (ADR) mechanisms, and the law enforcement agencies. Finally, the sources of laws and law practice are briefly considered.*

*La rareté des études sur le système légal Ethiopien justifie à elle seule l'intérêt de cette contribution. Depuis 1991, date de la chute du dictateur Mengstu à la tête du pays depuis 1974, le gouvernement Ethiopien a conduit une série d'importantes réformes institutionnelles, au premier rang desquelles la création en 1994 de la République fédérale démocratique d'Éthiopie (RFDE). Ces réformes successives servent de fil conducteur aux développements de l'auteur qui analyse successivement les sources du droit, la Constitution de la RFDE, les modalités d'élaboration de la loi, le système judiciaire et les modes de règlement des conflits en Éthiopie.*

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## **I INTRODUCTION**

Ethiopia is located in East Africa in the sub-region known as the Horn of Africa. It covers an area of about 1.2 million square kilometres. It is bordered by Sudan to the west, South Sudan to the south west, Kenya to the south, Somalia and Djibouti to the east, and Eritrea to the north. It has a population of 86,538,530.<sup>1</sup> Life expectancy at birth is 59.7. About 85 per cent of the population live in rural areas

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1 United Nations Development Programme Report 2013.

and earn their living from agriculture, which is the backbone of the country's economy. The country has an annual per capita income of about USD 418. The Ethiopian currency is known as Birr.<sup>2</sup> Ethiopia has a diverse population, with more than 85 distinct ethnic groups. Orthodox Christianity, Protestantism, Islam, Catholicism, Judaism and indigenous religious beliefs are practised.

Ethiopia is one of the most ancient and oldest independent nations in Africa. Conventionally the historical formation of the Ethiopian state goes back at least three thousand years.<sup>3</sup> The formation of contemporary Ethiopia as a state, however, was by Emperor Menilik II in the late 19<sup>th</sup> century. The Emperor is well-known for defeating the Italian colonial army at the battle of Adwa. Adwa was a watershed both in the survival and evolution of the modern empire state of Ethiopia.<sup>4</sup> After the death of the Emperor, political power was taken over by the short-lived succeeding rulers, Lij Iyasu and Empress Zewditu. Emperor Hailesilassie was the next ruler to succeed to the throne. This Emperor is acknowledged for modernisation of the bureaucracy system. He, for example, introduced the first modern constitution to the country in 1931. The Emperor faced internal challenges following the end of the five-year Italian occupation. The 1931 Constitution was revised in 1955 to cope with the political, social and economic changes witnessed in the country. The 1960 attempted coup proved the dissatisfaction of the mass that led to the popular Ethiopian revolution of the 1974 mainly led by the radical and left-wing intellectuals. The absence of organised political groups during the revolution resulted in the hijacking of the state power by a group of junior military officers called Derg in September 1974. The Derg regime failed to ensure the prevalence of rule of law and experienced both internal and external conflict. In 1991 the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) instigated a successful military attack on Colonel Mengstu.<sup>5</sup> In May 1991, EPRDF took control of Addis Ababa, the capital and largest city. Following this, the Peace and Democracy Conference held in July 1991 in Addis Ababa proclaimed the Transitional Period Charter, a precursor to the Constitution, and also instituted the transitional Government of Ethiopia.<sup>6</sup> In December 1994 the Constitution of the

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2 Ethiopia's unit of currency which literally means silver. At the current market rate 18 birr is equivalent to 1 USD.

3 Merera Gudina *Ethiopia: From Autocracy to Revolutionary Democracy* (Addis Ababa University, Addis Ababa, 2011) at 1.

4 Ibid.

5 Military ruler of Ethiopia who was in power for 17 years.

6 Fasil Nahom *Constitution for Nation of Nations: The Ethiopian Prospect* (Asmara, Eritrea, 2004) at 38.

Federal Democratic Republic of Ethiopia (FDRE)<sup>7</sup> was ratified by the newly elected federal parliament.

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## ***II THE FDRE CONSTITUTION AND ITS MAIN FEATURES***

The current Constitution of Ethiopia came into effect in 1995. It is a document of 106 articles<sup>8</sup> contained in ten chapters. As stated in the Preamble, the creators of the Constitution are the "nations, nationalities and peoples of Ethiopia". In terms of form, the Preamble comes first, followed by general provisions, and then by the basic principles of the Constitution, human rights, state organs, local government, national policy objectives and principles and amendment rules. The following are the main features of the FDRE Constitution.<sup>9</sup>

*The Establishment of Federal System:* Federalism is an important feature of the Constitution. The Constitution declares Ethiopia to be a federal polity with nine regional states based on ethno-linguistic patterns. Federalism was introduced as the culmination to the long-standing 'national question',<sup>10</sup> and as a reaction to and result of a long history of a centralist tendency that was pursued harshly by successive governments in the past.

*Ethnicity:* Ethnicity is of great importance in the Constitution. The wording of the Preamble of the Constitution begins with "We, the nations, nationalities and peoples of Ethiopia. ..." <sup>11</sup> This symbolises a constitution of the Ethiopian citizens

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7 Hereafter called "FDRE".

8 Footnote references are to articles of the FDRE Constitution.

9 Nahom, above n 6, at 49–64.

10 Markakis (2003) as cited in Tsegaye Regassa "State Constitution in Federal Ethiopia; Preliminary Observation" (Paper presented at the Ballagio Conference, 2004).

11 See Preamble to the FDRE Constitution.

not simply taken together as a people but as citizens in their different ethno-linguistic groupings. The ethno-linguistic groupings and the nationality issue have historico-political and socio-economic significance beyond the cultural and linguistic expressions. "We the nations, nationalities and peoples. ...." recognises Ethiopia as a nation of nations.<sup>12</sup>

*Parliamentary Democracy:* The Constitution establishes a parliamentary democracy.<sup>13</sup> There are two houses known as the Federal Houses. They are the House of Peoples' Representatives (HPR) and the House of Federation (HF). The Constitution also provides for a one house State Council at the state level. The HPR is the highest authority of the Federal Government and the State Council is the highest organ of state authority. The HF which is composed of representatives of Nations, Nationalities and people is the other representative assembly with specific power, including the ultimate "power to interpret the Constitution."<sup>14</sup>

*Right to Secession:* The right to secession is part of the broader right to self-determination. It is one of the most controversial articles of the Constitution as many argue that it endangers unity. The right to secession is the ultimate extension and expression of the right to self-determination and the Constitution provides a detailed set of procedures for the way in which this right may be exercised.<sup>15</sup>

*Ownership of Land:* Land is an item of the Constitution which is hotly debated, but on economic rather than political grounds. The Constitution states that, "the right to ownership of rural and urban land ... is exclusively vested in the state and in the people of Ethiopia". It goes on to add, "Land is a common property of the nations, nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of transfer".<sup>16</sup> The general principle is that land, urban or rural, should not be considered simply as a market commodity. According to art 40 of the Constitution, all urban and rural land is the property of the state and the Ethiopian people.

*Language:* Article 5 provides both for the equality of languages and for their practical application in government. Accordingly, all 85 Ethiopian languages enjoy equal state recognition, The Amharic language is the working language of the

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12 Nahom, above n 6, at 51.

13 Article 45.

14 Articles 53–62.

15 Article 39(1).

16 Article 40(3).

FDRE. However, states of the federation may by law determine their own working language.<sup>17</sup>

*Religion:* Religion has played an important part in Ethiopian constitutional history over the centuries. From paganism to archaic Judaism, from Christian Orthodoxy to Islam, and from Catholicism to Protestantism, they have all left their strong imprint at one time or other in Ethiopian constitutional history. There has been no time in Ethiopia's monarchical history when there has not been a state religion. The 1995 Constitution avoids such practice. According to art 11 state and religion are separate. There is no state religion and the state shall not interfere in religious matters and religion shall not interfere in state matters.<sup>18</sup>

*Fundamental Rights and Freedoms:* A significant thrust of the Constitution is in the field of fundamental rights and freedoms. Nearly one third of the provisions of the Constitution deal with fundamental rights and freedoms. These rights are divided into human rights<sup>19</sup> and democratic rights.<sup>20</sup> Generally, the Constitution incorporates first, second, and third generation rights. However, the compartmentalisation of rights as human rights on the one hand and democratic rights on the other is not watertight. The Constitution is in compliance with UNDHR and other international human right instruments.<sup>21</sup>

*Constitutional Interpretation:* The ultimate interpreter of the Constitution is not the highest court of law, but the HF.<sup>22</sup> The Constitution establishes the Council of Constitutional Inquiry,<sup>23</sup> a body of mostly legal experts of high standing, headed by the Chief Justice of the Federal Supreme Court, to examine constitutional issues and submit its findings to the House of Federation. The HF thus has the competent and authoritative legal advice of the Council of Constitutional Inquiry before it makes its decision on constitutional issues.

*Constitutional Amendment:* The Constitution is a rigid one. Amending it involves a long procedure. The formal initiation of constitutional amendment can

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17 Article 5(1), (2) and (3).

18 Article 11(1), (2) and (3).

19 Articles 14–28.

20 Articles 29–44.

21 Article 13(2).

22 Article 62(1).

23 Article 63(2).

come from either regional or federal legislative organs. Where an initiative comes from the regions, a third of State Councils must have supported a draft by majority vote. Otherwise either of the Federal Houses can initiate a constitutional amendment by a two-thirds majority vote.<sup>24</sup>

*State of Emergency:* The Constitution stipulates specific procedures and institutions on a temporary basis when situations arise that amount to a state of emergency. The Council of Ministers has the power, under such circumstances, to issue a decree proclaiming a state of emergency and, through regulations, take the measures necessary to protect the country's sovereignty and peace, and to maintain public security, law, and order. To this end, the Council of Ministers may suspend the democratic and political rights provided for in the Constitution.<sup>25</sup>

*Inter-governmental Relations:* The relationship between the federal government and the states is regulated by the federal constitution. The Constitution lists the federal powers, the state/region powers, concurrent powers, and leaves residual powers to the states.<sup>26</sup> The principle of 'mutual respect'<sup>27</sup> between federal and state governments and 'mutual non-interference'<sup>28</sup> in one another's affair is recognised in the Constitution.<sup>29</sup>

### **III LAW MAKING INSTITUTIONS**

#### **A Federal Institutions**

The highest legislative authority is the House of Peoples' Representatives (HPR). The members of the HPR are elected by a plurality of the votes cast in general elections every five years. Members of the HPR are popularly elected for a five-year term in a "first-past-the-post" electoral system.<sup>30</sup> The HPR has 550 members, and at least 20 seats are reserved for minority nationalities and peoples in order to ensure their representation.<sup>31</sup> Members of the HPR are representatives of the nations, nationalities and peoples of Ethiopia. They are governed, as clearly

24 See arts 104 and 105.

25 Article 93.

26 Articles 50–52.

27 Tsegaye Regassa "State Constitution in Federal Ethiopia; Preliminary Observation" (Paper presented at the Ballagio Conference, 2004) at 4.

28 At 4.

29 Articles 47(4) and 50(8).

30 Girmachew Alemu *Introduction to the Ethiopian Legal System and Legal Research* (Addis Ababa University, Addis Ababa, 2010).

31 Article 54(3).

indicated, by the Constitution by the will of the people and their conscience. Members of the House are granted immunity from arrest and prosecution without the permission of the HPR except in the case of *flagrante delicto*.

The Federal Democratic and Republic of Ethiopia has basically a parliamentary form of government,<sup>32</sup> where the political party or coalition of political parties that has the greatest number of seats in the HPR forms and leads the executive wing and approve the appointment of members for the executive Council of Ministers and the Prime Minister. The HPR also nominates the candidate for the President, who must then be approved by a two-thirds majority of both Houses of the parliament. The President has titular power, but should formally sign all laws coming from the HPR.<sup>33</sup> The Prime Minister has the real executive powers,

According to art 55, the most important function of HPR is to enact laws on matters assigned to the federal jurisdiction and ratify national policy standards. The article spells out that the HPR also exercises other important functions including the appointment of federal judges, the ratification of international agreements and the investigation of the conduct of members of the executive, establishing the Human Right Commission and the institution of the Ombudsman.<sup>34</sup>

The House of the Federation (HF) is the upper house in the federal government. The HF functions as the representative institution for the regional units, but in the FDRE It is composed of representatives "of representatives of nations, nationalities and Peoples".<sup>35</sup>

Each nation, nationality and people should officially be represented by at least one representative in the HF. Additionally, each nation and nationality can be represented by one additional representative for every one million of its population. Members of the HF are elected by the State Councils in each regional state. The HF is given the most important power of the interpretation of the FDRE Constitution. The HF is also empowered to decide on issues related to the rights of states to self-determination including secession, find solutions to disputes between states, and

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32 Article 45.

33 Article 71(2).

34 Article 55.

35 Article 61.

determine the allocation of joint federal and state revenues and the federal subsidies to the states.<sup>36</sup>

### *1 The Federal Executive*

#### (a) The Prime Minister

The power of government is granted to the party that wins the majority of the seats in the HPR and the highest executive powers of the federal government are vested in the Prime Minister (PM) and Council of Ministers, who are accountable to the HPR. The PM is elected from among members of the HPR and is not subject to any limit on the number of terms that may be served. The powers and functions of the Prime Minister include;<sup>37</sup>

- Acting as PM is the Chief Executive, the Chairman of the Council of Ministers, and the Commander-in-Chief of the national armed forces.
- Submitting for approval to the HPR nominees for ministerial posts from among members of the two Houses or from among persons who are not members of either House and possess the required qualifications.
- Following up and ensuring the implementation of laws, policies, directives and other decisions adopted by the HPR.
- Leading the Council of Ministers coordinates its activities and acts as its representative.

#### (b) The Council of Ministers

The Council of Ministers is vested with the highest executive authority. The Council of Ministers comprises the PM, the Deputy Prime Minister, Ministers and other members as may be determined by law.<sup>38</sup> Powers and functions the Council of Ministers,<sup>39</sup> include the following;

- Ensuring the implementation of laws and decisions adopted by the HPR.
- Deciding on the organisational structure of ministries and other organs of government responsible to it. It also coordinates their activities and provides leadership.
- Drawing up the annual Federal budget and, when approved by the House of Peoples' Representatives it implements it.

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36 See arts 61 and 62.

37 Article 73(1) and (2).

38 Article 76(1)–(3).

39 Article 77.



## 2 *Federal Courts*

### (a) Structure and Jurisdiction

The Constitution recognises the establishment of an independent judiciary that has a dual judicial system: the federal courts and the state courts with their own independent structures and administrations. Judicial powers, both at federal and state level, are vested in the courts.<sup>40</sup> The Constitution states that the supreme federal judicial authority is vested in the Federal Supreme Court and empowers the HPR to decide by a two-third majority vote to establish subordinate federal courts, as it deems necessary, nationwide or in some parts of the country.<sup>41</sup> There is a Federal Supreme Court that sits in Addis Ababa with national jurisdiction. Federal High Courts have been established in five States. Federal courts at any level may hold circuit hearings at any place within the State where they are established or in any area designated for its jurisdiction" if deemed "necessary for the efficient rendering of justice." Each court has a civil, criminal, and labour division with a presiding judge and two other judges in each division.<sup>42</sup> Adjudication by religious and customary courts is recognised. A three-tier Federal Islamic court whose jurisdiction is established by the consent of the parties is also recognised.<sup>43</sup>

The Federal Supreme Court includes a cassation division which has the power to review and overturn decisions issued by lower federal courts and state supreme courts containing fundamental errors of law. In addition, judicial decisions of the Cassation Division of the Federal Supreme Court on the interpretation of laws are binding on Federal as well as State courts.<sup>44</sup>

The Federal Courts Proclamation allocates subject-matter jurisdiction to federal courts on the basis of three principles: laws, parties and places. It stipulates that federal courts shall have jurisdiction over cases arising under the Constitution, federal laws and international treaties and over parties specified in federal laws." Article 3(3) of the Federal Courts Proclamation states that federal courts have judicial power in places specified in the Constitution or in federal laws. Article 5 of

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40 Article 79(1).

41 Article 78.

42 Proclamation No 25/1996, arts 20 and 23.

43 Article 78(5).

44 Proclamation No 25/1996, art 10.

the same Proclamation stipulates that federal courts shall have civil jurisdiction over:

cases to which a federal government organ is a party; suits between persons permanently residing in different regions; cases regarding the liability of officials or employees of the federal government in connection with their official responsibilities or duties; cases to which a foreign national is a party; suits involving matters of nationality; suits relating to business organizations registered or formed under the jurisdiction of federal government organs; suits regarding negotiable instruments; suits relating to patent, literary and artistic-ownership rights; and suits regarding insurance policy and application for habeas corpus.

Article 4 of the Federal Courts Proclamation gives federal courts criminal jurisdiction over offences against the national state; offences against foreign states; offences against the law of nations; offences against the fiscal and economic interests of the federal government; offences regarding counterfeit currency; offences regarding forgery of instruments of the federal government; offences regarding the security and freedom of communication services operating within more than one region or at international level; offences against the safety of aviation; offences of which foreigners are victims or defendants; offences regarding illicit trafficking of dangerous drugs; offences falling under the jurisdiction of courts of different regions or under the jurisdiction of both the federal and regional courts as well as concurrent offences and offences committed by officials and employees of the federal government in connection with their official responsibilities or duties.

(b) Accountability and Administration

The Constitution provides that the President and Vice-President of the Federal Supreme Court shall be appointed by the House of Peoples' Representatives upon the recommendation of the Prime Minister; other federal judges are appointed by the HPR from a list of candidates selected by the Federal Judicial Administration Commission.<sup>45</sup>

The Constitution prohibits the removal of judges before retirement age except for violation of disciplinary rules, gross incompetence or inefficiency, or illness that prevents the judge from carrying out the judicial responsibilities. Such determinations are made by the Federal Judicial Administration Commission,

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45 Article 81.

which likewise decides issues of appointment, promotions, discipline and conditions of employment.<sup>46</sup>

The Federal Judicial Administration Commission is a nine-member body that consists of six Federal judges and three members of the HPR.<sup>47</sup> The Commission is composed of the following members:

- The President of the Federal Supreme Court, Chairman.
- The Vice-President of the Federal Supreme Court.
- Three members of the HPR.
- The most senior judge of the Federal Supreme Court.
- The President of the Federal High Court.
- The most senior judge of the Federal High Court.
- The President of the Federal First Instance Court.

The day-to-day operations of the Federal Courts in Ethiopia are supervised and managed by court presidents, who therefore act both as judges and administrators with responsibilities and obligations to the President of the Supreme Court.<sup>48</sup>

## ***B State Institutions***

The Constitution confers equal recognition for both the states<sup>49</sup> and the federal government. The Federal Democratic Republic of Ethiopia (FDRE) consists of two layers of government, the Federal Government and nine states (also referred to as regions or regional States) and two federal cities, Addis Ababa and Dire Dawa. The nine states of the federation are the State of Tigray, the State of Afar, the State of Amhara, the State of Oromia, the State of Somalia, the State of Benshangul /Gumuz, the State of the Southern Nations, Nationalities and Peoples, the State of

46 Article 81(4).

47 Proclamation No 24/1996, art 4(1).

48 Proclamation No 24/1996, arts 16 and 18.

49 The Constitution gives much power to the regional states. Collectively, the regional states are granted the status of a nation. They are given self-determination up to secession as per article 39 of the Constitution. Under the Constitution Self-determination is broadly understood to mean as the use and development of one's language, culture, history and administrative structure. Beyond the "unrestricted right to administer itself", self-determination also includes proportional representation at federal organs. In order to resolve conflicting claims over representation, territory and resource, the Constitution has created the House of Federation whose members are elected by State Councils. The ethnic groups are represented at this institute. This House is composed of "representatives of nations, nationalities and people" at least one for each of them, plus an additional member for nation or nationality for each one million of its population".

Gambela, and the State of Harari People.<sup>50</sup> When closely looked at art 94 of the Constitution, shows that the above stated regions are not only independent financially but structurally as well.<sup>51</sup> In addition, The Constitution confers on executive, judicial and legislative powers on the Regional Governments like the Federal one.

### *1 The State Legislature*

The state legislature is the highest law-making organ in the state. The state legislature promulgates laws in areas that fall under the exclusive jurisdiction of the state government. Under the supreme law of the land of Ethiopia<sup>52</sup> states are given power to institute a legislative organ called the state council. The state council is composed of members elected by the state people for a term of five years. Most states have a unicameral parliament that both enacts laws and decides State constitutional issues. In at least two states, however, second legislative houses have been established to decide State constitutional issues, similar to the role of the Federal House of Federation. Where such structure exists at State level, they are known as the House of Nationalities.

### *2 The State Executive*

State councils of the regions are also responsible for appointment of the executives in charge of the various organs of State. The respective constitution of each state stipulates that the State Councils are entrusted with forming the Executive Committee, which is the highest state-level executive organ. State executive bodies are responsible for the execution of laws, policies and strategies falling within their jurisdiction. These include administering land and other natural resources in keeping with federal laws and formulating and execution economic, social and development policies, strategies and plans of the state in question.<sup>53</sup>

The State administration has a Chief Administrator, or Regional Administrator as its chief executive officer. The Chief Administrator is elected from among members of the State Council by a political party or coalition of political parties that constitutes a majority in the State Council. The Chief Administrator establishes

50 Article 47.

51 Article 94 of the Constitution deals with division of revenue between the federal and regional states and according to this article the Federal Government and the States shall respectively get revenue to cover all financial expenditures necessary to carry out all responsibilities and functions assigned to them by law.

52 The Constitution is silent as to which law shall prevail in case of conflict between the laws made by the Regional and the Federal Government.

53 Article 52.

the State Executive Council and nominates its members. The members of the State Executive Council (the Chief Administrator, Deputy Administrator and the heads of the various regional bureaus) need to be confirmed by the State Council. The State executive structure is replicated at lower state administration levels such as zones and districts.<sup>54</sup>

### 3 *State Courts*<sup>55</sup>

#### (a) Structure and Jurisdiction

The Constitution provided for a three tier of federal and state judicial system. The state courts in addition to original jurisdiction also assume delegate jurisdiction over federal matters for example, the state supreme court (which also incorporates a cassation bench to review fundamental errors of state laws), high courts, and first Instance courts.<sup>56</sup> State supreme courts sit in the capital cities of the respective states and have final judicial authority over matters of State law and jurisdiction. State high courts sit in the regions of states while state first instance courts sit at the lowest administrative levels of states

#### (b) Accountability and Administration

The state systems of judicial administration and accountability mirror the federal process. The state governments have also established judicial administration commissions with a view to safeguarding the independence and accountability of state courts. With respect to appointment, the President and Vice-President of the state Supreme Court are recommended by the President (Chief Executive Office) of the states and appointed by the State Council; all other State judges are appointed by the State Council based upon recommendations made by the State Judicial Administration Commission. Similar guarantees of tenure of judges exist in State Judicial Administration Commissions.

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54 Zones and *woredas* are the lowest administrative units of state government.

55 States have their own courts. For instance, as per art 3 and art 27(b) of the Oromia National Regional State Courts Proclamation No. 6/1995, the Region has four tiers of courts, namely: the Social Courts, District Courts, Zonal Courts and Supreme Court. The Oromia National Regional State has also a cassation division within its Supreme Court. Petitions can be filed in the Cassation Division of the Federal Supreme Court from any level of the federal or state courts, both on federal and regional matters if the decision being challenged is final and contains a basic error of law.

56 Article 78(3).

### ***C Municipal Court***<sup>57</sup>

The Addis Ababa City Charter creates two levels of City Courts exercising municipal jurisdiction: First Instance and Appellate Courts. There is no Supreme Court in the municipal system, although a cassation bench is included within the Appellate Court. Cassation review of the Appellate Court decisions can be brought before the Federal Supreme Court, which also decides jurisdictional conflicts between the city and federal courts. The Addis Ababa City Courts have civil and petty offence jurisdiction.

### ***D Social Courts***

The Addis Ababa City Charter established Social Courts at Kebele<sup>58</sup> level (more than 200 *Kebeles* exist in Addis Ababa) to hear property and monetary claims up to 5,000 birr. Social Court decisions can be appealed to the First Instance City Courts. If there is a fundamental error of law in the decisions of the First Instance City Courts on appeal from Social Courts, it can be a ground for cassation before the Appellate Court of the city. Some States have also established Social Courts that handle small claims and minor disputes.

### ***E Religious Courts***

The Constitution provides the framework for the independent validity of non-state or unofficial laws such as customary and religious laws in some fields of social activity. Article 34(5) of the Constitution provides that: "This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious and customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law." Art 78(5) of the Constitution also stipulates that:

As per art 34(5) the House of representative and state councils can establish or give official recognition to religious and customary courts. Religious and customary courts that had state recognition and functioned prior to the adoption of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution.

Formal legal pluralism under Ethiopia's new constitutional order is confined to matters of personal status and family law.

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57 It is one of the judicial organs of the Addis Ababa city government such as Labor Relations Board, Civil Service Tribunal, Tax Appeal Commission and *Kebele* Social Courts.

58 The lowest administrative unit in the Government.

To date, Sharia Courts that apply Islamic law are the only religious courts that have been officially established both at the federal and state levels. Sharia Courts apply only Islamic law and have their own appellate system.<sup>59</sup> They are required, however to follow the procedural rules of ordinary courts and receive their budgets from the state. Parties must voluntarily submit to the jurisdiction of these courts, or the dispute should be redirected to the regular courts. All the federal Sharia courts are accountable to the Federal Judicial Administration Commission. All of the State Councils have given official recognition to Sharia Courts within their respective jurisdictions.

#### ***IV ALTERNATIVE DISPUTE RESOLUTION MECHANISMS***

Alternative dispute resolution mechanisms are used in Ethiopia to settle conflict via processes other than formal litigation that take place in the court of law. These mechanisms could be either customary or traditional or found in formal laws and institutions. The mechanisms are included in;

- (1) The 1960 Ethiopian Civil Code which deals with alternative dispute resolution mechanisms such as conciliation, compromise and arbitration.<sup>60</sup>
- (2) The labour law.<sup>61</sup>
- (3) The Ombudsman.<sup>62</sup>
- (4) Ethiopian Human Rights Commission.<sup>63</sup>
- (5) The Ethiopian Arbitration and Conciliation Centre and the Draft Mediation Law.<sup>64</sup>

#### ***V LAW ENFORCEMENT AGENCIES***

At the federal level, the law enforcement agencies include the Ministry of Justice, the Federal Police Commission and the Federal Prison Commission.

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59 There is no appeal from the decisions of the *Sharia* courts to the regular court structure as per art 5 of Proclamation 188/99.

60 Civil Code of Ethiopia, arts 3307, 3318, 3325–3345.

61 See Proclamation No 377/2003.

62 See Proclamation No 211/2000.

63 See Proclamation 210/2000.

64 This is a non-governmental and non-for profit organisation established by a group of lawyers in March 2004 which aims at providing alternative dispute resolution services for the settlement of disputes in, among others, business, labor and family relations.

The Federal Ministry of Justice, an executive organ of the government, has the primary authority for prosecution of cases falling under the jurisdiction of federal courts.<sup>65</sup>

Federal Police Commission Proclamation No 313/213 establishes the Federal Police Commission<sup>66</sup> which is accountable to the Ministry of Federal Affairs.

The Federal Prisons Commission was established by Proclamation No 365/2003 as an institution accountable to the Ministry of Federal Affairs. The objectives of the Commission are to admit and hold prisoners in custody, and provide them with reformatory and rehabilitative service in order to enable them to make the attitudinal and behavioural change necessary to become law abiding, peaceful and productive citizens.

At the state level, the state judicial bureaus, and state police and prison commissions are established to enforce the law of the country.

The State Justice Bureaus are part of the executive branch of the state government. They have similar powers and functions with that of the Federal Ministry of Justice. The Head of a State Justice Bureau has similar powers with those of the Federal Minister of Justice.

States are also allowed to establish their own Police and Prison Commissions. The Police and Prison Commissions of the States are accountable to the State Justice Bureaus. Even though the State Police and Prison Commissions are functionally independent, they are obliged to cooperate with their federal counterparts in order to maintain and improve conditions of prisons across the nation.<sup>67</sup>

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65 See art 23 of Proclamation 471/2005 which itemises the powers and duties of the Ministry of Justice.

66 Proclamation No 313/213, art 6 provides that the powers and functions of the Federal Police.

67 Federal Prisons Commission Establishment Proclamation No 365/2003, art 34.



## VI SOURCES OF ETHIOPIAN LAWS<sup>68</sup>

### A Source of Federal Laws

#### 1 The Constitution

It is stated in the Constitution that any proclamation, regulation, directive and practice which is in contradiction with the Constitution is void.<sup>69</sup> The Constitution is, thus, the supreme law of the land and as such, all laws of the country derive their legal validity from the Constitution.

#### 2 International Treaties

International treaties evidence an acceptance of a principle as international law by the parties to the treaty. As per art 9(4) of the Constitution 'all international agreements ratified by Ethiopia are an integral part of the law of the land.' Every international agreement to which Ethiopia is a party has to be ratified by the HPR and published in *Negarit Gazette* to be enforceable. Therefore, all international agreements to which Ethiopia is a party are considered as Ethiopia laws.

Article 13(2) of the Constitution also provides that the fundamental rights and freedoms recognised under Chapter 3 of Constitution shall be interpreted in a manner conforming to International Covenants on Human Rights and international instruments adopted by Ethiopia, and for all purpose of human rights and freedoms, the Constitution is interpreted in line with international law.

Ethiopia has been a champion in ratifying many international and regional treaties. For instance, Ethiopia has ratified the African Charter on Human and Peoples Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the 1965 Convention on the Elimination of Racial Discrimination, the 1982 Convention Against Torture and other Cruel,

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68 The term `source of law` has a couple of connotations. One sense of the term might suggest all the pieces of information used in the preparation of a legal document. A legal document may be a constitution, a proclamation, a regulation, a directive, a testament and any other legal document. This sense of the term is also referred to as a material source. Material source of the document may be obtained from public opinion, pertinent books, experts, past legislation, foreign sources and research, etc. Secondly, the term refers to the reason that a given legal rule is valid or must be respected.

69 Article 9(1).

Inhuman or Degrading Treatment or Punishment, and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Ethiopia also ratified the Optional Protocol on the involvement of the Child in Armed Conflict (OPAC) in 2000.

### 3 *Codes and Statutes*<sup>70</sup>

During the period between 1957 and 1965, six comprehensive legal codes were enacted in Ethiopia. A new Penal Code was introduced in 1957, which largely drew upon its counterpart in Switzerland. In the 1960s, in rapid succession, a large body of law was introduced into Ethiopia in the form of five codes.<sup>71</sup> First, the Civil, Commercial and Maritime Codes in 1960, followed by the Criminal Procedure Code in 1961, and finally, the Civil Procedure Code in 1965. All of the six codes were promulgated in the form of proclamations as extraordinary issues of the *Negarit Gazette*.<sup>72</sup> Both the Revised Family Code<sup>73</sup> which applies only within the federal jurisdiction, and a Criminal Code in force throughout Ethiopia, were promulgated by proclamations in 2000 and 2005 respectively. The Criminal Procedure Code follows the inquisitorial system of adjudication.

### 4 *Decrees, Regulations and Directives*

The Council of Ministers of the Federal Government can issue regulations. Federal ministries issue directives. The mandate to issue regulations and directives of the Council of Ministers and Ministries respectively emanates from the HPR as expressed in primary legislation. Moreover, the Council of Ministers of the Federal Government is empowered to decree of state of emergency should an external invasion, a breakdown of law and order which endangers the constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel, a natural disaster, or an epidemic occur.<sup>74</sup>

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70 Statutes were used as information in the making of the Ethiopian codes. In the 1920s, early 1930s and 1940s Ethiopia passed several statutes. The following may be cited as examples: the nationality law, company law, loan law, bankruptcy law, business registration law and banking law. The 1930 Nationality Law was in force until it was replaced by the Ethiopia Nationality law Proclamation no 378/2003. The Ethiopian Nationality Law of 1930 adopted the principle of *jus sanguinis* which states that a person gets the nationality of a country if s/he is born from an Ethiopian father or Ethiopian mother. The other basic nationality principle, *jus soli*, states that a person gets nationality of a country where s/he is born.

71 This was the result of Ethiopia's open door foreign policy and growing diplomatic relations with the West.

72 See Civil Code of the Empire of Ethiopia Proclamation No 165 of 1960.

73 It repealed and updated a chapter of the Civil Code which dealt with family law.

74 Articles 77(10) and 93(1).

## 5 *Precedents*

A precedent is a judicial decision, normally recorded and used as an authority for reaching the same decision in subsequent cases by virtue of the doctrine of *stare decisis*. Pursuant to art 2(1) of the Federal Courts Amendment Proclamation, a judicial decision by the Cassation Division of the Federal Supreme Court<sup>75</sup> on the interpretation of a law is binding on Federal and State Courts at all levels.<sup>76</sup>

## 6 *Customary Laws*

Customary laws were used, to some extent, as a material source of the Ethiopian codes. The orthodox view of customary law is that it is a practice habitually followed by the majority of the members of a given community for a relatively long period of time with the intention to be bound by it. The drafter of the Ethiopian civil code Professor David stated that he included a number of customary rules in to the Civil Code of Ethiopia using number of different methods.<sup>77</sup>

## **B Source of State Laws**

### 1 *State Constitution*

As stipulated in art 52(2)(b) of the Constitution, states can promulgate their own constitutions. Currently, the nine states of Ethiopia have their own constitution in conformity with the Constitution. The states' constitutions declare supremacy within each State.

75 At present, the Cassation Division of the Federal Supreme Court, located at the apex of the court system in Ethiopia, is a judicial unit of last resort. It considers any final court decision over any matter, whether federal or regional and regardless of the tier of the court, provided such decision contains an error of law.

76 Proclamation No 25/1996, art 10.

77 Professor Rene David stated that he used several methods to make customary laws as a source of the Ethiopian law. One method is incorporation. The term ``incorporation`` refers to the direct writing of a given customary rule into a code. He stated that he incorporated customary rules if those rules met the following criteria; when the custom was sufficiently general as to be practiced by at least a majority of the highland population, the custom was not repugnant to natural justice which permeated that an ultimate old collection of secular law and religious authority, the *Fetha Negast*, the custom was not contrary to imperatives of social and economic progress and the custom was sufficiently clear and articulate as to be capable of definition in civil law terms. The second means used to give room for custom is explicit reference to custom. Professor David also stated that several provisions in the Ethiopian Civil Code made an explicit reference to custom. The third strategy the drafter of the Civil Code used was to give a gap-filling role to custom. The idea was to state that whenever the Code is silent about a given issue, custom might step in. art 3347 on custom and its applicability is designed to play this role. Fourthly, judges are permitted to attach customary meanings to disputable code terms.

## 2 *State Proclamations*

The Constitution also allows states for administrative convenience to issue proclamations on matters falling under their jurisdiction.<sup>78</sup> For instance, the States of Tigray, Amhara, Oromia and the Southern Nations, Nationalities and People have enacted their own Family Codes.

## 3 *State Decrees, Regulations and Directives*

The Constitution clearly points out that State Executive Councils are empowered to decree a state-wide state of emergency should a natural disaster or an epidemic occur. State regulations and directives are issued by State Executive Councils and State Bureaus by virtue of the power delegated to them by State Councils of the State legislature.<sup>79</sup>

## **C *Hierarchy***<sup>80</sup>

Article 9(1) of the Constitution proclaims that any law, customary practice or a decision of an organ of state or public official, which contravenes the Constitution, shall be of no effect. Thus, the Constitution is the highest law of the land. It has pre-eminence over all federal as well as state laws. The place of international agreements in the hierarchy of laws of Ethiopia is still a point of disagreement to many scholars. However, in practice, international agreements are referred to by judges as having the same status as proclamations. These are followed by regulations, decrees and directives respectively. When a decree is adopted by the House of Representatives, it becomes a Proclamation. The same hierarchy applies to State laws.

## **VII *BECOMING A LAWYER***

According to a recent report by the Ministry of Justice, there are 1751 Federal Court lawyers and 712 First Instance Court lawyers at the Federal level. Becoming a lawyer in Ethiopia requires the relevant training,<sup>81</sup> experience and being aware of judicial procedures. For a person to work as a lawyer in Ethiopia, he/she must be of Ethiopian nationality. Lawyers should play their part in working cooperatively with judicial organs for ensuring the operation of the rule of law and the prevalence of justice.

78 Article 52(1).

79 Article 93(b).

80 There are, however scholars having a different perspective on the hierarchy of laws in Ethiopia as to what comes first, the decree or the constitution.

81 Legal training given by a recognised tertiary education institution.

The type of licence that is required from a lawyer varies as to the level of court in which he/she is going to represent a client. There are the Federal First Instance advocacy licence, the Federal Courts advocacy licence and a federal court special advocacy licence. Each requires a different level of qualification, experience and indemnity insurance.

The Ministry of Justice is in charge of matters related to licence: It issues, renews, suspends and revokes licences. The Ministry also forms and runs the Advocacy Disciplinary Council which is an organ with the power to investigate charges brought against lawyers who violate the lawyer's code of conduct directive.<sup>82</sup>

### ***A Types of Licence***

Proclamation No. 199/200<sup>83</sup> provides for three types of licences. In the first type, an applicant who wants to appear at the Federal First instance court needs to have the Federal First Instance Court Advocacy Licence which requires the applicant to have five years of experience for a law diploma graduate or two years of experience for a law degree graduate. The second type is the Federal Courts Advocacy Licence. This licence requires a law degree and five years of relevant experience. A lawyer with this licence can represent a client at all levels of courts.

Both the above licences entail that applicants must have a professional indemnity insurance and pass advocacy entrance exam. The other requirement for both of the licences is that applicants have not been convicted and sentenced for an offence involving an improper conduct.

The third type is the Federal Court Special Advocacy Licence with a requirement of a degree in law, a minimum of five years relevant experience and defends the interests and rights of the society. This licence is special in a sense that the applicant serves for free after a successful application. The applicant must not be convicted for an offence involving improper conduct.

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82 A directive issued by the Ministry of Justice.

83 Proclamation for licensing and registration of advocates practising before Federal Courts.

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