An Outline for the Study of Ethiopian Constitutional law

Tsegaye Beru, Duquesne University
AN OUTLINE FOR THE STUDY OF ETHIOPIAN CONSTITUTIONAL LAW

By Tsegaye Beru, Esq.¹

Introduction

This outline is based on the 1995 Ethiopian Constitution. However, it is important to acknowledge that the 1995 Constitution cannot be studied in isolation. Like its forerunners, this Constitution is not distinctively Ethiopian, save the customary and religious laws that were recognized by it. Past and present constitutions were derived, in most part, from foreign constitutions including constitutions from western and Eastern countries and Japan. Although the immediate sources can be traced back to the Charter of the Transitional Government, this Constitution was built upon the constitutions that preceded it, the laws that were promulgated since the 1930s and religious and customary laws that predated it. Therefore, the study of constitutional law should incorporate prior constitutions, codified laws, customary and religious laws that have contributed to it. To accomplish this a thorough research on legislative history will be beneficial.

I have endeavored to present a discussion of some of the cases that have been decided by the Federal Supreme Court. These cases are taken from the web site of the Court and are only examples to show how the Court has handled cases by interpreting the Constitution.

WHAT IS A CONSTITUTION

As defined by Black’s Law Dictionary, a constitution is the fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of government sovereign powers, and guarantees individual civil rights and civil liberties.

WHAT IS CONSTITUTIONAL LAW

It is the body of law deriving from the ...constitution and dealing primarily with governmental powers, civil rights and civil liberties. [see Blacks Law Dictionary]. It is that branch of the law which treats the organization and frame of government, the distribution of political and governmental authorities and function, and fundamental principles which are to regulate the relations of government and citizen, and which

¹ Tsegaye Beru is member of the faculty of the Duquesne Law School and Assistant Director of DCLI. He is also Director of the Ethiopian Project of the Duquesne University Faculty of Law.
prescribes, generally, the plan and method according to which the public affairs of the nation or state must be administered.

**Why Study Constitutional Law Then?**

The answer to these questions is in the Constitution itself. First, it is the paramount law of the land and has supremacy over any other law federal or state. It must be studied carefully so that any governmental action is valid and authorized by the Constitution. It also focusses on the structure of the federal government and the distribution of powers among its three branches: the executive, the judiciary and the legislative, and the relationship among the federal government and the nine states. The doctrine of separation of powers ensures that the three branches remain separate and distinct so that there is a system of checks and balances. It answers the question what powers are given to each branch of government and which ones are left for the states to govern. It addresses the fundamental and democratic rights it confers upon its peoples. However, it is not complete in and on itself and requires untangling some pertinent questions. For example Articles 30 and 31 speak about the right of assembly, demonstration and petition and freedom of association. It is also stated that appropriate regulations may be placed in the interest of public convenience relating to the location of open-air meeting and the route of movement of demonstrators or, for the protection of democratic rights, public morality and peace... Although it is understood to mean peaceful demonstrations, it does not specify what type of activities are regulated.

The study of constitutional law also includes, among many others, constitutional interpretation. Article 79 of the Constitution specifically states that courts at any level shall be free from any interference of influence of any government body, government official or from any other source and that judges shall exercise their functions in full independence. Art. 83 on the other hand, states that all constitutional disputes shall be decided by the House of Federation. Unlike the Supreme Court of the United States which has the power to strike down any laws passed by Congress or the states that contradict the Constitution, the Ethiopian Supreme Court does not have outright power. Why so?  Who will be the final arbiter should there be divergent views on the Constitution?  The Constitution does not provide with definitive answers as to why the courts, the Commission of Inquiry (CCI) and the House of Federation (HOF) have some legality to interpret it. Is it done to avoid monopoly by the Supreme Court?  One may ask what the mandates of the HOF and the Commission of Inquiry (CCI) are when it comes to interpreting the Constitution, particularly with regards to Arts. 62, 83 and 84. The CCI is to see if there is constitutional interpretation, and forward its finding to the HOF. The president and vice president of COI are also president and vice president of the federal Supreme Court, respectively who may ultimately rule on constitutional matters. Is it possible then that there might be a
conflict of interest between their roles as justices and as members of the CCI in dealing with constitutional issues that require interpretation?

Although it is not the intent of this paper to analyze and determine the relationships between the federal courts, the HOF and CCI and their functions to constitutional interpretation, it must be clear on the outset that the roles played by each should be defined and clarified. Most importantly, the Transitional Period Charter of July 22, 1991 addresses the democratic rights, foreign policy, structure and the composition of the transitional government. However, the judiciary and the courts are left out completely at this crucial period of the formation of a new democratic nation. Why was that done so? That is why we study constitutional law to unlock the foregoing questions.

LEGISLATIVE HISTORY

As can be expected constitutions are generally fraught with ambiguities, lacunae and contradictions. To get answers to the foregoing questions, unlock the ambiguities and find the sources for the present Constitution, one needs to learn the background history of the resources consulted, and to learn from the original drafters what the intent was in drafting a new constitution. To do so it becomes imperative to conduct a comprehensive legislative history research. Although legislative history generally deals with the background event up until the enactment of codes and statues it is used here to mean compiling and studying all documents that were used to draft and promulgate the 1995 Constitution. These include, and are not limited to, past constitutions, the minutes of the Charter, the initial draft documents, the discussions held during the conferences and meetings, the UN Universal Declaration of Human Rights, customary and religious laws, codes that were enacted since the 1930s and foreign constitutions that influenced the drafting of the 1995 Constitution and most importantly the interviews that were conducted by a Ms. Sarah Vaughan with the key players of the draft constitution.

The section on human rights is in conformity with the provisions provided in the Universal Declaration of Human Rights (UDHR) to which Ethiopia is a signatory. The right of nations and nationalities to self-determination including and up to cessation has been the burning issues and a topic of contentious nature. University students, political parties that cropped up after the 1974 revolution addressed it in their respective assemblies and publications. The military government issued the document, “National Democratic Revolution” where it recognized the right to self-determination of all nationalities. Article 2 of the military government Constitution was devoted on the subject of nationalities.
In addition, the first 18 articles of the 1960 Civil Code address issues on “The human person’s rights from its birth to its death,” “child merely conceived, date of conception, viable or not viable child, right of personality, restrictions on freedom and searches, freedom of residence, inviolability of residence, freedom of thought, religion, freedom of action, and right to keep silent and choice, etc. See appendix 1

There were the London and national conferences in the early 1990s, a transitional government was formed and with it a Council of Representatives (COR) and there was a Commission created to draft a constitution. At about the same time, many political parties were established, each having its agenda for what “future Ethiopia” and the new constitution would be. At the initial stage, there were international observers and organizations who had helped or suggested, in part, in the drafting of the new constitution. All these documents should be consulted in order to determine the sources for the new constitution and to help in constitutional interpretation.

The following, and all other documents, if and when available, may shade light as to the original intent of the drafters and the sources that contributed to the promulgation of the 1995 Constitution. Therefore, the study of legislative history should be a part of the study of constitutional law.

1. Past constitutions
Although a detailed study of past constitution may not be necessary at this juncture, reading the preambles and some pertinent sections and selected articles from each may be sufficient to learn which ones have been incorporated. Generally the preambles to the constitutions set forth the purposes, principles and goals for having a constitution.

2. The London Conference
The Conference was held on May 27, 1991 where the main political parties attended. The Conference was chaired by Assistant Secretary Cohen of the United States in the hopes that the military government and the opposition parties, mainly the EPDRF, EPLF and the OLF, would form a transitional government. It was believed that the contending parties were to form a pluralistic democratic government and that EPDRF was to assume power temporarily until such a time a transitional government would be formed. During the process, there were documentations presented by all concerned parties at the Conference. Some of these include:

   a. Statements by the Coalition of Ethiopian Forces (COEDF) in Washington DC. on April 22, 24, June 28 and July 6, 1991.
c. EPDRF’s documents presented in London in 1990 and 991 on peace and peaceful transition of Power,
d. News Bulletin of the EPDRF from January and December of 1991
e. The peace proposal and statement on the transitional program in Ethiopia presented by the Oromo Liberation Front, London 1990.
f. Also Proclamations Nos. 7, 8 and 33 of 1992.

3. The TPLF
The TPLF moved to Addis Ababa in May of 1991. The parties that were created after the revolution of 1974 and during the transitional period were against TPLF’s immediate ascension to power. Because of the discontent by other parties , the TPLF leadership sought the idea of transforming itself into a transitional government. Their platform was to change to what has been a centralized government into a federal setting by being inclusive of all ethnic groups and promoting self-governance including, if necessary cessation. This effort led to the formation of the EPDRF, a national coalition of various parties and ethnic groups. In doing so, the TPLF had a transitional plan and agenda that was discussed among the various groups. However scanty, this document is equally crucial as it was the basis for what is to be a decisive factor to form the federal government.

4. The National Conference
There was a need to call for a national conference to address some of the lingering issues. This Conference premised under “peace and democracy” called upon all progressive elements including the liberation movements that fought the Derg, members of different ethnic groups, other individuals from among the community at large, including professors, religious leaders and community elders. The papers submitted and distributed to attendees are also important to see if the suggestions made by these groups had some influence in the draft Constitution.

5. The Transitional Period Charter
This Charter ushered, for the first time, the concept of federalism. The issues on human and democratic rights emerged from the instruments presented at the initial conventions. This idea of federalism was fraught with some irregularities because at the time of the national conference, the federal and states governments had a loose confederation and were not fully federated. What then led to this perfect union or federation? The answers may be found in these instruments.
6. The Charter
The Charter appeared on Negarit Gazeta 50th year No. 1 July 22, 1991 Known as the Peaceful and Democratic Transition Conference of Ethiopia held between July 1-5, 1991. It endorsed the Transitional Period Charter for the sole purpose of

- Providing the peoples of Ethiopia with the opportunity to rebuild the country and restructure the state democratically;
- Starting a new chapter in which freedom, equal rights and self-determination of all the peoples shall be the governing principles of political, economic and social life;
- To that end the rights and interests of the deprived citizens will be safeguarded by a democratic government elected by and accountable to the people.
- The following are excerpts from the Charter:

Part One Article One

Based on the Universal Declaration of Human Rights (UDHR) of the United Nations, adopted and proclaimed by the General Assembly by resolution 217 A (III) of December 10, 1948 and to which Ethiopia is a signatory, individual human rights shall be respected fully, and without any limitation whatsoever, particularly every individual shall have the freedom of conscience, expression, association and peaceable, child merely conceived, political parties, provided the exercise of such right does not infringe upon the rights of others.

Part One Article Two

The right of nations, nationalities and peoples to self-determination is affirmed. To this end, each nation, nationality and people is guaranteed to:

a. Preserve its identity and have it respected, promote its culture and history and use and develop its language.

b. Administer its own affairs within its own defined territory and effectively participate in the central government on the basis of freedom, and fair and proper representation.

c. Exercise its right to self-determination of independence, when the concerned, nation/nationality and people is convinced that the above rights are denied, abridged or abrogated.
Part Three Article Six

- There shall be established a Transitional Government (TG) consisting of a Council of Representatives (COR) no more than 87 members and composed of representatives of national liberation movements, other political organizations and prominent individuals and a Council of Ministers (COM).
- The TG shall exercise all legal and political responsibility until it hands over power to a government popularly elected on the basis of a new Constitution.
- The COR shall exercise legislative functions and oversee the work of the COM.
- Among other duties of the COR include approving the nomination of the Prime Minister, initiation and promulgation of decrees pursuant to the charter, and Establishing the Constitutional Commission (CC).

Part Four Articles ten through twelve

- The COR shall constitute the CC to draw up the draft constitution and the CC shall submit to the COR the draft constitution, where it upon adoption by the COR, the constitution will be presented to the people for discussion and the final draft shall be presented to the constituent assembly for adoption pursuant to the final draft of the Constitution. Election to the National Assembly shall be held on the basis of the provision of the new Constitution where the TG shall handover to the party or parties that gain the majority in the National Assembly.

7. The Evolution of Nations, Nationalities and Peoples (NNAP)

The issue of NNAP was something that was talked about and discussed in the 60’s and 70s when the university students took to the streets demanding equalities among all peoples of Ethiopia under the banner “the rights of Nations and Nationalities including and up to secession.” Around 1983, The Derg established the Institute for the Study of Ethiopian Nationalities and under it the Constitutional Commission comprised of people from all walks of life, including elders, academicians, writers and many more. The delegates of the Constitutional Commission resolved to submit a constitutional draft containing 120 articles. Millions of copies of such draft were printed and distributed to the people to comment on this new concept of “nations and nationalities.” The people participated and in the end presented their recommendations to the Commission. These are very important document to review in order to get the background information on the formation of nations, nationalities and peoples. The Derg Constitution which recognized them was finally ratified and became effective on February 22, 1987.
8. THE CONTEMPORARY CODES

It is too common to read in the Constitution phrases such as, “particulars shall be determined by law,” “as prescribed by law”, etc. as shown below.

Art 12(3) In case of loss of confidence, the people may recall an elected representative. The particulars shall be determined by law.

Art 17(1) No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law.

Art 33(2) Every Ethiopian national has the right to the enjoyments of all rights, protection and benefits derived from Ethiopian nationality as prescribed by law.

Art 34(4) In accordance with provisions to be specified by law, a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted.

Art 34(5) This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.

Art 49 (5) The special interest of the State of Oromia in Addis Ababa regarding the provisions of the social services or the utilization of natural resources and other similar matters, as well as joint administrative matters arising from the location of Addis Ababa within the State of Oromia, shall be respected. Particulars shall be determined by law.

The Ethiopian Constitution is a written document and the text is complete in itself. It can be changed or amended according to provisions provided in Arts. 104 and 105. However, the study of constitutional law will not be complete until these laws incorporated in various codes are consulted.

THE OUTLINE

The 1995 Constitution of the Federal Democratic republic of Ethiopia

The Nations, Nationalities and Peoples of Ethiopia, through their elected Representatives, ratified the Constitution on December 8, 1994. All sovereign powers reside in the Nations, Nationalities and peoples of Ethiopia and the Constitution is an
expression of their sovereignty expressed through their representatives elected in accordance with this Constitution and through their direct democratic participation.

Constitutions are the fundamental laws or principles for the government of a nation or state. Thus the constitution represents the supreme written will of the people regarding the framework for their government. When the Ethiopian Constitution asserts these rights, or lays down a certain principle of law or procedure, it speaks for the entire Nations, Nationalities and Peoples of Ethiopia as their supreme law.

By the Constitution it was intended to establish a Republic comprising the national government and the states and distribute powers among them and the three branches of government. It was also intended to grant and protect human and democratic rights of citizens; emanating from the nature of mankind and democratic and individual rights to citizens where these rights are inviolable and inalienable. All Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions and these fundamental rights and freedoms 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 as adopted in Ethiopia.

**Supremacy of the Constitution – Art. 9**

- The Constitution is the law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.
- All citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it.
- It is prohibited to assume state power in any manner other than that provided under the Constitution. [see Arts. 50 & 51 of the Constitution]
- All international agreements ratified by Ethiopia are an integral part of the law of the land.

See the cases below that discuss the supremacy of the Constitution.

**Amendment to the Constitution – Arts. 104, 105**

Unlike the codes or statutes where they can be amended or repealed altogether by the House of Peoples Representatives (HOPR), amending the Constitution is a daunting task. Because it is a Constitution of the Nations, Nationalities and Peoples (NNAP) of Ethiopia, it is a delegation of power from NNAP and can only be amended by the provisions provided in Articles 104 and 105 in the following manner.

- Any proposal for constitutional amendment shall be submitted for discussion and decision to the general public and those whom the amendment of the
Constitution concerns if and when it supported by two-thirds majority vote in the HOPR, or by a two-third majority in the HOF or when one-third of the State Councils of the member States of the Federation, by a majority vote in each Council have supported it.

- **Two ways to amend the Constitution Art. 105**
  - Chapter Three dealing with Fundamental Rights and Freedoms, Arts 104 and 105 of the Constitution can be amended only
  - When all State Councils, by a majority vote, approve the proposed amendment and
  - When the HOPR and HOF, by two-third majority vote, approve the proposed amendment.

**All Other Articles of the Constitution**

- May be amended when the HOPR and the HOF, in a joint session, approve a proposed amendment by a two-third majority vote; and
- When two-third of the Council of member States of the Federation approve the proposed amendment by majority vote.

**Final Legal Authority of the Constitution – Art. 106**

- Should there be a contradiction between the English and Amharic versions of the Constitution, the Amharic version shall have the final legal authority.

**Federal and State Constitutions**

- Under the federal system each state establishes its own constitution and laws. These laws are, however, subordinate to the federal constitution.
- Unlike American state constitutions, the Ethiopian state constitutions are not sui generis. Although the Ethiopian national and now Federal constitutions have been in existence since 1931, the state constitutions are of recent origin.
- The nine state constitutions were promulgated after the Federal Constitution and somewhat mirror it. Just like the preamble Federal Constitution which begins with “We the Nations, Nationalities and Peoples of Ethiopia” all states start with similar preambles, such as “We the people of the Amhara”, “We the People of Afar”, “We the Nations and Peoples of Gambela”, etc.
- Similar to the Federal Constitution, the states’ constitutions begin with territorial jurisdictions, the make-up of their respective flags, regional anthems, official languages, etc. and proceed to lay out the fundamental and democratic right in similar language as that of the Federal Constitution.
Separation of State and Religion – Art. 11

- State and religion are separate and there shall be no state religion. The state shall not interfere in religious matters and religion shall not interfere in state.
- Art 27(5) of the Constitution also states that freedom to express or manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, peace, health, education, public morality or the fundamental right and freedoms of others, and to ensure the independence of the state from religion.

THE FEDERAL SYSTEM and ITS POWERS

I. Federalism
The 1995 Constitution provides for a federal form of government. Federalism is a system of decentralization where a union is formed between the national government and the states and where power to govern is shared among them and where each entity exists as a governing body separately and independently from each other. By such arrangement two tiers of governments are created: federal and states, each with three branches of government: the executive, the judiciary and the legislature. This is between the federal government and state governments and not necessarily with each nation and nationality.

POWERS OF THE FEDERAL GOVERNMENT

- The federal government is a government of limited powers granted to it by the Constitution. Any action taken by any division of the government must trace back its authority to the Constitution.

Some Inherent Federal Powers  Const. Arts. 51 and 93

Some powers are exclusively federal, granted to it by the Constitution. Some of these exclusive powers not shared by the states are:

- Protects and defends the Constitution.
- Enacts laws for the utilization and conservation of land and other natural resources, historical sites and objects.
- Shall establish and administer national defense and public security as well as federal police force.
- Is responsible for development, administration and regulation of air, rail, and sea transport and major roads linking two or more states, as well as for postal and telecommunication services.
• Levies taxes and collect duties on revenue sources reserved to the federal government.
• Determines and administers the utilization of the waters or rivers and lakes linking two or more states or crossing the boundaries of the national territorial jurisdiction.
• Shall formulate and implement foreign policy, negotiate and ratify international agreements.
• The power to declare and lift national state of emergency and states of emergencies limited to certain parts of the country.
• Taxing power.
• Determine and administer nationality, immigration, refugee and asylum, passports, entry and exit from the country.
• To deploy, at the request of state governments, federal defense forces to arrest a deteriorating security.
• Regulates inter-state and foreign commerce.

Member States of the Federal Government – Art. 47

• The Federal Democratic Republic shall comprise of nine states delimited on the basis of the settlement patterns, language, identity and consent of the people concerned. Nations, Nationalities and peoples within the States have the right to establish, at any time, their own States in the following manner.

Formation of States – Arts. 46 and 47

• When the demand for statehood has been approved by a two-third majority.
• States shall ne delimited on the basis of the settlement patterns. Language, identity and consent of the people concerned.
• NNAP may form their own state when
• A demand for statehood has been approved by two-third majority of the members of the Council of NNAP and the demand is presented in writing to the State Council.
• When the State Council has organized a referendum within one year to be held in the NNAP that made the demand.
• When the demand is supported by a majority vote in the referendum.
• When the State Council will have transferred its powers to the NNAP.
• When a new state created becomes a member of the FDRE.
• Member states have equal rights and powers.
State Border Changes – Art 48

- All state border disputes shall be settled by agreement of the concerned States and if they fail to settle their disagreements, the HOF shall decide on the basis of settlement patterns and the wishes of the people concerned. The HOF shall render its decisions within a period of two years.

Powers and Functions of States – Art 52

All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States are reserved to the States. States shall have the following powers and functions:

- To establish a State administration that best advances self-government, a democratic order based on the rule of law; to protect and defend the Federal Constitution.
- To enact and execute the State constitution and other laws.
- To formulate and execute economic, social and development policies, strategies and plans of State.
- To administer land and other natural resources in accordance with Federal Laws.
- To levy and collect taxes and duties on revenue sources reserved to the States and to draw up and administer the State budget.
- To enact and enforce laws on the State civil service and their condition of work; in the implementation of this responsibility it shall ensure that educational training and experience requirements for any job, title or position approximate national standards.
- To establish and administer a state police force, and to maintain public order and peace within the State.

The Rights of Nations, Nationalities, and Peoples – Arts 39, 46-48

- Nation, nationality or people is defined as a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.
- Every NNAP has unconditional right to self-determination, including the right to secession, the right to speak, to write and to develop its own language, to express, develop and promote its own culture, and preserve its own history. See Art 39(4) for procedures on secession.
- It has the right to full measure of self-government, to establish institutions of government in the territory it inhabits and to equitable representation in state and Federal governments. See also Art 61(2) for representation.
• The right to self-determination, including secession, of every nation, Nationality and Peoples comes into effect when
  1. A demand for secession has been approved by a two-third majority of the members of the legislative council of the NNAP.
  2. When the Federal Government has organized a referendum which must take place within three years from the time it received the request for secession.
  3. When the demand for secession is supported by majority vote in the referendum When the Federal Government has transferred its powers to the Council of the NNAP that has voted to secede.
  4. When the division of assets is effected in a manner prescribed by law.

**Separation and Division of Powers of the Federal Government Arts 50(2)**

Article 50(2) establishes three separate branches of government: the legislative, executive and judicial. However it does not talk about the separation of power except in the case of judicial power where Article 79 (2)(3) states that

• Courts of any level shall be free from any interference or influence of any governmental body, governmental official or from any other source.
• Judges shall exercise their functions in full independence and shall be directed solely by law.

**Relationship between the Federal Government and the States**

• The states shall respect the powers of the Federal Government and the Federal Government shall likewise respect the powers of the States Art 50(8).
• All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States are reserved to the States. Art. 52(1).

**The Three Branches of Government**

**THE President of the Republic**

**Presidential Powers, Functions and appointment Articles 69 -71**

• The President of EFDR is the Head of State. The President is nominated by the HOPR and shall be elected for a term of six years.
• The nominee shall be elected President if a joint session of the HOPR and HOF approves his candidacy by a two-third majority vote.
The President has the following powers:

- Opens the joint sessions of HOPR and HOF at the commencement of their annual sessions.
- He shall proclaim In the Negarit Gazeta (NG) laws and international agreements approved by the HOPR in accordance with the Constitution.
- He shall, upon recommendation by the Prime Minister, appoint ambassadors and other envoys to represent the country abroad.
- He shall receive the credentials of foreign ambassadors and special envoys.
- He shall award medals, prizes and gifts in accordance with conditions and procedures established by law.
- He shall, upon recommendation by the Prime Minister and in accordance with law, grant high military titles.

The Pardon Power – Art. 71(7)

- The president shall in accordance with conditions and procedures establish by law, grant pardon.

Upon the recommendations by the National Pardon Board, the president has pardoned journalists, opposition leaders and other prisoners from various prisons in the county.

The Executive:

Powers, Functions and appointment Articles 56, 72-77 of the 1995 Constitution

The Prime Minister (PM)

- The highest executive powers of the EPDR are vested in the PM and the Council of Ministers (COM).
- The Executive branch is elected from a party, or a coalition of parties that has the greatest number of seats. (Art 56)
- The PM and COM are responsible to the HOPR. In the exercise of State functions members of the COM are collectively responsible for all decisions they make as a body.
- The term of office of PM is for the duration of the mandate of the HOPR (which is five years.)
- The PM shall be elected from among members of the HOPR.
- Power of the government shall be assured by the political party or a coalition of political parties that constitutes a majority in the HOPR.
• The PM is the Chief Executive, the Chairman of the COM, and the commander in Chief of the armed forces.
• The PM shall submit for approval to the HOPR 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.
• He shall follow up and ensure the implementation of laws, policies, directives and other decisions adopted by the House of Peoples’ Representatives.
• He leads the COM, coordinates its activities and acts as its representative.
• He exercises overall supervision over the implementation of policies, regulations, directives and decisions adopted by the Council of Ministers.
• He exercises overall supervision over the implementation of the country’s foreign policy.
• He selects and submits for approval to the House of Peoples’ Representatives nominations for posts of Commissioners, the President and Vice-President of the Federal Supreme Court and the Auditor General.
• He supervises the conduct and efficiency of the Federal administration and takes such corrective measures as are necessary.
• He appoints high civilian officials of the Federal Government.
• In accordance with law enacted or decision adopted by the HOPR, he recommends to the President nominees for the award of medals, prizes and gifts.
• He shall submit to the HOPR periodic reports on work accomplished by the Executive as well as on its plans and proposals.
• He shall discharge all responsibilities entrusted to him by this Constitution and other laws.
• He shall obey and enforce the Constitution.

**Deputy Prime Minister: Article 75**

The Deputy Prime Minister shall:
- Carry out responsibilities which shall be specifically entrusted to him by the Prime Minister.
- Act on behalf of the Prime Minister in his absence.
- The Deputy Prime Minister shall be responsible to the Prime Minister.

**The Council of Ministers (COM): Article 76**

- The COM comprises the Prime Minister, the Deputy Prime Minister, Ministers and other members as may be determined by law.
- The Council of Ministers is responsible to the Prime Minister.
- In all its decisions, the Council of Ministers is responsible to the HOPR. See also Art 93(2)(a) in case of declaration of state of emergency.
- Art. 60(2) states that if the COM is dissolved when it loses majority in the House, the President may invite political parties to form a coalition government.
- According to Art 60(5) if the House is dissolved, the previous governing party shall continue as a caretaker government, but may not enact new
proclamations, regulations or decrees, nor may it repeal or amend existing laws.

**Powers and Functions of the COM: Article 77**

One of the duties of the COM or individual ministry is to submit bills to the HOPR and as such serves as administrative agency. Although Art 77(13) grants power to the COM to enact regulations in the form of proclamations and decrees, it is silent whether or not they can adjudicate. Some of its duties include;

- Ensuring the implementation of laws and decisions adopted by the HOPR.
- It shall draw up the annual Federal budget and, when approved by the HOPR, it shall implement it.
- It shall ensure the proper execution of financial and monetary policies of the country; it shall administer the National Bank, decide on the printing of money and minting of coins, borrow money from domestic and external sources, and regulate foreign exchange matters.
- It shall protect patents and copyrights.
- It shall provide uniform standards of measurement and calendar.
- It shall formulate the country’s foreign policy and exercise overall supervision over its implementation.
- It has the power to declare a state of emergency; in doing so, it shall, within the time limit prescribed by the Constitution, submit the proclamation declaring a state of emergency for approval by the HOPR.
- It shall submit draft laws to the HOPR on any matter falling within its competence, including draft laws on a declaration of war.

**National Defense and State of Emergency - Arts 51(6), 74(1), 77, 87, 93**

- The PM shall establish and administer national defense and public security forces as well as a federal police force 51 (6)
- The PM is the Commander-in-Chief of the armed forces, Chief Executive and Chairman the Council of Ministers. 74(1)
- The Council of Ministers must decree the state of emergency 77(10) which then must be approved by the HOPR by two-third majority if it is in session and 48 hours after the emergency has been decreed. It is assumed that the PM will carry out the decree if the HOPR is not in session, but it still must be submitted to it fifteen days after the decree has been adopted.
- The PM by his broad powers given to him by Art 74 carries out the decree to defend the country
- Where states are concerned, the House of Federation (HOF) shall seek for Federal intervention should any state endangers the constitutional order. See Art 62(9)
Power Over Addis Abeba Art - 49

- Addis Ababa is the capital city of the Federal Government and it is responsible to the Federal government. The residents of the city are represented in the HOPR.
- Since the city is located within the Oromia State, the State’s interest with regards to social services, the utilization of natural resources and joint administrative matters shall be in agreement between the city and the Oromia State.
- It should be noted that the Federal Government has precedence over states see Arts. 50(8), 40(8) and 51(5)
- Under the Addis Ababa City Government Revised Charter Proclamation No. 361/2003 the city has its own council, mayor, cabinet and judicial organs comprising of a First Instance Court and Appellate Court. It also has Kebele Courts (subdivisions of the city.)
- The Federal Supreme Court shall decide on conflict of jurisdiction between the courts and federal courts.

Issue whether the Addis Abeba First and Appeal Courts have jurisdiction over a disputed land.
In Aschenaki Regassa v Gezahegn Negash et al. case No. 33841 vol. 9 page 87 dated Tikmt 6, 2001, EC. the Federal Supreme Court reversed the decisions of the city First Instance and Appellate Court holding that both courts lacked jurisdiction over the disputed land.

In Tsegaye Meseret, et al v Road Transport Authority case No. 50810 vol. 11 page No.258 dated Tikmt 30, 2003, EC. The Federal Supreme Court affirmed the decisions of the city’s First Instance and Appellate Courts decisions

Conduct and Accountability of Government – Art. 12

- The conduct and affairs of government shall be transparent and any public official or an elected representative is accountable for any failure in official duty and in case of loss of confidence the people may recall an elected official.
  - Issue: Whether a government employee should be tried by an administrative, lower and appellate courts of a zone.
    In Tzazu Argaw v Benshangul Gumuz State Council, case no 63417 vol. 12 page 464 Hamle 15, 2003. The lower court decided that the Administrative court has the jurisdiction to see a case of a government
employee. The Supreme Court affirms the decision of the Public Employee Administrative Court citing Art 12(2) of the Federal Constitution.

Revenue and Financial Expenditures (appropriations) – arts 94 – 95

- Both the Federal Government and the States shall bear all financial expenditures necessary to carry out all responsibilities and functions assigned to them by law. Any financial expenditure required for any delegated function by a State by the delegating party.
- The Federal Government may grant to States emergency, rehabilitation and development assistance and loans and it shall have the power to audit and inspect.
- The Federal Government and States shall share revenue taking the Government into account.

Taking Art. 40(8)

- Art 40(8) states that ...the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property. Art. 51(5) also states that the federal government shall enact laws for the utilization and conservation of land and other natural resources, historical sites and objects.
- Art 44 particularly states that all persons who have been displaced or whose livelihood have been adversely affected as a result of State programs have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.
  - Issue: Whether individuals have the right to compensation when the government takes their property.

In Addis Abeba Agricultural Bureau v Abebe Abay et al. case no 39539 vol. 9 page 54, dated Hamle 30, 2001,

The Court cites to 40(8) which states in part “...the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.”

Taxing Powers

Directives on Taxation – Art. 100
In exercising their taxing powers, States and the Federal Government shall ensure that any tax is related to the source of the revenue taxed and tax does not adversely affect their relationship in that neither States or Federal Government shall levy and collect taxes on each other’s property unless it is a profit-making enterprise and that the rate and amount of taxes shall be commensurate with services the taxes help deliver.

**Federal Power of Taxation Const. Art. 96**

- The federal government shall levy and collect custom duties, taxes and other charges on imports and exports; on enterprises and property owned by the Federal Government and international organizations.
- Collect taxes on employees of the government, lotteries, air, rail and sea transportation, stamps and monopolies, etc.
- Shall levy and collect income tax on employees of the federal government and international organizations
- Shall levy and collect income, profit, sales and excise taxes on enterprises owned by the federal government, income of air, rail and sea transport services, income of houses and properties owned by it and fix rents
- Shall tax the income and winnings of national lotteries and other games of chance
- Shall determine and collect fees and charges relating to licenses issued and services rendered by organs of the federal government
- Shall levy and collect taxes on monopolies and stamp duties.

**Issue:** whether the income derived from an employee residing and working in the state goes to the federal government

**Case:** Water Works Construction (WWC) v Fideltiu Zone. Case No. 40133 Vol 7, Page 181, Hamle 2, 2001. E.C.

The Federal Supreme Court reversed the decisions of the Somali State Supreme Court asserting that the employees of WWC are employees of the federal Government and pursuant to Art 96(3) the Federal Government should collect income tax from its employees not the Wereda or the State.

**State Power of Taxation – Art 97**

- Although the Constitution is silent on this subject, states may not levy taxes on the government and its instrumentalities.
- States, however, shall levy and collect taxes on employees of state and private enterprises; land, private farmers and those in cooperatives; sales taxes on traders within the state; water transportation located within the state only (not federal waters) rented properties and enterprises owned by the states and taxes on forest resources.
• States shall levy and collect taxes on income derived from private houses and other properties within the state. They shall also collect rent on houses and other properties they own.
• States shall levy and collect profit, sales, excise and personal income taxes on incomes of enterprises owned by the states.
• Consistent with the provisions of sub-Article 98(3) shall levy and collect taxes on income derived from mining operations, and royalties and land rentals on such operations.

**Concurrent Power of Taxation – Art 98**

• Both state and federal governments shall jointly tax on enterprises they jointly establish; profits of companies and dividends due to shareholders; and on income derived from large-scale mining and petroleum and gas exploration and royalties on such operations.

**Other Powers of Taxation – At 99**

• Any field that is not covered by Arts 96-98 are left for the HOPR and HOF to decide in a joint session by a two-third majority vote on the exercise of power of taxation.

**The Legislature – Chapter six articles 53 – 60**

*The Parliament of Ethiopia is bicameral in as much as it has two chambers, that is, the House of Peoples Representative and the House of Federation. However the Parliament is not bicameral in the real definition of the term. Bicameralism means having two legislative chambers where a proposed bill or law is deliberated upon by both. That is not the case in Ethiopia. The House of the Peoples Representatives and the House of Federation carry separate duties and responsibilities as we will see below.*

**The House of Peoples’ Representatives (HOPR)**

• The Members of the HOPR are elected for a term of five years by the people from each electoral district. Total members shall not exceed 500 and out of these 20 seats are devoted to minority nationalities and peoples.
• Election of a new House is concluded one month prior to the end of its term.
• The HOPR shall have the power of legislating within the federal jurisdiction assigned to it by the Constitution.
• Some duties include enacting labor, commercial, penal and civil laws;
• The HOPR, in conformity of Art. 93 of the Constitution, shall declare state of emergency and proclaim a state of war on the basis of draft law submitted to it by Council of Ministers
• The HOPR shall establish a Human Rights Commission that will investigate the conduct of the national defense forces and others. (55(7), 55(14).
• It shall levy taxes and ratify the national budget
• It shall elect its own Speaker and Deputy Speaker.

Session and Dissolution of the HOPR Arts. 58, 60
• Every session begins in the first week of the new Ethiopian year (September.)
• The Prime Minister may cause the dissolution of the House before the expiry of its five year term in order to hold new elections and it must be with the consent of the House itself.
• If the House is dissolved, new elections shall be held within six months and the new House shall convene thirty days after the elections have ended.

Adoption of laws – Art 57
• Laws passed by the HOPR shall be submitted to the Nation’s President for signature. The President shall sign a law within fifteen days, if not the law shall have effect without his signature.

The House of Federation (HOF) Arts 48, 61-68
• Members of the HOF are elected for a term of five years by the State Councils or they may hold elections.
• The HOF is composed of representatives of nations, Nationalities and peoples where each is represented by at least one member.
• One additional representative is elected for each one million.

Powers and Functions of the HOF
• The HOF has the power to interpret the Constitution
• It organizes the Council of Constitutional Inquiry to help it with its constitutional inquiry.
• It shall find solutions to disputes among states. Art 48 also provides it with the power to decide disputes on settlement patterns and render decisions within a period of two years.
• It shall order Federal intervention if any State endangers the constitutional order.
• They may cast vote only when present in the House.
The House should hold at least two sessions annually.

**Issue: The right to be elected** Arts. 9 and 38

The issue is whether or not candidates from Amhara, Oromia, Tigray residing in the Benishangul-Gumuz region could participate in election to hold offices in the region although they could not speak any of the languages spoken in the region. The Election Board agreed with the region and the candidates appealed to the HOF stating that their constitutional right to elect and be elected was violated. They appealed to the HOF. The Commission of Constitutional Inquiry (CCI) submitted its findings to the HOF. Based on their findings, the HOF reversed the decision of the election Board quoting Art. 9 and 38 of the Constitution that every Ethiopian national has the right to vote and to be elected, without discrimination based on color, race, nation, nationality, sex, language, religion or other opinion or status and added that any law that contravenes with the Federal Constitution has no effect.

**Issue concerning Religious laws**

**In re Kedija Beshir:** This case involves inheritance according to the Sharia law. Plaintiffs file a complaint against defendants with the Sharia First Instance Court claiming that they are entitled to get their share of their grandfather. Without both parties present, the First Instance, the High Court and the Supreme Sharia ruled in favor of the plaintiff. The case was appealed to the Federal Supreme Court where it affirmed the decisions of the Sharia Court. The defendants appealed to the CCI where it found that the decision was unconstitutional and it forwarded its decisions to the HOF. The HOF reversed the decision of the Sharia and Federal courts stating that although Art. 34(5) of the 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. `[Art. 34(5)]` the decisions of the courts contradicts Art. 9(1) of the Constitution when they allowed only the plaintiff to appear before them.

**Issue : The right to secede**

**Issue:** Whether the Silte (ስልጤ) people, a group within the Guraghe people, fulfill the definition of nation, nationality and peoples and have the right to secede.

Art. 39 (1) states that every nation, nationality and Peoples has an unconditional right to self-determination, including the right to succession. The HOF deliberated on this issue by addressing Arts. 39(4), 47(3), 52(2), and 62(3) and decided to hold a referendum.
The Council of Constitutional Inquiry (CCI) Articles 82-84 of the Constitution

The Council is established by the 1995 Constitution and is organized by the House of Federation see art 62 (2)

- Investigates constitutional disputes and submit its recommendations to the House of Federation (HOP) for their decision (see Art 62(3) for that power.
- When federal or state law is contested as being unconstitutional and submitted to it by any court or interested party, it shall consider the matter and submit it to HOP for their final decision.
- The Council shall submit its final recommendations if there is a need for constitutional interpretation and it may also remand the case to the concerned court if it finds there is no need for constitutional interpretation.
- The interested party, if dissatisfied with the decisions of the Council has the right of appeal to the HOP.
- The council drafts its own rules and procedure and implements them upon approval by HOP.

See the cases Benishangul-Gumuz and Kedija above

Immunity Arts 54(5)(6)

- Members of both the HOPR and HOF may not be prosecuted on account of any vote they cast or opinions they express, nor shall any administrative action be taken against them.
- No member shall be arrested or prosecuted without permission of the Houses except in cases of flagrante delicto.

THE JUDICIARY

Judicial Power – Articles 78 & 79 [discuss kebeles customary and sharia]

- Art 78 of the Constitution establishes an independent judiciary and Arts. 79 (1) (2) judicial powers both at federal and state levels are vested in the courts and courts at any level shall be free from any interference of influence of any governmental body, government official or from any other source.
- Discuss the courts and HOF’s role with constitutional issues
- The Constitution establishes two sets of court systems, federal and states with [their respective hierarchy]. The Constitution also recognizes customary and sharia courts.
Judicial Review or Constitutional Interpretation

Judicial review is the fountain of constitutional interpretation. It is the doctrine where the courts have the power to invalidate any federal and state governmental action that is repugnant to the Federal Constitution. However, unlike the United States where the constitutional law doctrine is largely the product of the decisions of the Supreme Court, constitutional interpretation in Ethiopia is not first heard by the Federal Courts. The Federal Constitution does not explicitly grant the authority to hear constitutional issues. Art 6 (3) of the Federal Courts Proclamation No. 25, 1996 states, “Where a case brought before them gives rise to issues of constitutional interpretation, Federal courts shall refer the case to the CCI prior to giving decision on the matter.”

Duality of Functions of the Justices of the Federal Supreme Court

- The president and Vice President of the Federal Supreme Court have dual functions. Both serve as judges in the Federal Supreme Court and also as president and Vice President, respectively of the CCI
- Question: What will their influence be in recommending cases to the CCI and HOF

Appointment of Federal Judges – Articles 81 and 55(13)

- Upon the recommendation of the Prime Minister, the President and Vice-President of the Federal Supreme Court are appointed by the HOPR.
- The Federal Judicial Administration Council (FJAC) selects other federal judges and presents to the Prime Minister for appointment by the HOPR.

Appointment of State Judges – Article 81

- The Chief Executive Officer (President) of the state makes recommendations and the State Council appoints the President and Vice-President of the State Supreme court.
- Other state Supreme and High Court judges are appointed by the State Council upon recommendations by the State Judicial Administration Council.
- The State Council has the power to appoint the judges if the state FJAC fails to submit its recommendations within three months.
- The State First-Instance Courts are appointed by the State Council upon recommendation by the SJAC.
Judicial Power of the Courts – Art 79

Judicial powers, both at Federal and state levels, are vested in the courts and shall be free from any interference of influence of any government body, government official or from any other source. The judges shall exercise their functions in full independence and shall be directed solely by the law. Except in interpretation.

The Federal Courts

There are three levels of courts at the federal level.

The Federal First Instance and High Courts

These courts are granted authority to conduct trials and hearings in civil and criminal cases under the federal law. These courts sit in Addis Ababa and Dire Dawa and in such other places as may be determined in accordance with Art. 78(2) of the Constitution and under the Federal High Court Establishment Proclamation No. 322/2003, April 8, 2003, the Federal High Court also sits in Afar, Benshangul, Gambella, Somali, and Southern Nations and Nationalities and Peoples states. A Federal Court of any level may, where it finds it necessary for the efficient rendering of justice, hold circuit hearings in any place within the Region or area designated for its jurisdiction. See Art 24(3) of the Federal Court Proclamation No. 25/1996.

The Federal Supreme Court

The Federal Supreme Court sits in Addis Abeba and is composed of a President, a Vice President and necessary judges. It has civil, criminal and labor divisions. Each division has a presiding judge and two other judges. The president or the Vice president of the Federal Supreme Court may preside over any division. See Part Six articles 19 and 20 of the Federal Courts Proclamation No. 25, 1996.

Jurisdiction of the Federal Courts - Art 80

The jurisdiction of federal courts is determined by Art. 80 of the Constitution. For the courts to hear a case, there has to be a federal question jurisdiction, i.e., there must be present a federal question that is a question arising under Art 80, the Federal Courts Proclamation NO. 25/1996, as amended by Federal Courts Proclamation No. 138/1998 and No. 32/2003, other federal laws and international treatises, parties specified in the federal laws and places specified in the Constitution and federal laws. Federal courts have the highest and final judicial power of federal matters and the Federal Supreme Court has power of
cassation over any final court decision on state matters which contains a basic error of law.


Federal courts may at any level order that decisions and orders given by them be enforced by Regional Courts. Where two or more Regional or Federal Courts claim or disclaim jurisdiction over a case, the Federal Supreme Court shall give the appropriate order thereon.

Criminal Jurisdiction of Federal Courts – see Part Two section 4 of the Federal Court Proclamation No. 25, 1996

- Offenses against the Constitutional order or against the internal security of the state
- Offenses against foreign state; the law of nations; the fiscal and economic interests of the Federal Government; against counterfeit currency; forgery of instruments of the Federal Government; the security of freedom of communication services operating within more than one region or at the international level; [Commerce Clause?];
- Offenses against the safety of aviation; offenses regarding foreign nationals; illicit trafficking of dangerous drugs
- Offenses falling under the jurisdiction of courts of different regions or under the jurisdiction of both the Federal and Regional Courts as well as concurrent offenses
- Offenses committed by officials and employees of the federal government in connection with their official responsibilities and duties

Civil Jurisdiction of the Federal Courts - See Part Two of the Federal Court proclamation-No. 5, 1996

- Cases to which a federal government agency 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 where a foreign national is a party
- Cases involving nationality
- Cases involving negotiable instruments and
- Application for Habeas Corpus
Concurrent Jurisdictions of Courts – Article 80 of the Constitution

- The Federal Supreme Court has the highest and final judicial power over federal matters
- State Supreme Courts have the highest and final judicial powers over their respective state matters
- The Federal Supreme Court has the power of cassation over any final court decision containing a basic error of law
- The State Supreme Court has the power of cassation over any final court decision on state matters which contains a basic error of law
- In addition to their jurisdiction, State High Courts may exercise the jurisdiction of the Federal First-Instance Court
- Court decisions rendered by the State High Court exercising Federal First-Instance Court jurisdiction are appealable to the State Supreme Court
- Decisions by a State Supreme Court on federal matters are appealable to the Federal Supreme Court

Issue: This is an issue on jurisdiction whether a case between individuals from different states first heard by a state high federal court should be appealed to the state Supreme Court or the federal supreme court.

Case: Ethiopia Insurance Company v. Solomon Yacob: case No. 54577, vol. 12 page 447 Hdar 1, 2003. The Federal court cited to constitutional articles 78(2), 80(20, 80(4) and 80(5) and decided that there was no error.

Issue: Judgment in absentia: In criminal cases whether the accused has a constitutional right of appeal when a verdict is handed down without the accused being present, and if the Supreme Court could hear the case on appeal and correct the verdict.

Case: Semahegne Belew v Federal Prosecutor case No. 57632 vol 12 page 179 Tahsas 25, 2993. The Court affirmed the decision of the federal high court in deciding the case in absentia.

Issue: Whether the Constitution grants the Federal Supreme Court to hear appeal cases; and whether a case heard by arbitration can be heard by the Court.

Case: National Mining Corporation v Dan Trading case No. 42239 Vol. 10 page 350, Tikmt 29, 2003. The Court held that it had the power to hear cases decided by arbitrators under the revised Federal Courts Proclamation No. 454/1997.
Federal Supreme Court Review of State Judgments

- Art. 80(6) of the Federal Constitution provides that decisions rendered by a State Supreme Court on Federal matters are appealable to the Federal Supreme Court. The Federal Court Proclamation gives the Federal Supreme Court the authority to hear appeal cases from the state courts in cases involving Federal Court Proclamation No. 25, 1996 Part Three Art 10 also states that the Federal Supreme Court shall have power of cassation over the final decisions of the Regional Supreme Court rendered as a regular division on in its appellate jurisdiction.

Federal Supreme Court First Instance Jurisdiction – (Original Jurisdiction)
Part Three section 8 of the Proclamation

- Offenses for which officials of the federal government are held liable in connection with their official duties
- Without prejudice to international diplomatic law and custom, cases involving foreign ambassadors, consuls, representatives of the international organizations and foreign states
- Application for change of venue from one federal high court to another or itself

Appellate Jurisdiction of the Federal Supreme Court – section 9

- Decisions from the Federal High Court rendered in its first instance jurisdiction
- Decisions of the Federal High Court rendered in its appellate jurisdiction in variation of the decisions of the Federal First Instance Court

Power of Cassation of the Federal Supreme Court – section 10

In cases where they contain fundamental error of law, the Federal Supreme Court shall have the power of cassation over

- Final decisions of the Federal High Court rendered in its appellate jurisdiction
- Final decisions of the regular division of the Federal Supreme Court
- Final decision of the Regional Supreme Court rendered as a regular division or in its appellate jurisdiction.

Federal High Court: First Instance Civil Jurisdiction – section 11

- Cases involving an amount in excess of Five hundred thousand Birr
- Without prejudice to the jurisdiction of the Federal Supreme Court under article 8 of the Federal Courts Proclamation No. 25/1996
• Cases regarding private international law
• Cases regarding nationality
• Application regarding the enforcement of foreign judgments of decisions
• Application for change of venue from one Federal First Instance Court to another or itself

**Federal High Court First Instance Criminal Jurisdiction – section 12**

• Criminal cases specified under sub-articles (1), (2), (3), (8) and (10) of article 4
• Other criminal cases arising in Addis Ababa and Dire Dawa and falling under the jurisdiction of the High Court pursuant to other laws in force.

**Federal High Court: Appellate Jurisdiction – section 13**

• Has appellate jurisdiction over decisions of the Federal First Instance Court

**Federal First Instance Court Civil Jurisdiction – section 14**

• Cases involving an amount not exceeding of five hundred thousand Birr
• Without prejudice to the jurisdictions of the Federal Supreme and High Courts under Article 8 and sub-article (2) of article (11), may hear cases submitted pursuant to articles 3 and 5 of the Federal Courts Proclamation No. 25/1996
• Without prejudice to judicial power vested in other organs by law, other civil cases arising in Addis Ababa

**Federal First Instance Court Criminal Jurisdiction Section 15**

• Criminal cases specified under sub-article (4) (5) (6) (7) and (9) of article 4
• Without prejudice to judicial power vested in other organs of law, other criminal cases arising in Addis Ababa and Dire Dawa as well as other criminal cases under the jurisdictions of Awraja [district] and Wereda [sub-district] Courts pursuant to other laws in force [look it up]

**Substantive Laws to be Applied by Federal Courts Part Two, section 6**

Federal Courts shall settle cases or disputes submitted to them within jurisdiction on the bases of

• Federal laws and international treaties
• Regional laws where the cases relate to them
• Regional laws to be applied pursuant to sub-article (1)(b) hereof shall not be applied applicable where they are inconsistent with Federal laws and international treaties
• Where a case brought before them gives rise to issues of constitutional interpretation, Federal Courts shall refer the case to the Council of Constitutional Inquiry prior to giving decision on the matter

Procedural Laws to be applied by federal Courts

• The Criminal and Civil Procedure Codes as well as other relevant laws in force shall apply with respect to matters not provided for under the Federal Courts Proclamation insofar as they are not inconsistent therewith.

Removal of Federal Judges

Article 79 states that judges shall not be removed from their duties before the retirement age unless

• The Judicial Administration Council decides to remove them for violation of disciplinary rules or on grounds of gross incompetence or inefficiency; or
• When the Council decides that the judges can no longer carry out their responsibilities on account if illness; and
• When the House of Peoples Representatives approve by a majority vote the decisions of the Council

Doctrine of Abstention or Withdrawal – see Section 27 of the Federal Courts Proclamation No. 25, 1996

Federal Court may not sit if

• A judge is related to a party to the litigation either by consanguinity or affiliation
• the judge acted as a tutor, legal representative or advocate to one of the litigants
• A judge has acted in some capacity in connection with the case or the subject matter of the dispute
• A judge has a case pending in court with one of the parties or the advocate thereof
• There are sufficient reasons, other than those specified under section 27 (1) (a) to (d) to conclude that injustice may be done

Removal – Section 28 of the Federal Proclamation No. 25, 1996

For a federal judge to be removed the following must happen
Where a party to a case is of the opinion and submits a written application to the court that a judge should not sit for reasons specified in section 27 above. The application is submitted before the trial begins or soon after the party becomes aware of the situation.

In such cases:

- If the judge is sitting alone, he shall either withdraw or refer the matter for decision to another division within the same court, or where there is no other division, to the court in which appeal lies from the decision of the court.
- If the judge is sitting with other judges, he shall withdraw and the remaining judge or judges shall hear the application and give a decision thereon.
- The decision given either way shall be final and subject to no appeal.

**Penalty** See sections Part Six sections 29-30

- If the application for removal is dismissed, the cost shall be borne by the applicant irrespective of the outcome of the case and there will be a fine of $500.00 Birr if a party makes an application without good cause.

**Concurrent Jurisdiction of Courts** - See Art 80 of the Federal Constitution

- The federal Supreme Court shall have the highest and final judicial power over federal matters.
- State Supreme Courts shall have the highest and final judicial power over state matters. They shall also exercise the jurisdiction of the Federal High Court.
- Notwithstanding the provisions above, The Federal Supreme Court has a power of cassation over any final court decision containing a basis error of law.
- The State Supreme Court has power of cassation over any final court decision on state matters which contain a basic error of law.
- State High Court shall, in addition to State jurisdiction, exercise the jurisdiction of the Federal First-Instance Court.
- Decisions rendered by a State High Court exercising the jurisdiction of the Federal First-Instance Court are appealable to the State Supreme Court.
- Decisions rendered by a State Supreme Court on Federal matters are appealable to the Federal Supreme Court.

**State Courts art. 78, 80**

- States shall establish State Supreme Court, High and First-Instance Courts.
- State courts shall also exercise the jurisdiction of the Federal High Court.
- State High Court shall, in addition to State jurisdiction, exercise the jurisdiction of the Federal First Instance court.
- Decisions rendered by a State High Court exercising the jurisdiction of the Federal First Instance Court are appealable to the State Supreme Court and
decisions rendered by a State Supreme Court on federal matters are appealable to the Federal Supreme Court. At the same time, the Constitution (Art 78) also allows State Councils to establish or give official recognition to religious and customary courts.

**Religious and Customary Courts – Art 78 (5)**

Pursuant to sub-Article 5 of Article 34 of Peoples’ Representatives and State Councils can establish or give official recognition to religious and customary courts. Religious and customary courts that had state recognition and function prior to the adoption of the 1995 Constitution shall be reorganized on the basis of recognition accorded to them by Art 78.

**Addis Abeba City Courts**


**Civil and Criminal Jurisdictions of the city courts**

**Civil Jurisdiction – Art 41 of the Charter**

It hears cases arising from suits on possessory rights, issuance of permits or land use; on regulatory powers and functions of executive bodies. Suits in connection with administrative contracts and government owned houses and suits arising between executive bodies of city government.

**Criminal Jurisdiction**

It hears cases on fiscal matters and cases arising under Articles 33, 35, 53 and 59 of the Code of Criminal Procedure.

**Conflict of Jurisdiction and Power of Cassation - ART 42 OF THE Charter**

- The Federal Supreme Court decides on conflict of jurisdiction arising between the city courts and federal courts.
- A party alleging a fundamental error of law in a final judgment of the Addis Abeba city Appellate Court appeal to the Federal Supreme Court and to the Federal Supreme Court for cassation.
Kebele Social Courts

Kebeles are urban dwellers’ associations with their own courts which

- Have jurisdiction over cases of property and money claimed where the amount involved does not exceed Birr 5,000.00 (local money)
- Over contraventions of the city’s hygiene and public health regulations.
- Decisions of this court may be appealed to the corresponding First-Instance Court of the city where the decision is final except where there is a fundamental error of law in which case application for cassation may be brought before the City’s Appellate Court.

Sharia Courts

Federal Courts of Sharia Consolidation Proclamation

The Federal Courts of Sharia Consolidation No. 188/1999 establishes the sharia courts at three levels: the Federal First Instance Court of Sharia, Federal High Court of Sharia, and the Federal Supreme Court of Sharia all accountable to the Federal Judicial Administration have been established having the following common jurisdiction:

- Any question regarding marriage, divorce, maintenance, guardianship of minors and family relationships; provided that the marriage to which the question relates was concluded, or the parties have consented to be adjudicated in accordance with Islamic law;
- Any question regarding Wakf, gift/Hiba/, succession of wills; provided that the endower or donor is a Muslim or the deceased was a Muslim at the time of his death;
- Any question regarding payment of costs incurred in any suit relating to the aforementioned matters.
- Federal Courts of Sharia shall adjudicate cases under their jurisdiction in accordance with Islamic Law and in conducting proceedings properly, the courts shall apply the civil procedure laws.

Jurisdiction of the Federal Supreme Court of Sharia

The Federal Supreme Court of Sharia shall have jurisdiction over:

- Decisions of the Federal High Court of Sharia rendered in its first instance jurisdiction;
• Decisions of the Federal High Court of Sharia rendered in its appellate jurisdiction.

Jurisdiction of the Federal High Court of Sharia

• The Federal High Court of Sharia shall have first-instance jurisdiction over cases involving an amount in excess of Birr two hundred thousand (200,000).
• The Federal High Court of Sharia shall have appellate jurisdiction over decisions of the Federal First Instance Court of Sharia.
• It shall have jurisdiction over applications for change of venue from one Federal First Instance Court of Sharia to another or to itself.

Jurisdiction of the Federal First Instance Court of Sharia

• The Federal First Instance Court of Sharia shall have jurisdiction over cases involving an amount not in excess of Birr 200,000 (Birr two hundred thousand) or cases the value of which cannot be expressed in money.

The Federal High Court and First Instance Court of Sharia

• The Federal High Court and First Instance Court of Sharia shall each have a head, representing the respective court, as well as Kadis, registrars and personnel necessary for their respective functions.

Decisions and Orders of Federal Courts of Sharia

• Federal Courts of Sharia, of all levels, may order that decisions and orders given by them on matters under their jurisdiction, be enforced by executive organs.
• Any Executive Organ as well as individuals who receive the decisions or orders of any Federal Court of Sharia shall execute or cause the execution of same.

Pending Cases

• Cases pending in the Addis Ababa and Dire Dawa Courts of Sharia, prior to the coming into force of this Proclamation, shall be transferred to the Federal Courts of Sharia having jurisdiction pursuant to the provisions of this proclamation.

Human and Democratic Rights –Art 10, 13

• The Constitution declares that human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable.
• Human and democratic rights of citizens and peoples shall be respected
All federal and state legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions provided by the Constitution with regards to human and democratic rights (Art 13) and the fundamental rights and freedoms outlined below shall be interpreted in a manner conforming to the principles of Universal Declaration of Human Rights, International Covenants on Human Rights and International Instruments adopted by Ethiopia. ((Art 13 (2))

Issue: Whether in a capital case the Court should first see that the accused who cannot afford to hire an attorney has the constitutional right to be represented by an attorney.

Case: Shambel Husein Ali v Somalia State case No. 37050 vol. 7 page 160, Tahsas 30, 2001. The Court citing Constitutional art. 13(1) decided that the decisions of the Jijiga High Court and affirmed by the Somali State High Court was unconstitutional and dismissed the case and stated that the accused has the right to be represented by an attorney of his choice. It also decided that the case should be assigned to a new panel of judges.

See also Abysynia Bank Ins. Co v. Abdu Ahmed case no. 40901 vol. 1, page 180, decided Yekatit 26, 2001. See also Proclamation 377/96 art.167 and 97/90 art.3

Human Rights

Rights to Life, the Security of Person and Liberty – Art. 14

• Every person has the inviolable and inalienable rights to life, the security of person and liberty

Right to Life - Art. 15

• Every person has the right to life. No person may be deprived of his life except as a punishment for a serious criminal offense determined by law.

The Life of the Security of Person – Art. 16

• Everyone has the right to protection against bodily harm.

Prohibition Against Inhuman Treatment – Art. 18

• Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment
• No one shall be held in slavery or servitude. Trafficking in human beings for whatever purpose is prohibited
• No one shall be required to perform forced or compulsory labor

Right of the Person Arrested, Accused and Right to Access to Justice – Due Process of Law – Arts. 17, 19, 20, 37

• No person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction.
• Persons arrested have the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charge against them.
• Person arrested have the right to remain silent and any statement they make may be used against them in court, (Miranda) any confession made under coercion shall be inadmissible.
• They have the right to be brought before court within 48 hours of their arrest notwithstanding the time it takes from place of arrest to appearing in court.
• Person arrested have the right to be released on bail,

  Issue: Whether a child born into a marriage had any legality and whether the courts should address this issue.

  Case: Ermias Constantinos Gilliptis v Solomon Constantnos Gilliptis Case No. 57607 vol. 11, page 68 date.

  The Federal Supreme Court decided citing Art 37(1) that everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by a court of law or any other competent body with judicial power.

Right to Liberty and of the Arrested and Accused Arts. 17, 19, 20

• The Constitution grants wider protection to the accused and arrested
• Art. 17 states that no person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him.
• Art. 19 also states that the persons arrested has the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charge against them.

The Right to Remain Silent:

• Art 19-2 states that any person arrested has the right to remain silent. Upon arrest they have the right to be informed that any statement they make may be used against them in court.
• 19-3 Persons arrested have the right to be brought before a court within 48 hours of their arrest. Such time shall not include the time reasonably required for the journey from place of arrest to court.
• On appearing before court, they have the right to be given prompt and specific explanations of the reasons for their arrest...[there is more]

Non-retroactivity of Criminal Law – The Ex Post Facto Laws – Art. 22
• No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense at the time when it was committed.
• Nor shall a heavier penalty be imposed on any person that the one that was applicable at the time when the criminal offense was committed.
• A law promulgated subsequent to the commission of the offense shall apply if it is advantageous to the accused or convicted person

Prohibition of Double Jeopardy – Art. 23
• No person shall be liable to be tried or punished for an offense for which he has already been finally convicted or acquitted in accordance with criminal law and procedure.

Right to Honor and Reputation – Art 24
• Everyone has the right to respect for human dignity, reputation and honor, free development of his personality in a manner compatible with the rights of other citizens and the right to recognition everywhere as a person.

Right to Equality – the Equal Protection Under the Law– Art. 25
• All person are equal before the law and are entitled without discrimination to the equal protection of the laws. The law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.

Right to Privacy – Search and Seizures – Art 26
• Everyone has the right to privacy, including the right not to be subjected to searches of his home, person or property, or the seizure of any property under his personal property.
Everyone has the right to the inviolability of his notes and correspondence including personal letters, and communications made by means of telephone, telecommunications and electronic devices.

Public officials shall respect and protect these rights. No restrictions may be placed on the enjoyment of such rights except in compelling circumstances and in accordance with specific laws whose purpose shall be the safeguarding of national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedoms of others.

**Freedom of Religion, Belief and Opinion Art. 27**

Everyone has the right to freedom of thought, conscience and religion. This right shall include the freedom to hold or to adopt a religion or belief of his choice and the freedom, either individually or in community with others, and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

**Parents’ Rights – Art 27(4)**

- Parents and guardians have the right to bring up their children ensuring their religious and moral education in conformity with their own convictions.
- These rights may, however, be subject to limitations as are prescribed by law and are necessary to protect public safety, peace, health, education, public morality or the fundamental rights and freedoms of others, and to ensure the independence of the state from religion.

**Right to Education – Art. 90(2)**

- Although the Constitution is silent on the fundamental right to education Art. 90 states that education shall be provided in a manner that is free from any religious influence, political partisanship or cultural prejudices.

**DEMOCRATIC RIGHTS**

**Right of Thought, Opinion and Expression – Art. 29**

- Ethiopian nationals have the right to hold opinions and the right to freedom of expression without state interference.
- These rights also include freedom to seek, receive and impart information and ideas of all kinds, **regardless of frontiers**, either orally, in writing or in print, in the form of art, or any medium.
- Freedom of the press and other mass media are guaranteed without any prohibition of any form or censorship.
• These rights may be limited through laws to protect the well-being of the youth, and the honor and reputation of individuals and any propaganda for war may be banned.

**Right to Assembly, Demonstration and Petition – Art. 30**

• The Constitution grants the individual the right to assemble, petition and demonstrate together with others peaceably and unarmed, and to petition. Appropriate regulations may be made in the interest of public convenience relating to the location of open-air meetings and the route of movement of demonstrators or, for the protection of democratic rights, public morality and peace during such a meeting or demonstration.

• There will be appropriate restrictions relating to the location and route of these activities as well as any propaganda for war and any public expression of opinions intended to injure human dignity

**Freedom of Association – Art. 31**

• Unless used in violation of existing laws and to illegally subvert the Constitutional order, every citizen has the right to freedom of association for any cause or purpose

**Issue: Workers’ right to form a union. Arts. 31 and 42(1) (a) (2)(3)**

*Ethiopia National Bank Workers’ Union v Representative of EPDRF’s Ministry of Social Affairs.* Case No. 55731 vol. 11 page 207 Yekatit 22, 2003 E.C.

This an appeal by the Union to the Federal Supreme Court alleging that decision rendered by the Federal High Appeal Court with regards to their right to form an association was erroneous and that they have the right to form a union based on Proclamation No. 377/96 and Constitutional Art. 42(1)(a) and Art. 31. The Federal Supreme Court citing Federal Constitution Articles 42(1)(a), 2 and 3 and Art. 31 affirmed the decision of the Federal High Appeals Court stating that they did not meet the requirements of the statute as well as the constitutional provisions to form a union.

**Freedom of Movement – Art 32**

• All Ethiopian and foreign nationals who reside in the country lawfully have the right to travel within the country and choose their place of residence anywhere
within the territory. Any Ethiopian national has the right to return to their country from abroad.

**Rights of Ethiopian Nationality – Art. 33**

- No Ethiopian national shall be deprived of his nationality against his or her will. This nationality right shall not be annulled if an Ethiopian marries a foreign national.
- As much as Ethiopian nationals have the right to change their nationality, foreign nationals may also be conferred with Ethiopian nationality in accordance with law enacted and procedures established consistent with international agreements ratified by Ethiopia.

**Marital, Personal and Family Rights – Art. 34**

- The family is the natural and fundamental unit of society and is entitled to protection by society and state.
- Men and women who have attained marriageable age as defined by applicable laws have the right to marry without any distinction as to race, nation, nationality or religion.
- Marriage shall be entered into only with the free and full consent of the parties.
- The rights and interests of children is protected during divorce.
- The 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. The Constitution also recognizes a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted.

See the case of Kedija above

**Rights of Women Art. 35**

The 1995 Constitution accords greater freedom to women giving them

- Equal rights with them generally and in marriage in particular, are entitled to affirmative measures.
- Harmful customs and laws are eliminated altogether.
- Women have the right to maternity and prenatal leave with full pay according to established law.
- Right of property and employment and the right to family planning and education to prevent harm arising from pregnancy and childbirth.
Issue: Whether a person entering an illegal marriage should be bound by that illegal document
Case: Zewditu Getachew v Temesghen Desalegne Amhara State Gojam Zone, Case no. 31946 vol. 5 page 244, Ginbot 14, 2000 E.C.

This case is about marital property where the Federal Supreme Court reverses the decision of the Amhara Supreme Court citing Arts. 34(1), 35(2) and 9(1) of the Federal Constitution. The court held that the marriage entered between the parties was in accordance with customary law and it contradicts the Constitution art 9(1) and women have equal property right on property acquired during their marriage and are entitled to equal share during divorce.

Rights of Children – Art. 36

- All actions taken by public or private institutions shall be in the best interest of children.
- Children have the right to life, a name and nationality and to know and be cared by their parents or legal guardian.
- Free from exploitive practices or hazardous or harmful work.
- Free from corporal punishment or cruel and inhumane treatment.
- Children born out of the wedlock have same rights as children born of wedlock.
- Orphaned children also get the protection of the state by establishing institutions promoting adoption and advancing their welfare and education.

Case: Whether parents can be guardians of their children if they act in the best interest of the child, Art. 36(2.)
Tsedale Demisse v Kifle Demisse; case No. 23632 Vol.5 page 188, October 26, 2000 E.C. This case arose in the Southern Nations, Nationalities and Peoples State federal court. The Federal Supreme Court reversed the decision of the supreme court of the state citing Art. 36(2) of the Federal Constitution which states that “In all actions concerning children undertaken by private and public welfare institutions, courts of law and administrative authorities shall be in the best interest of the child.”

Right of Access to Justice – Art. 37

- Everyone has the right to bring a justiciable matter to and obtain a decision or judgment by a court of law or any other competent body with judicial power.
Issue: Whether a court can hear a case with regards to property located in a foreign country

Case: In Abadit Lemlem v Zalambesa City Council case No. 48217 vol. 11 page 249, Tikmt 18, 2003 E.C. the Court citing Arts. 79 and 37 remanded the case to the Tigray Court asserting that this was not a political matter and there was a case and controversy for the Tigray court to hear.

In Ngist Haile v Legesse Alemu case No 37399 vol. 9 page 106 Tir 28, 2001. The Federal Supreme Court reversed the decisions of the Federal First Instance and Federal High Court with regards to Joint property owned by married couple in the United States and decided that courts should address the issue pursuant to Art. 37 of the Constitution.

Case: Heirs of Mohhamed Husein v Government Housing Agency case No. 37966, vol. 12 page 476, Tir 27, 2003. First The Court Dismissed the ruling by the appeal court and also stated that The Court that the Appellant had the right of appeal and the Court also had the jurisdiction to hear the case. Finally it ruled that there is case and controversy and that the lower court has jurisdiction to hear the case.

Voting Rights and the Right to be Elected - Art. 38, 102

- Every person has the right to vote on the attainment of 18 years of age and can do so without discrimination based on color(?), race, nation, nationality, sex, language, religion, political or other.
- Has the right to be elected to any office at any level of government and elections shall be universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.
- Every citizen has the right to be a member of any association or organization including labor unions.
- To that effect the Constitution the National Election Board is established by Art 103 of the Constitution to conduct federal and state elections freely and without any governmental influence. Members of this Board shall be appointed by the HOPR upon recommendation by the Prime Minister.

Case: See the case of Benshangul above
Rights of nations, Nationalities and Peoples (NNP) of Ethiopia – Art 39

- Every NNP has an unconditional right to self-determination, including the right to secession, the right to speak, to write and develop its own language; to express, to develop and to promote its culture; and to preserve its history.

  See the Silte case above. See also Art. 62(3-5)

- The right to self-determination, including secession, of every NNP shall come into effect when a demand for it has been approved by a two-third majority of the members of the Legislative Council of the NNP concerned; when the federal government (thru HOF?) has organized a referendum which must take place within three years the time it received the Council’s decision for secession; when the demand for secession is supported by majority vote in the referendum; when the federal government will have transferred its powers to the Council of NNP who have voted to secede and when the division of assets is effected in a manner prescribed by law.

Property Rights – Art 40

- Every citizen has the right to acquire and use tangible and intangible private property produced by the labor, creativity, enterprise or capital and to dispose of such property by sale, bequest or transfer.
- Land, whether urban or rural, is a common property of the states and peoples of Ethiopia and shall not be subject to sale or other means of exchange.
- The Ethiopian peasants and pastoralists have the right to obtain land without payment and are protected against eviction or displacement.
- Private investors may use land on payment arrangements without prejudice to the Nations, nationalities and Peoples ownership of land.
- Every citizen has the right to immovable property he build and improve upon it.

Issue: Whether land belongs to the government and whether individuals have the right to build on it and if the property built during the marriage belongs to both spouses.
Case: Gebre-Egziabher Kebedew v Selamawit Welde-Gebriel vol 6 page 188 case No. 26130.
This case arises from a dispute between husband and wife and from land ownership. The court citing to 40(3) of the Federal Constitution decided that the right to ownership of rural and urban land, as well as all natural resources is exclusively vested in the state and in the peoples of Ethiopia and 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 exchange.

Issue: Whether or not land can be used in exchange to pay debt.
Case: In Gashaw Begosew v Alebel Meket Case No. 49200, vol 11 page 276 Hdar 1, 2002 E.C. This case comes from Amara State and the Federal Suprme Court citing Art. 40(3) re-asserted that land belongs to the Government and peoples of Ethiopia and not to individuals.

Case: See Addis Abeba Agricultural Bureau under Taking above
Issue: Ownership of property pursuant to Property Rights Art. 40(2)
Case: Rahel Snetsehay v Mesfin Tamrat Case No. 55081 Vol. 11 page 256, Tikmt 18, 2003 E.C.

The Federal supreme reversed the decision of the Federal First Instance Court by refereeing to Art. 4092. The court stated that the transfer of property to a minor is illegal and according to 40(2) of the Constitution a person becomes an owner of a property if it is produced by the labor, creativity, enterprise or capital of the individual.

**Economic, Social and Cultural Rights – Art. 41**

- Citizens have the right to engage freely in economic activity, choose their means of livelihood, occupation and profession and equal access to social services; to choose their means of livelihood, occupation and profession; to equal access to publicly funded social services
- To that end the Government has the responsibility to protect and preserve historical and social legacies, and to contribute to the promotion of the arts and sports; to allocate an ever increasing resources to public health, education, provide rehabilitation and assistance to the physically and mentally disabled, the aged and children without parents and guardians, the poor and those without employment.
- Art 41 also protects farmers’ and pastoralists’ right to receive fair price for their products
- The government has the responsibility to protect and preserve historical and cultural legacies and to contribute to the promotion of arts and sciences.
Right of Labor – Art. 42

- Women workers have the right to equal pay.
- Citizens have the right to improved living conditions and to be consulted with respect to policies and projects affecting their community.
- Workers have the right to form associations, trade union to bargain collectively with employers, including the right to strike.

Case: See under Article 31

The Right of Development - Art. 43

- The people of Ethiopia have the right improved living conditions and to sustainable development and the NNP have the right participate in national development and to be consulted affecting their communities.

Environmental Rights – Art. 44

- Citizens have the right to clean healthy environment.

Conclusion

I have tried to outline and group similar articles of the Constitution under major areas. I have done so in the absence of adequate commentaries on the Constitution. Except for some articles here and there, there has not been any major discussion on the Constitution and its current effectiveness to the country at large. This is understandable given the fact that there are not many constitutional lawyers in the country that follow up the decision of the federal courts and write comments about the courts’ decisions. We cannot have a good constitutional order without workable constitutions both on the federal and state levels. It is our hope that the constitutional interpretation by the courts and the HOF is done in accordance with the original meaning and understanding of the Constitution without any governmental interference so that Ethiopia will have “a government of laws and not of men.”

The original meaning, in this case means, what the intent the drafters was when they drafted the Constitution. Those learned in the law and engaged in pedagogy, law practice and members of the bench should serve as a documentarians by preserving the original documents. There should be a department within the premises of the federal courts, the law schools, the National Archives or the HOF where these interpretations are documented and preserved so that when the time comes for amending the constitution, they may be consulted. The Constitution is a living document that will be read and reread in the years to come. Most of the people who helped in the drafting of it are well and alive and should be consulted so that they too can submit their general understanding of the first draft. It is extremely gratifying
to see the excellent work that was started by Sarah Vaughan who interviewed some of the original drafters and who also were the major players during the transitional period. This important piece of work must continue by constitutional documentarians before these actors are gone. This work that has been done by Ms. Vaughan must be kept in a central place so that future researchers may have access to it. I believe that if there is the will, there are a great many more such people in Ethiopia who can help in compiling legislative history of the Constitution and preserving it.