

CRIMINAL LAW
AT STATE WOREDA COURTS
LAW AND PRACTICE

BY MULUGETA LEMMA

ADVISOR: - AMEHA MEKONIN (L.L.B, L.L.M)

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Introduction

Ethiopia, the country now follows the ideology of Federalism pass through different governmental structure. From governmental structure which happened in the world Ethiopia pass through two of them. Such as unitary and Federalism.

Now a day the country followed the Federal Democratic Republic principles. To run on this principle the country constituted the constitution. That constitution cited as constitution of the Federal Democratic Republic of Ethiopia proclamation No. 1/1995.

As the country follow the Federal Structure of the government, the features of Federalism that is establishing of dual government that is the Federal & the State was promulgated by constitution. Each government constitution organized the three governmental machinery (legislative, Executive & judiciary). Both of the government sovereign in its exclusive area. The judicial power of the two governments vested on the hand of the courts. The regional government constitution established the three layer of courts automatically, however regarding Federal the constitution establishing the Federal Supreme courts and give the power for parliament to established the nation wide or only the parts the high & 1st instance courts. Until the parliament to do so the power of high & 1st instance courts delegate for supreme & high courts of state respectively.

Judicial jurisdiction of now a day of the country was exercised by Federal and State courts by the features of Federalism. Based on this, the issue of this paper is desired to discuss the jurisdiction of courts & their relation with more emphasis to judicial jurisdiction of state woreda courts criminal powers and the practiced activities.

The paper comprised four chapters and the summary of it. The first chapter deals with historically back ground of court structure in Ethiopia. This chapter discussed to show the schefan structure of courts in the country. The next chapter two deals with political structure of the country. This chapter discussed to see the courts structure in the spectrum of different system. The left two chapters are the core point of this paper.

Chapter three, try to examine the judicial jurisdiction of the courts in different angles like in the concept of FDRE constitution and power division b/n them, how criminal law exercised in the state courts, the concrete of delegation and the practice of this law by state woreda courts.

At the last chapter the legal problem of the criminal law of state woreda court and reach to conclusion & the recommendation of the paper for readers. End notes & bibliography are written of the End.

Chapter One

Structure of courts in Ethiopia

Historically the sense of justice among Ethiopia would be traced way back in the judicial history of the country. The very fact that, any elderly person on the street used to be asked to intervene and adjudicated a litigation between two individuals impartially right at the spot which is known "Road side court." Correspondingly, who ever was alleged to have committed an offence or failed to meet his/her obligation was required, under pain of penalty, to submit to the authority of such a spontaneously called up on person. The person who assumed such responsibility could exact coercive obedience irrespective of their sex and social status. Such person would, more often than not, try to bring about the settlement of the issue between the parties in an amicable manner could also require the assistance of others, usually elders or members of the clergy, to mediate between the disputants so as to settle the case out of court¹.

Moreover, if all modes of settlement of disputes available in the community in question did not work, the road side judge would bring the disputants before the local chief or send them to the court of first instance by tying up the tips of their close. This is one way of dispute resolution mechanism out of courts in the history of Ethiopia.

When we come to the specific topic i.e. courts structure and their power in Ethiopia depending on their historical development that brought them about and the nature of their work we can classify them in to regular and non-regular courts. But for the purpose of this paper we are concerned only with regular courts under this chapter. So, it is appropriate treating

them by classifying under different period of time. This cover the period starting from 1908 to present time.

The Structure of Regular courts from 1908 to 1936

The hierarchy of courts, their constitution and power before the year of 1936 is summarized as below.

Firstly there exist “Yafer –Dagna or Yessir – Dagna that is court of first Instance at the bottom. Here administrative and Judicial functions were interested to local chiefs, the head of a parish church or monastery or to the *Shum or zegar* (official of an area that was not under the supervision of place officials) or to the *gan – geb* i.e. officials of an area under the supervision of place officials. All these officials formed the lows unit of judicial organ known as the court of first instance that could adjudicate matters of family disputes, succession and delict. Ones the decision is made by this court, appeal went to the yakal Dagna which is district court².

Secondly, there is “Yakal Dagna” or district court. Those persons appointed to the office of representative had an appellate jurisdiction at a district level on cases that seen by first instance courts. These include cases of family matters, succession and delict. Here among the disputant party the one who did not satisfied by the decision given by the first instance court can appeal to the district court³.

At the third level there is “Shaleqa court” or provincial court (governors). Here the governor usually appointed a number of judges to assist him in the adjudication of cases, from whose decisions petitions were made to him. This feature may lead one to conclude that the governor and the judges under him constitute two ticks of courts. But

actually it was one court with a sort in built internal review system. Appeal from the district court went to judges of the provincial court⁴.

The provincial court, as the highest regional court included the judges who were appointed by the governor and whose decisions were reviewed by him. The governor's courts had jurisdiction on any matter except homicides, mutilation and arson. In such cases, the governor's court made only a preliminary investigation the disposition of which went to national courts that is the court of the chief justice and finally to the emperor's court⁵.

The fourth one is the court of the Afe-Negus which is called appellate court of the chief justice. In the earliest period the chief justice had no judges to assist him. But, later on being appreciative of the heavy responsibility that was shouldered by the chief justice, and also being aware of the injustice to which the people would be subjected to as a result of delays of cases and arbitrariness emperor Menelik II decided in favor of appointing twelve senior judges to assist him. They sat in six divisions and shared the jurisdiction that was previously the exclusive competence of the chief justice. Still even though some of the power of the chief justice was thus shared by the senior judges, some powers of higher importance remained nevertheless under his sole competence. He had the power to coordinate the function of the six divisions and to issue summonses⁶. The other power of the chief justice was to interpret the law. In the difference arose in the interpretation and application of the law, one could appeal to him. Another matter that was within the exclusive jurisdiction of the chief

justice was issuing an injunction for any complaint lodged against judges of lower courts⁷.

The chief justice and the six divisions had clerks attached to each of them. The principal function of these clerks was to write the judgments and rulings and the issuance of injunctions, warrants and other forms of service⁸.

There fore, in generally speaking the court of the chief justice was the supreme judicial body for all civil and criminal matters. Hence, all judgments and sentences other than death sentences passed by the chief justice and senior judges were executable. However, in some exceptional situations, decisions of the chief justice were appeal able to the crown court⁹.

The sixth one which is found at the top in the hierarchy of courts was the Zufan chilot or crown court. Where a person who had lost his case in the court of the chief justice wished to take his case to the crown court, he was entitled to do so. Thus, any person who unsuccessfully appealed to the Supreme Court in both civil and criminal cases used to petition the improper. If the petition was granted in the exercise of his discretion, the improper reviewed the decision of the Supreme Court in the crown court. This review could result in affirmation, reversal or any other manner of disposition¹⁰.

Death sentences were executed only after the assessors and scholars of the Fetha Negest gave their opinions and when finally the emperor pronounced his judgment in the crown court¹¹.

The Structure and power of Regular Courts in Ethiopia from 1936 - 1941

There is no as such significant change during this period of time. By the time, Ethiopia was under the occupation of Italy. The Italian colonial power attempted to create its own court structure in Ethiopia during this occupation period¹².

Concerning civil matters, the customary law and religions laws were to remain in force and to be applied by the lower level native civil courts. Criminal courts were however manned by Italians, a measure that accelerated the replacement of the higher structure of the old judicial system. But what done was only an attempt and it did not continue after 1941¹³.

1.3. *The Structure and power of Regular Courts in Ethiopia From 1941 – 1974*

This was a period immediately after the liberation from Italian Occupation that many changes were introduced in the structure of the courts that later served as levers for meaningful innovation to be made. The competing interest of creating an independent judiciary on one hand and establishing centralized administration on the other were compromised in the following ways¹⁴.

One the merging of the executive and judicial functions in the person of governors and centralizing the appointment of judges.

Two detaching the two national courts, that is the high court and the supreme court, from provincial influence.

It was this compromise solution that had to total transformation of the Ethiopian judicial system. According to the treaty concluded between Ethiopia and Britain in January 1942, a new court system was established by the Administration of justice proclamation No. 2 of 1942. The proclamation provided for an integrated hierarchy of courts, the initial jurisdiction of which was to be determined principally by the crime in criminal cases¹⁵.

When we see decree No. 1 of the 1942 it provided under Article 78, 82 and 83 that the governors general and governors of all levels shall be the presidents of the courts established in the town in which they reside. The Senior judge of each court was designated as the vice president. This practice was discontinued up on the promulgation of proclamation No. 323/1973 that providing for the independence of courts from the administration¹⁶.

The following courts were established by the administration of justice. Proclamation No. 2 of 1942 as amended by the proclamation No. 90/1947 and No. 102/1948.

A. *The Local Judges (Atbia Danga)*

At the bottom of the structure of the courts. One found local judges set up by proclamation No. 907/1947. Local judges were not government employees, but they were authorized by the proclamation to handle cases of small claims. This judges quite often held office because of their hereditary title of grant land holder or representative (bale gult or melkegna). In rare cases, however, they were chosen from among the land owners of the locality by the governor of the district. Two assessors sat

with the local judge where he could not affect a compromise in criminal case. In civil cases, local judges had original jurisdiction over disputes involving twenty five birr or less and in criminal cases. In civil cases, offences punishable with fine not exceeding twenty five birr. They were required to settle cases by compromise. Appeals from their decisions went to the sub – district courts. The local judges court was by implication abolished by the civil procedure code of 1965¹⁷.

B. The Miketil Woreda Court (Sub – District Court)

These courts were established in each sub – district by proclamation No. 102 of 1948. Sub – district courts consisted of one judge sitting for both criminal and civil and appellate cases. Like district courts, the jurisdiction of sub – district courts was determined by a warrant. They were given jurisdiction over civil matters whose value did not exceed hundred birr and criminal cases punishable by the time not exceeding fifty birr. This court was abolished in 1961 by order of the emperor¹⁸.

C. The Wereda Court (District Court)

These courts were established in each district by proclamation No. 2/1942. The district court consisted of one judge sitting for criminal, civil and appellate cases. District courts were given jurisdiction to hear civil cases, the subject matter of which did not exceed five hundred birr and to impose punishment not exceeding hundred birr in criminal cases and to hear appeals from the decisions of sub-district courts¹⁹. Later, its jurisdiction was increased and they exercised initial jurisdiction over civil cases involving an immovable where the amount in controversy did not exceed 1,000 birr. When a civil case did not involve an immovable, the upper limit

of jurisdiction of district courts was five hundred birr. They also tried a number of crimes specifically delegated to it. Actions declared criminal by legislation other than the penal code were tried in district courts if the penalty did not exceed three years simple imprisonment. The district courts considered of one judge for all cases²⁰.

D. The Provincial Court (Awraja Courts)

These Courts were established by proclamation No. 2/1942 in each province. These courts consisted of three judges when sitting both in its appellate role and as a court of original jurisdiction. Decisions were made by unanimity or by a majority.

The jurisdiction given to the Governorate - General court by proclamation No. 102/1948, as stated above, was originally the jurisdiction of the provisional courts their original jurisdiction was given to the Governorate-General court; the provincial courts jurisdiction was not determined by law. Starting from 1948 to the time of the promulgation of criminal and civil procedure codes, provincial courts had competence in civil cases the amount of which did not exceeding 2,000 birr, and criminal matters to impose imprisonment not exceeding one year and a five not exceeding one thousands (1,000) birr. Later, provincial Courts exercised original jurisdiction in all civil cases where immovable were involved and the amount in controversy was between 1,000 and 10,000 birr. Where the claim did not involve an immovable, the provincial courts initial jurisdiction comprised claims of amounts between 500 and 5,000 birr. They also had jurisdiction over all claims that could not be expressed in money (for example, divorce cases can be mentioned) ²¹. The initial criminal

jurisdiction of provincial courts was generally of a less serious nature than those cases tried initially in the high court. Actions declared criminally by legislation other than the penal code were tried in the provincial court if the penalty did not exceed five years imprisonment. Provincial courts heard all appeals from civil and criminal cases brought from district courts²².

E. Governorate – General Court (Teklay Gizat)

This court was established by proclamation No. 102/1948 which constituted such number of judges as was determined by the emperor from time to time.

The Governorate – General court was deemed to be duly constituted to hear any matter with in its jurisdiction when three judges were present. Decisions of the majority were to prevail in case of absence of unanimity. The jurisdiction of the Governor – General court originally constituted of the following²³.

- In criminal cases, it could impose the following penalties
 - i) Imprisonment not exceeding five years
 - ii) Five not exceeding 2,000 Maria Theresia thalers
 - iii) Corporal Punishment not exceeding 25 lashes
 - iv) The combination of any of these punishment
- In civil matters, its jurisdiction was limited to cases the subject matter of which did not exceed 2,000 Maria Theresia thalers
- If had also jurisdiction over appeals made from decisions of the provincial court.

The Governorate – General courts were by implication abolished by the criminal procedure code of 1961.²⁴

F. The High Court

This court considered of the president and such number of judges as was determined by the emperor from time to time. When it comprised three judges, it was deemed to be fully constituted for hearing any matter presented before. It was the opinion of the majority that prevailed at the time there exist difference among those three judges. It had the notation – wide jurisdiction and its principal sat was Addis Ababa but had circuit branches in many of the provincial capitals. As its principal sat, there exist criminal, commercial and maritime divisions.²⁵

The main factors to decide the original jurisdiction of the High Court in civil cases was the value and nature of the case raised. Thus the Original jurisdiction was varying depending on when the claim involved movable and immovable property. Accordingly, during its first establishment the jurisdiction of High Court was limited to civil cases the subject matter of which more than two thousand (2,000) Maria Theresia Thalers. Through time this amount was increased, and when the case involved immovable property, the High Court had primary jurisdiction in all claims when the amount in controversy more than 10,000 birr. Otherwise, if the claim did not involve immovable property, the court had Original jurisdiction if the amount in controversy more than 5,000 birr.²⁶

More over, the High Court had exclusive jurisdiction over certain types of claims of national or commercial importance regardless of the amount in controversy. The original criminal jurisdiction included crimes

of serious nature, but beyond that there was little generic similarity among them activities that more made crimes by any law other than the penal code were initially tried in the High Court, if the penalty exceeded five years of imprisonment. In addition, all appeals from the Governorate – General Court sitting as a Court of original jurisdiction heard by the High Court concerning the issue of criminal cases. All civil appeals brought from the Governorate – General Court also heard by the High Court.²⁷

G. The Supreme Imperial Court

This Court originally consisted of the president, called the chief justice and two High Court judges who had to be assigned by the president of the High Court for each case. Later, however vice-chief justices were appointed to preside over the divisions of this court. The court sat in divisions having three judges. Decisions were given by unanimity or by majority decisions. Any case carrying the death penalty was not to be executed before securing the approval of the emperor. In civil case the supreme Imperial court did not exercise any original jurisdiction. In criminal matters, it had original jurisdiction only in cases involving ministers charged with offences committed in connection with their official function. Appeal cases also heard by the supreme imperial court, from all civil claims initiated in the High Court. In other case, when the High court in the exercise of its appellate jurisdiction over the provincial courts, varied the judgment given by the provincial court. The supreme Imperial court also heard appeals on criminal cases from the decisions of the High Court in the first instance.²⁸

H. The Crown Court (Zufan Chilot)

The 1955 revised constitution come up with the power that the supreme judicial authority was given to the supreme Imperial court while the crown court exercise the power to operate at the pinnacle of the regular court structure. The emperor exercised this authority even at the existence of the 1955 revised constitution with out having any legal ground except conventions and residual power. The emperor reviewed cases in the crown court wherever he was petitioned to do the same. ²⁹

The Ethiopian Court Structure 1974-94

The Ethiopian political system and its administrative structure changed form solomonic dynast /hereditarily structure/ to Military /Derge/ during 1974. Some political say “Derge regime was unconstitutional government. Those doctrines emphasis proclamation 1/1974 has a status of constitution rather than the 1987 constitution³⁰. because:-

1. It governs for a long time the system rather than the Real constitution
 2. It abolishes the previous constitution and their Emperor. Saying the country is with out constitution is not saying the country with out governmental organ. Just as, the administrative structure change there is court arrangement in the system. Accordingly there were two structure courts during Derg regime³¹.
1. The proclamation No. 1/1974 elongated up to 1987. During this year there is Woreda, Awraja & high court in every province administrative structure. The one supreme court in the center.

2. From 1987 – 1991 is the life expectancy of Derg constitution. In this life expectancy there is one Supreme Court and the high Aweraja courts in each administrative Region and autonomous region.

During this time even if, judicial independence was promulgated on constitution “work year” of the judiciary is equal to work year of National Shango³².

The Ethiopian Court Structure of 1994 today

The Ethiopian court structure becomes modernized following the change of contribution. The current contribution make clear establishment of courts to the ancient constitution. As made of the government is Federalism, and one of the features of Federalism is organizing the Federal and its Constituent, the arrangement of court is followed this way. The 1995 FDRE constitution establishment two layer of court structure and at each layer there is three level³³. Such levels of courts are:-

1. Instance court ___high court---supreme courts of Federal structure
2. Woreda court ___Zonal court ---Supreme Court at state structure.

Such court structure is promulgated on the constitution automatically and there is establishment did not proclaimed automatically. That means the constitution say, “may with $\frac{2}{3}$ of vote HPR established the 1st instance courts & high court in nation wides or only in country side, up to this establishment, concurrent power of court established through delegation³⁴.

The FDRE constitution recognized the exclusive power of the constituent except for some power which is exercised by concurrent. Like concurrent power of taxation. For the case of judiciary there is conflict of

structural procedure during the current years. The judicial jurisdiction of the Federal and the constituent was promulgated by relevant legislative of each government³⁵.

In other way, there is elongation of power of Federal court and concurrent power. For example, though the state Supreme Court is the supreme power of judiciary in the region and has the causation power for the error of laws. The Federal supreme court have judicial jurisdiction of cassation over any final decision of the court³⁶.

The next conflict is clashing parallel jurisdiction of the courts. That is the power of Zonal court is not equally or parallel to the Federal high court rather than 1st instance court. The state Supreme Court jurisdiction is not equally to Federal supreme court rather than parallel to Federal high courts³⁷.

Chapter One

End Notes

1. Abera Jembere, An introduction to the Legal History of Ethiopia, (Africa studies center, Lei den, Netherlands), 1999, P-30
2. Ibid
3. Supra Note 1, P-31
4. Ibid
5. Ibid
6. Cited above at note 1, P-33
7. Ibid
8. Heinrich Sholler, Ethiopian Constitutional and Legal Development (Rudiger koppe verla Koln, Germany) (2004) Vol. P-46
9. Id. P-47
10. Ibid
11. Cited above at note 1, P-35
12. Id P-36
13. Ibid
14. Ibid
15. Cited above at note 8 P-49
16. Id P- 47
17. Cited above at note 1, P-37
18. Id P-38
19. Ibid
20. Ibid
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22. Ibid
23. Supra note 8, P-48
24. Ibid
25. Ibid
26. Ibid
27. Supra note 1 P-40
28. Ibid
29. National /Regional self - Government Establishment Proclamation (1987), Art. 100(1), Proclamation No. 1 Neg. Gaz. 4th year No. 1
30. Supra note 8, P-59
31. Ibid
32. Ibid
33. Fasil Nahum, Constitution for a nation of Nations. The Ethiopian prospect. (Red sea press, Insc, Asmara, Eritrea)(1987) P-99
34. Ibid
35. Supra note 33 P-100
36. Id, P-102
37. Id, P-103

Chapter Two

Structure of courts in various forms of Government

Historically the country in the world pass through different politically unity on their life. This change of politically unity transition from one political system to another has its own constituent and competence. Of this constituent the historical back ground of the country the geographically, the economic situation the political view are the point what we are observed¹. From different political /governmental/ system the unitary government, the Federal government and the confederation are the list of the many². In those list, even if the legal aspect rule of law of governmental structure is what ever strong it or democratic or undemocratic each system has governmental structure³. Of each system governmental structure the court is one of them. Now when we try to observe the organization of courts in each political system; How Woreda court practice in the numerate governmental structure of those political units practiced.

2.1. Unitary governmental System

As its name indicates the unitary governmental power is monopolized by union one⁴. That is the central government on which the power concentrates. As the court is one of the three governmental machinery, structural arrangement of the court is most likely seems governmental politically administrative structure of the country. Even if some features of unitary government (monopolizing power, nominal existence of sub- territory) is common for those country which follow the unitary government such sub division is not the reality power

decentralization of the system rather than the subordinate of the centre⁵. Even if the judiciary is the organ which is free from political structure their structural arrangement is formed accordingly to administrative arrangement of the system⁶.

For example if we see the ancient Ethiopia the far near governmental political structure of Haile Sillase and Derge regime both of them followed the unitary government political system⁷:-

1. The 1923 constitution Art. 42 promulgated administrative structure in to 14 provinces and each province sub dividend on to Aweraja, woreda and mikitul woreda⁸. Just as we say judiciary structural arrangement follow the administrative structural of the system in Derg regim there is the Supreme Court and other inferior court structure⁹. Except the Supreme Court is the only court which the constitution call it by name for the others the constitution say the "Others" court their arrangement seems¹⁰.

At the same manner, when we see the Derge regime as the power of administrative monopolized at the centre the subordinate portion of the country perform on the behalf of the central; Governmental organ (Legislative, Executive & Judiciary). Such organ perform their duty on the seem of unity. Especially in Derge unitary the power is decentralized but the subordinate Administrative exercise this power as an agent. Such non decentralization of power is also sharing in Judiciary b/c in two government's only one Supreme Court.

Then unitary government structure arrangement has different features for ex. we take our country Ethiopia, for a long period it governed by the unitary government i.e. if we take the latest situation of Haile

Sillasse & Derg Regime, The court structure is differ. For example the Proclamation No. of 1942 amended by Pro. No. 1947 & N. 102 of 1948 the court structures were proclaimed as the following hierarchy of courts Atbia Dagna___ Mikitil Wereda__Wereda__Awraja____Teklay Gezat____High court Supreme ____Imperial court.

N.B. If petsion is submitted to crown, any decision is revised by Zufan chilot with out constitutional legal ground.

2. During the Derg regime after the constitution of 1980 the hierarchy of court structure is

Awraja__Zonal court__High court__Suprem court.

During this each state, the judicial jurisdiction of each level court is promulgation by the proclamation Pro. No. 1942 as amended by proclamation No. 1/1956. (Criminal procedure code schedule and legal notice No. 17/68 etc.)

N.B In two political regimes the court structure and the court judicial jurisdiction is not promulgated in the constitution of the time¹¹.

2.2. Federalism, Governmental structure

Just as any governmental political system the Federal political arrangement was its own feature, that is Structural arrangement advantages and disadvantage. Some Scholars identify and give a meaning for Federation & Federalism¹². When they explain the Federation, It is a Political Institution¹³. The others give different explanation for “Federalism”¹⁴. From this Explanation, It is Ideology normative principles. It is guarantee autonomy for both Federal & State government¹⁵. One aspect which makes familiar all scholars was the features of Federalism.

Even if different Federal countries have its own features because of each country established Federalism through their own complexity there is some common features of Federalism¹⁶. Such common features are the Federal country have written constitution, they follow the democratic system, there is at least two government the state is the constituent of the government the state is, they follow rule of the law¹⁷. Our country Ethiopia which is the member of UN, those follow the Federal system, She is one of them. Even if she reached the system through her own complexity the features of Federalism shay on her one of the features owns of the written constitution¹⁸. This is succeeded Federal system constitution clearly set down in both authority the three machinery of government (legislative, executive & judiciary) ¹⁹. The FDRE constitution Art. 50/2/ promulgated this principle at two authority of government b/c the country follow the Federalism system. The other features of Federalism are the doctrine of separation of power²⁰. The doctrine of separation of power has its own objective:-

1. To abolished the concentration of power in the hand of one governmental machinery.
2. To abolished the potential tyranny by checks and balance. The Federal system constitution enhances this doctrine by establishing boundary of each organ.

Of thus, governmental machinery at two authority of Federal system the court is one of them. As known the main objective of courts are disputes resolving organ²¹. In the country which follow the Federalism structure the courts is aspect detached from politics & become new trade organization²².

Of country in Federalism structure may slightly differ from country to country which follow the same structure. i.e. Federalism that is in some Federal countries the judiciary is unified. I.e. in such country whether the law is enacted by Federal or state legislative it is exercised by single court according to their judicial jurisdiction. But there is one Supreme Court for both Federal & State government²³.

In other Federal Structure the two governments (Federal & State) organized their own structural organization of court by having some slightly common judicial jurisdiction when we observe the FDRE constitution Art. 78/2, 3/ promulgated that both states have three level courts (supreme high & 1st instance courts.) If we say Federal government in an Ethiopia contextual they have 9 member states according to FDRE constitution Art. 47 of this Federal members state the Oromia National State is one of them. In the Oromia national state constitution Art. 46/94 of the region the court is structured as Supreme Court, Zonal court & Wereda court. Their criminal & civil matter judicial jurisdiction is according to heretical of court case and other Federal proclamation like criminal procedure, civil procedure, the legal notice of 17/76 and other materials.

Then three level court structure of the state and Federal which organized by each government constitution main function is to set out dispute of the citizens such resolving disputes is decentralized to the extent of residual of the nation and Nationality of the country²⁴. This approach is shying in the constitution by establishment of dual government²⁵. That is the Federal and the constituent. Each member of Federation has its own written constitution in their constitution organized²⁶.

In federalism system the country which achieved the Federal goal have their own complexity²⁷. For the reason of their pass way. Just like they have common features there is slightly difference. Such differentiate features

1. In some country constitutional interpretation invested on the Supreme Court just like U.S.A. and constitution interpretation is vested on the hand of house of Federation like Ethiopia.
2. There is one Supreme Court which hears the law enacted by federal & State legislation like “Canada” and other type of court structure.

Except some slightly difference, Federalism is the best way to achieve the goal development

2.3. Confederation Governmental

The confederal system is the political arrangement government that gives the meaning of alternative²⁸. Such type of political arrangement is lay between unitary and Federal Political arrangement, that which is not the perfect system²⁹. The USA during the colonial Independence of England established the confederal congress but sub confederal is not existed more than 7 years. Due to this and other such political system is far from political knowledge. In this governmental structure it is national official where in one way or another forced to refer decision on some national questions to state government³⁰. Confederation governmental structure has its own features. From its features the local government was subordinate to the central governments. Even if there is nominal decentralization, it wiped one up of a day. In this political system the governmental organ are shaped accordingly³¹.

Chapter Two

End Notes

1. Constitution for a nation to a nation the Ethiopian prospect (by Fasil Nahom) page. St. Mary University Collage.
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3. Ibid
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Chapter Three

Judicial Jurisdiction of State Woreda Courts In Ethiopia

The State is one of the bodies of Federal Government¹. Such part of Federal Government i.e. the state is established by the Federal constitution.² after establishment, the state government constituted its constitution. Such state constitution comprised the Legislative, Executive and the Judiciary organ just like the Federal Constitution. In my focus area that is in Oromia National State constitution No. 46/1994 Art. 46 Promulgated the three machinery Organ of Regional government. Administrative Structure of the Oromia Regional State Government also emphasized on State constitution.³ The Regional state Administrative structure are Regional Government, Zonal, District /Woreda/ & Kebele Structure. Such administrative structure has judicial jurisdiction on its level except the kebele structure which composed social courts instead of ordinary courts.⁴ Such Judicial Jurisdiction was recognized by the substantive law⁵, criminal law procedure the civil law procedure schedule and other relevant legal material like proclamation No. 84/1976, legal Notice No. 17/1967 proclamation No. 40/85 & 74/86 proclamation of social court. Even if such legal material Judicial is not up dated.

3.1. What is Jurisdiction?

“Judicial jurisdiction is the power of the courts of a particular or nation or state to render judgment binding an individual or his property”, As the above definition express Judicial jurisdiction is the power of court to

litigate the party for the delivered case or executing the case which the final decision rendered on it.⁸

Even though, discussion of jurisdiction is the purpose of this paper, seeing the high light of element of jurisdiction is help to understand the reader. Jurisdiction has basically three components ⁹. Those components are judicial local & material jurisdiction. Such all element of jurisdiction must cumulatively¹⁰ exist in order for court to have jurisdiction. That means its one of the element of jurisdiction miss in the some court which pending a case, there is no binding judgment.¹¹ Accordingly, when we focus the heart of this paper jurisdiction of criminal law, such element exist.

3.1.1. Element of Jurisdiction of courts in criminal case

In criminal case, the element of jurisdiction must exist cumulative to make that court force full. Such elements are judicial, over offence & local jurisdiction ¹². Judicial jurisdiction is sub divided on to two principal & subsidiary jurisdictions ¹³. Such two branches of judicial jurisdiction, that is the principal jurisdiction and subsidiary jurisdictions have their focal area. Accordingly 1. The principal jurisdiction is applicable for the crime ¹⁴.

- A. For the crime accused in Ethiopia
- B. The crime of certain offence against Ethiopia in foreign country.
- C. The crime for who have immunity
- D. The crime of commission of an offence in a foreign country for those members of Ethiopian Defenses. ¹⁵

As the some way the 2nd party of criminal jurisdiction that is subsidiary jurisdiction is according to Art. 17&18 of criminal courts. Such offence are the offence like International law, or universal order are offence

of genocide, war crimes & crime against public health or moral and the like ¹⁶. The other crime which was committed a board against Ethiopia of by Ethiopian nation was consider as subsidiary jurisdiction of Ethiopian courts when the offence was punishable under the Ethiopian law with death or rigorous imprisonment of not less than ten years ¹⁷. Accordingly, the crime jurisdiction according to the Ethiopian criminal code jurisdiction lies on aggressive penalty, as we see above. The subdivision of criminal jurisdiction that is principal & subsidiary has the difference. Just as we say above their difference is lie on the restriction of the law. The law's restriction is.

When a person is subjected to Ethiopia's Principal jurisdiction, Ethiopia is the country most affected by the alleged commission of the offence for principal jurisdiction ¹⁸ while when we see the subsidiary jurisdiction where the Ethiopia is not the country affected by the commission of the offence ¹⁹. In generally, a person was subjected to Ethiopia's principal jurisdiction it found in Ethiopia or extradited here, may be tried for the offence here whether or no he was tried in a foreign country for the same offence and if he was tried whether or not he was discharged or acquitted ²⁰.

In connection to this principal jurisdiction is that where the offender has been convicted of the offence in a foreign country, any part of the punishment already served shall be deducted from the new sentence ²¹.

In other hand, subsidiary jurisdiction according to the EFDR criminal code the more favorable punishment shall be imposed on the accused if there is disparity b/n the punishment imposed by the law of the

country of commission & the Ethiopian criminal code according to the same code Art. 19(3)

3.1.2. Local Jurisdiction

We have discussed the judicial jurisdiction which is based on the identity of person or commission which is happened, in the case of local the offence is tried where it is committed (15/39) This part of provision was cited by criminal procedure code Art 100 and the following. The judicial jurisdiction of the court of criminal law is cited by criminal by criminal procedural schedule 1st. When the country follow the unitary structure ²². Now a day Ethiopia follows Federal system of government ²³. In its nature the judicial jurisdiction which was listed on criminal procedure code based on the aggravated kind of offence the competence of the court was divided b/n two government. In order to make familiarly the Federalism the Federalism structure of the country with jurisdiction, the FDRE & Regional constitution and other enacted law try to answer. After I said this in Federal system. It is already known there is two governments. But the management of the law especially the criminal law is not handled smoothly. Here in after we see its details.

As we say the two governments has its hierarchy's structure of courts. Each layer of courts are announced by the FDRE constitution in details also in state constitution.

Therefore, the state Woreda court is one of the administrative structure of the regional Government court layer and such legally was recognized by the regional government constitution ²⁴ and the scope of power was demonstrated by others legal materials such as subsistence law,

civil procedural law and other legal material of has judicial jurisdiction. The points which arise here for our concern is about the criminal law. As, our country now the Federal country, which composed Federal government and State, "Sharing power" between them is the feature of Federalism. This means, Federal laws interpreted by Federal courts, the state law interpreted by the state court. Due to this criminal law is the law which is enacted by Federal government therefore it consider as Federal law. This order was written on the FDRE Constitution Art 55/5/. B/c of this, criminal law is the law which is interpreted only by Federal court as a principle. But the FDRE constitution, authorized by mechanism of the power of judicial jurisdiction of Federal government delegated for state court²⁷. Delegation is not given with out a problem. That a problem is may a competence or other thing ²⁸. For our agenda before 14 years back, when our constitution promulgated the constitution my think the state lacked the skilled man power or competent power Due to this the constitution delegated state court on Federal law. Unfortunately, now a day the constitution did not analyzing give consideration to the capacity of state for the past 14 years ago. Such delegation wasn't elongated to state woreda courts. In contrary, the Federal Supreme court which have the final power of cassation over any court decision of the country according FDRE constitution Art. 80(3)(a) accepted and ratified the decision of criminal matter which was decided by the all state of Woreda courts, instead of canceling with the errors of law.

In other way, even if Auditing mechanism of court is not much enough strong, the state government final decision was adjudicated by Federal Supreme court cassation beneath.

This show, the constitution ignored the parallelism of court.

A. As we say in chapter two of this paper there the charter of the Transitional government allowed the parallelity of the court in Federal & state ²⁹.

B. That Parallelity of court of Transitional period was

A. The Federal Supreme Court ___ High court ___ 1st Instance Court ³⁰

B. The State Supreme Court ___ Zonal Court ___ Woreda Court ³¹

The FDRE constitution established the two governmental structures of court, but the FDRE constitution was not recognized the transitional period parallelity of court ³². The State court, except the power of Federal Jurisdiction (the state Supreme & Zonal) has the concurrent power of Federal Matter; the state woreda court jurisdiction is limited to only state matter of woreda jurisdiction³³. According to the FDRE Constitution principal idea the jurisdiction of Federal matter is based on national wide strong thing ³⁴. The FDRE constitution Art. 78/2/ state out "The house of people's Representatives may, by $\frac{2}{3}$ majority vote established nation wide or in some part of the country only the Federal high court & 1st instance courts it deems necessary. Unless decided in this manner the jurisdictions of the Federal Court and of the 1st instance courts are here by delegated to the state courts". This constitution order was want to shape the national wide matter of jurisdiction to Federal court or the court which delegated on the behalf of Federal matter. There is one question which arise on mind

why the constitution went to established the Federal high and 1st instance court or give the power of delegation to state supreme & high courts. Even though, the FDRE constitution choose silent to differentiate clearly the Federal matter jurisdiction and state matter jurisdiction rather than establishing the two governments court structure. i.e. Federal & State³⁵.

Thus, choice of constitution that is silence to lack identifying the Federal matter and the state matter were resulting in the constitution on procedural. One of the best examples for this is practicing the criminal law of state court especially with out any hint of jurisdiction state worded courts.

In other way, establishing of two parallel court of constitution was become theoretically³⁶. The constitution say in one hand in Federalism concept establishment two state courts but the establishment was not on full scale implementation of court³⁷. There is full scale implementation of court on one hand and there is practical Federal Court in other. This constitutional arrangement must be form stand of the two.

Many different countries which follow the Federalism doctrine arrange their court system in different ways. Some Federal Country like the USA.³⁹ followed the system of unified court structure, the other country follow the mechanism of dual structure. Such two system of court structure is follow its own arrangement.⁴⁰

For example

In the way of unified system the three level courts arrangement have the Jurisdiction over the law of made by the two Federalism

governments according to the judicial jurisdiction of the delivered matters. In this system the state government is with the absent of state supreme courts.

In other Federal Court Structure country there is Separate & Parallel court structure in the Federal and State government.⁴¹

If we take our country Federal structure. Especially state worded a court jurisdiction arrangement it makes to arise the question, how the constitutional principle was become practiced.

3.2 The way of Delegation Power of courts of Federal Political system

One of the common features of Federalism is sharing power b/n central government and the state⁴². Decentralization of the power has its own advantage. That is to serve the people at the nearest with out up and down and high expensive, sharing of power b/n center and region also make exclusive area of power for both government and it's their sovereignty feature⁴³. No subordination to each other except to respect the exclusive power of each which is given by the constitution. As the system is Federalism, most sharing the authority's power principle in all the governmental machinery in both Federal & State government. But sometimes by the case of different aspects the power of the one government exercised by the others. During this it doesn't mean on government take the power of another, rather than the later government was the agent of the Former /principally/ government. Accordingly, there is the activity which the FDRE constitution announced the delegation power of the Federal government to the

state. For example collecting of tax or others. During the presence of delegation that means ⁴⁴, if one perform the activities of governance as agent the expensive of that activities are covered by the principal government ⁴⁵. This is constitutional principles, at the same way when we back to our Agenda; the FDRE constitution established the two co-existed court structure in the country. The constitution gives one assignment for parliament and organized the mechanism until the assignment of parliament accomplished. "Thus FDRE constitution message concerning the judicial jurisdiction was judiciary authority of Supreme Federal is vested in the Federal Supreme Court. The Federal high court and 1st instance court, however, established nation wide or parts of the country only may by 2/3 of parliament, unless this decided this power was delegated for the state Supreme & high court⁴⁶. The message of the constitution was though our constitution not clearly identifies the Federal matter & State matter Federal Judicial Jurisdiction was vested. On the hand of Federal Court unless it delegate and the state judicial courts is vested to on the hand of state courts⁴⁷. The FDRE constitution also established the machinery organ (Legislative, Executive & Judiciary) on both Federal & State Government⁴⁸. One of the powers of Federal government legislative was enacting of law, of thus which enacting by Federal Legislative was Penal Code⁴⁹. Therefore Penal code is law of Federal b/c it enacted by Federal Government. The writer discuss earlier the objective of courts is to settle dispute by interpret law. Interpretation of law by court becomes enforceable on the citizen when it performs according to the judicial jurisdiction. The

judicial jurisdiction courts emancipated from constitution, substance law, procedural law, and other legal material. Because of change is not stagnant if new law especially new offence was promulgated after the procedural law jurisdiction of the court decided by aggravated penalty of the new offence⁵⁰. The Federal parliament instead established the nation wide high & 1st Instance court through the low level of the country, Promulgated the new law in 1996. This proclamation was Pro. No. 25/1996. Pro. No. 25/1996 proclamation on the principle of Federal Court jurisdiction like “Case arising under the constitution, Federal law & International law”^{5.1} From this component when we see the “Federal law” it include the penal code, commercial code and others. But the proclamation enumerated criminal offence of Federal court under Articles 4 such criminal offence of Federal matter jurisdiction are 12 in number, ⁵². The FDRE Penal code compromised at least 735 articles with out including the petty offence. There fore, which courts have judicial power over the left offence?

The FDRE constitution art. 52/1/ say:- All power which is not expressly given for Federal Government alone or concurrently to the Federal Governmental and state are reserved to the state. But Penal Code is Federal law. Due to this it interpreted by Federal Courts. we can't say this power is reserved to state. The state Supreme court & high court adjudicated the whole area of penal law:- They,

1. May ignoring the proclamation No. 25/1996 and following the FDRE constitution Art. 78/2 principle of delegation adjuducted the criminal offence OR

2. May by taking the concurrent principle pro. No. 25/1996 rather area through principle of constitution adjudicated the crime law. But the Woreda court which is established by FDRE constitution & State constitution adjudicated the criminal offence with out empowering by those establishing legal material and with out the sense of delegation as seems the Zonal & Supreme Court. The other issue what the writer try to investigate concerning the adjudicating of criminal law by state woreda is that judgment want the merit competence, skill. The Reason why, such measurement required was, the consequence of the judgment taken away the Fundamental rights & Freedom at human being. Such Fundamental right which was adjudicated by the state woreda courts was incorporated by fundamental Right recognized in the world. Our FDRE constitution emphasized such concepts ⁵³. Knowing this, the Explanatory document of FDRE draft constitution say the state Woreda court adjudicated only the state matter ⁵⁴. Behind the FDRE constitution, the state woreda court adjudicated the criminal law; those offences which makes convicted until rigorous impressments of 20 years. This was performed with out the delegation of power & logical concepts of Federalism.

To analyzing this idea, the writer of this paper tries to investigate and interviewed some lawyers by the mechanism of:-

1. Through preparing the questionnaire
2. Interview

Accordingly I would have distributed around 100 questionnaire sheet. From this questionnaire sheet I collect 71 piece of sheet. The distributions of the participatory of the questionnaire are:-

<i>No.</i>		<i>Quantity</i>	<i>Level</i>	
			<i>High court</i>	<i>Woreda</i>
1.	Judge	20	8	12
2.	Public Prosecutors	36	6	30
3.	Advocators	15	6	9
	Total	<i>71</i>		

They finalized:

1. The state woreda court has no constitution legal ground to adjudicated criminal law but it practiced through the region. They raised the constitution the delegation of state supreme & High courts was the jurisdiction of Federal courts proclumated by pro. No. 25/1996 only or the other left law? Was their confusion area?
2. The other point what the writer partner's arised was through out their bench experience they did not see the strong litigation concerning the judicial jurisdiction of state woreda criminal power and there is no case which was cancelled from bench through their experience in the case of power from woreda court bench. Every body accepted as empowered except the constitution.

3.3. The consequence of Delegation B/n Federal & State courts

As the name it self indicate delegation means acting or performing some activities /exercise/ on the behalf of the other⁵⁵. In other way the participatory of the activities is you, the result of the activity is registered

by the name of your principal⁵⁶. In relating to our Agenda, Our country courts structure is followed the parallel & separate power in two governmental structure in one direction and the Federal government have the an idea of establishment of Federal court through low level & on the judiciary system of the state⁵⁷.

That means the Federal government judiciary seems to have the power over all the judiciary in the state. Such power is emancipated from the constitution that is:-

The FDRE constitution Art 80/3-A/ promulgated, the Federal Supreme Court have the power of cessation over final decisions state Supreme Court. The some constitution Art. 80/2/ say the state Supreme Court have the final & highest authority over the state matter.

At the same way the Federal government was structured by Federal & State government according to the same constitution Art. 50(1).

- The two governmental has the legislative, excusive & judiciary according to the same constitution Art. Sub Article (2). The member of Federation.
- State shall be delimited on the basis of the settlement patterns, language, identity & consent of the people concerned according to FDRE Constitution Art. 46/2/. Based on this FDRE constitution the Oromia Regional governmental state one of the member of FDRE Federation established /organized as the state government) according to the above FDRE constitution. So, as delimitation of state is based on pattern, identity & consent and the state is organized by governmental organ why delegation is necessary? B/c

of the main feature of Federalism is releasing of power with out monopolizing in the centre, wishing the “nation wide” establishment of high & 1st instance court or until such is succeed over run by delegation and also ignoring such delegation to elongated till woreda court special in criminal matter resulted;

1. Our country follow the doctrine of dual court structure, the above principle make such doctrine partial.
2. The other principle Federalism is no monopolizing of power at the center. The fact which is happened in the state was solved by the nearest concerned state organ. Saying it is Federal matter or state is not as such necessary. Doing make comprising the power at center.
3. The objective of law especially criminal law is to secure peace & security of environment.

Just as known the constitution is the general law, it empowered the legislative to enact the specific law. Accordingly the HOPR enacted proclamation No. 25/1996 to determine the jurisdiction of the Federal courts on the basis of the constitution⁵⁸. Accordingly this proclamation promulgated the Federal court jurisdiction on the basis of three main point⁵⁹. That is

1. The case arising under the constitution Federal law & International Treaties.
2. Parties specified in Federal Law.
3. Places specified in the constitution or in Federal law. This proclamation enumerated criminal jurisdiction & civil jurisdiction on the proclamation No. 25/1996 Art. 4&5. The procedures law Federal court followed is not

proclaimed in subsistence law as procedural law at once⁶⁰. There fore as the name law by it self indicate, not go to future other indicator material the country is followed Federal⁶¹. The Federal on other meaning the country which has two governmental structures. That is the Federal & State both government has the governmental machinery. Of the three governmental machinery the courts are the 3rd parts of government. The constitution empowered to have the three structures of courts of this state courts structure woreda court is the law level court of state judicial.

The state woreda court have judicial jurisdiction of only state matter. Now a day the state woreda courts adjudicated the criminal laws which impose the gregarious penalty until 25 years impisement⁶³. of the many power of the Federal government legislative one is enacting the Federal law. According to EFDR constitution Art. 55/5/ criminal law is enacted by HOPR. That means the law enacted by Federal HOPR is considering as Federal law. Even if, it did not enumerated the type of Federal law one by one the proclamation No. 25/1996 by it self Federal court have jurisdiction over Federal law⁶⁴. The way of constitution is not successfully established the delegate court, the constitution by it self lacked the identification of Federal jurisdiction and state jurisdiction. The criminal law which was the Federal law adjudicated by state court with out the ground of law.

Therefore, the principal idea delegation court is not full scale implementation. The Federal court jurisdiction that is the pro. No. 25/1996 and the other amended two did not cover what the Federal court matter jurisdiction is. Now a day, the state Supreme and high court the agent of Federal court, in the sense of concurrent court structure interpret the

Federal court jurisdiction of criminal which was promulgated by proclamation No. 25/1996 Article 4. This may show the result of delegation to minimize the up and down of the justice founder.

The other left part of criminal law is exercised by state court jurisdiction just as inherent jurisdiction. B/c the FDRE constitution did not identify the Federal matter & state matter, when it thinks the principle of delegation as the same time the parliament when promulgated the Pro. No.25/1996, become silent for the left articles of criminal code which is the Federal law. This is the other confusion area.

The most emphasized problem area of court adjudication is the state woreda court criminal power. There is no, not accurate but the sense of inherent & delegated power over criminal.

The practice is state woreda court adjudicated almost over 60% of penal code offence; its judgment was appealed to until the Federal Supreme court cassation bench. B/c of this is the day today practice and now a day it is the universal truth for Ethiopia, there fore the writer of this paper reserved to attach such type of a case.

3.4. Constitutional, Sovereignty & Delegation of partial powers

Even elongation of path and the complexity of settlement of democracy are not precise, self government of nation is the interesting achievement of democracy⁶⁵. Such achievement was expressed by the sovereignty of power⁶⁶. In the country where the Federal Doctrine follower, Sovereignty of power is exercised by democratic country for the reason of the power of government is emancipated from people⁶⁷. People in the sense, the nation, nationality of the country⁶⁸. Sovereignty according

blacks law dictionary “the supreme, absolute & un controllable power by which any independent state is government supreme political authority the supreme will paramount central of the constitution & frame of government & its administration the self sufficient source of political power from which all political powers are derived the international independence of a state combined with right & power of regulating its internal affairs with out foreign diction also a political society or state which is sovereign & independent “⁶⁹.

According to dictionary meaning sovereign is the over all supreme of authority. To summarize the sovereignty it is the authority of the last. Accordingly there is three way of sovereignty there are legislative sovereignty, constitutional sovereignty & peoples sovereignty⁷⁰.

To my concern when I see constitutional sovereignty, this constitutional Sovereignty is establishment the remark of the democratic political system. In Federalism Political system there is separation of power. That power is organized by constitution. Constitution is spectrum of people therefore the highest authority is vested in the hand of people⁷². There fore, of the member of FDRE federation Oromia is one. Just like another similar member ship as state there is regional constitutional sovereignty⁷³. So the nearest governmental authority must have exclusive power to serve the people. Special the disputes settlement organ that is judiciary is the effective organ for people peace & Security. From of all law the criminal law is interring connected to day to day activities of people. Such current issue was activities by the organ which is organized according to paternity & identity of that people. The far organ is far. To

serve the people principal is better than agent And for the happens occurred in state solved by state organ & elongated the power to the last organ (woreda) and may make it capacitated if lack of insufficient rather than deprived constitutional sovereignty may lack confidential, for the power which can be exercised by state make it delegation rather than power for or principal for the sake of constitutional sovereignty. The practice is deprived the sovereignty by inherited criminal jurisdiction for state and deprived the right of citizen by adjudicated by the organ which lacked the constitution power.

3.5. The Principle of Decentralization

Decentralization as its name indicate dedicated or share political, Administrative or fiscal power of the central government powers to the last low level authority. This principle is used to serve or give the service for the people whom authorized this authority. This decentralization principles is show as one thing that is the law levelly organ of the government of the government are authorized by the center. If the low level are incapacity to the authorized power that decentralization powers was with draws or amended etc. There is different type of decentralization. Those are

- Decentralization
- Delegation
- Devolution of the three type of decentralization, the last one has the interrelated concept of Federalism. B/c it granted legal, financial, political authority over agreed areas of activities. In the country which follows the Federalism ideology in any governmental organ, the power

incorporated in the center was decentralized. This has advantage to serve the people in the nearest /closest/. The court jurisdiction is one of the governmental organs which must say this principle. Especially with the choice law like criminal law the area where day to day people activities inter connected.

3.6. Experience of other Federal Government judicial Jurisdiction

One thing which is true for ever one is nothing which is made through night and also except bless of God there is nothing whom think, create, produce etc. Just as copy of the other⁷⁴. Even if USA is the 1st country which embraces the Federal system in the world, the others create the Federal system according to their complex experience⁷⁵. But most of the countries which follow the Federalism system have the common feature by the symbol of Federalism like by the governmental machinery. Even if Structural arrangement of them differ from country to country. This different also emancipated from the geographical historically and other back ground of the country⁷⁶. When we will try to seen structural arrangement of judicial jurisdiction of Few Federal country like Germany, India, USA, Swiss and other of this when we see

1. U.S.A.

As already known the primary function of court is dispute settlement. Any conflict of state and state & Federal is vested in the hand of supreme courts⁷⁷. Supreme Court also has the power of revision of judiciary. In USA only one Supreme Court by other courts is established in the state⁷⁸.

In USA, Federal court interprets Federal law and state law state law⁷⁹ In the USA constitution established two types of Federal courts. That

is constitutional courts (Article III) & legislative court (Article I)⁸⁰. Their court structures are in Federal jurisdiction⁸¹.

- District ____ Circuit ____ Supreme Court

In state jurisdiction

Country courts ____ appellate courts⁸². The decision of state is sent to Supreme Court only when there is substantial Federal matter is present⁸³.

2. Germany

Germany is another European country which follows the democratic political structure. Even if, the Germany followed federalism their judicial structure is different from the structure of U.S.A⁸⁴. That is all judicial power not given for federal court is reserved to state⁸⁵.

3. Swiss

All most all the court structure and performance of jurisdiction of Swiss is similar to Germany⁸⁶

4. India

In India, one of Federal country in Far East Asia has only one Federal court. That is the Federal Supreme court⁸⁷. The other judicial jurisdiction was reserved for inferior courts. In India state adjudicated criminal law with out ground. This is a few Federal follower country experience highlighting. Through those Federal country even if there is no unique Federal System in the world. I didn't read the delegation court jurisdiction. When we back to our country Ethiopia courts structure.

From back unitary government structure arrangement is May different. We Ethiopia for a long period it governed by the unitary government i.e if

we take the latest situation of Haile Sillasse & Derg Regime, The court structure is differ. For ex by the proclamation No. of 1942 amended by Pro. No. got 1947 & N. 102 of 1948 the court structures were proclaimed as the following hierarchy of courts Atbia Dagna__Mikitil Wereda__Wereda__Awraja____Teklay Gezat____High court Supreme ____ Imperial court.

N.B. If petition is submitted to crown, any deceptions are revised by Zufan chilot with out constitutional legal ground.

During the Derg regime after the constitution of 1988 the hierarchy of court structure according to pro. No. 15/1980

Awraja__Zonal court__High court__Suprem court.

During this each state, the judicial jurisdiction of each level court is promulgation by the proclamation. Such as Pro. No. 1942 as amended proclamation No. 1/1956. (Criminal procedural code schedule) and legal Notice No. 17/68 etc.

N.B. In two political regimes the court structure and the court judicial jurisdiction is not promulgated in the constitution of the time details.

Just as already we observe the court structure of some Federal country there is clearly cut system on their constitution. The two government judicial jurisdiction adjudicated on the area of exclusive power. Our country FDRE constitution was constituted by the principle of Federalism. B/c of country follows the ideology of Federalism. Such FDRE constitution want to establish the concurrent court instate through delegation of state supreme & high court by leaving the state woreda court. Most of the time “delegation” is come when there is a problem. At

early time of FDRE constitution there is lack of capacity of trained man power. Now a day that problem is mostly solved. B/c the FDRE constitution age is almost 13 years old. Though this age, there is no a man demand of constitution and established in all state Federal 1st & high court or no clear delegation for state woreda court just as theoretically as supreme & high court.

The regional, especially the writer focal area Oromia state administrative structure judicial organ established by following the authority of the administrative. That means one Supreme Court in the Region, Zonal/high court in each Zonal administrative structure. That means there 17 Zonal structures in Oromia, so there are 17 zonal /high/ courts. There is also almost over 2000 woreda structure. Even if there are three state councils in the regional state i.e, coffee, Woreda council & kebele council.

Summary

The Governmental organ whether that organ was for Federal government or state government established by law, the frame work or the procedure which govern the power of scope of that organ must established in parallelism. Other wise altera various was happened. Especially around the concerning area of this papers writer's that is the judicial jurisdiction of state courts, it found more care. Because, such governmental organs deal with the fundamental right of human being. So, judicial jurisdiction was investigated by this concept.

Judicial jurisdiction was refers to the power of courts to particular state to render judgment of binding. Such judicial jurisdictions have its component. The component of the judicial jurisdiction is cumulative to make the court judgment force able.

The country, which follows the Federalism ideology, establishing two governments is its features. The two government exclusive area of power was indicated by constitution. The FDRE constitutions do its best though it lacked identifying Federal matters and state matters.

Because of the country follow one political ideology, performing on behalf of the other is the accustomed performance. But analyzing the way of delegation, empowering the low level organ instead delegation with its sovereignty power is what lacked in the constitution.

CHAPTER THREE

END NOTES

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3. Id Article 45 p-23
4. Id Article 64, 76, 90
5. Labor law Proclamation No. 377/94
6. Criminal law procedure Negarit Gazeta No. 1/19954 schedule 1st
7. Ibid
8. Ethiopian Civil Procedure by Robert Allenselder (Faculty of Law Haile Sillassie I University, Addis Ababa p-19 .
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25. Federalism and the accommodation of Diversity in Ethiopia by (Assefa Fisaha PhD Addis Ababa University Law Faculty page 104, 120
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27. Cited above note 1 Art. 78(2)
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Chapter Four

Legal Problem and over all practice of state woreda courts

In the previous chapter, I attempt to investigate the concept of judicial jurisdiction of the country which follows the Federalism Ideology including our country Ethiopia. One of the main Feature of Federalism is having the written constitution¹. B/c of our country Ethiopia have the written constitution, the writer's central idea is orbiting surrounding the constitution.

Now, with out go far from the FDRE constitution, to point out the legal problem and to seen what the practice of criminal law of state woreda courts. Before analyzing the current constitution, when I go back the predecessor, As we say, the ancient Ethiopia history constitution, that means, the constitution before the 1995 FDRE constitution follow the ideology of unitary governmental structure². of this constitution, i.e. the 1980 E.c Derg Constitution. The PDRE constitution with its nucleus WPE found it self to build socialism fundamental³. The constitution also explain the structure of the governmental was unitary state⁴. The PDRE governmental strengthen it is political institution that is unitary in the preamble of the constitution⁵. The government administrative structure was organized by the center administrative Region, and autonomous Region⁶.

The 3rd wing of the government that was the judiciary has the place in the FDRE constitution. This party of constitution is organized by one Supreme Court and another inferior court in each Administrative Region

and autonomous region of the country⁷. Each administrative & Autonomous region of the country sub divided its branch to Awraja and Zonal. Even if the Administrative and Autonomous region high test authority's power is National Shengo⁸. The judiciary power was vested to courts⁹. The PDRE constitution admits the adhoc courts¹⁰. B/c of the country followed the unitary form of government; there was one legislative that is the National Shengo which enacted law. That produced law is considered as the central government law. Just as discuss above the dispute resolution organ of the government judicial jurisdiction was organized according to administrative structure of the system. That was Awraja ___ High(Zonal) court and Supreme court just as mentioned above on the constitution there is only one Supreme court and inferior court in the administrative region.

This provision of constitution was promulgated by details law¹¹. What we have not forgotten was that the Derg Regim governor the country for along period that is from 1967-1980 E.C. with out the constitution. Duty this the proclamation 1/1974, even it wasn't count as constitution, the country govern by it¹². Even if it was not a constitution the proclamation did not forget the judicial organ. It announces the all courts in the country perform their ordinary activities¹³. When it say all courts the courts structure of the time, that was woreda courts___ Awraja courts ___ high courts ___ Supreme Court. B/c of there was no division of power b/n Federal and state the country follow unitary structure, the woreda judicial jurisdiction of criminal matter was promulgated by criminal procedure schedules & others relevant materials¹⁴. The woreda judicial jurisdiction of

criminal was offence which the penalty of impressments not exceeded over three years (3) with fine and not ¹⁵. This criminal procedure provision was amended by the legal notice No. 17/1975. This legal notice up grade the power of woreda courts to adjudicate the offence of which the penalty doesn't exceeded 5 years imprisonment with fine & with out¹⁶. Such up grading the power of woreda court still not stop. The proclamation 39/1976 also add the other power to the woreda courts¹⁷. To bear in the mind, In the Derg regime there was two court structures that are before constitution and after. After the 1987 constitution, the law level of court start from Aweraja courts. This court adjudicated the power of Woreda and Aweraja which was authorized by the above material.

Now, when we back to the current activities of woreda courts especially the state woreda, the country at the early embryo stage identify its political ideology that to follow the Federalism. In Federal Political system it was accustomed or obvious establishing two governments. That the Federalism allows for government that is closer to the people and greater local control over decision which impact on citizen's daily lives¹⁸. As the above explanation, "Woreda" structure (government) was the low level of governmental structure and the organ which is closer to people. To be closer have the advantages to serve the day to day live problem of that society. Court is the one such type of woreda structure. Automatically the FDRE government after it was become to the power, on its 1991 charter established the state government¹⁹. The transitional period courts structures are parallel²⁰. That is woreda, High and Supreme courts in the state and 1st Instance court ___ central high courts and central Supreme

courts²¹ in Federal. During this period the law of the country especially the criminal and another are those not enacted newly, but the inherent from the predecessor. Also the procedure but there is some arrangement with the proclamation No. 40/85 Article 6 and 74/86 Article 8. These proclamations try to omit the double Jeopardy by selecting some National wise offence, and authorized for concerning central court structure according to competence of courts²¹. These jurisdictions of central courts are listed out by schedules. The left of the offence were left to the state²². Their judicial jurisdiction was over going according to criminal procedure schedule and the legal notice No. 17/1975. But after the coming power of FDRE constitution of 1995, the parallelism of courts b/n two governments seems ignored²³. The constitution vested the cassation power to Federal Supreme Court final decision of the over country, this implies the collapse of parallelism of courts b/n Federal & state²⁴. The delegation power which was authorized by the constitution for state high & Supreme courts are not elongated until the law level state court structure in country the state woreda courts exercised the criminal law just as authorized by the constitution²⁵.

Another issue what, the writer of this paper went to addressed was the criminal procedural law, the legal notice No. 17/1975 authorized the low level courts to see & decided criminal offence according to their competence, the FDRE constitution give the power of enacting criminal law for Federal legislative²⁶. Because of this and the nomenclature of penal code it self, that is called the “FDRE penal law” indicate state courts are depraved the right of judgment on the criminal law totally except for the

delegation of state Supreme & high courts. This show the contrary idea of Federalism as we mentioned the country follows thus ideology.

Also, the idea what must be got intention in the Federalism follower country was become to closets to the people. Getting the service by the nearest organ and the organ which structured according to the paternity and identify of that people was the Features of Federalism. To adjudicate the right which depraved by another by the organ whom knows the paternity of that peoples was the achievement of that people from ideology. From this achievement to be judged the day to day criminal violence is one of it. For example

If we take the offence regarding illicit trafficking of dangerous drugs the offence which promulgated by FDRE penal code Article 525. Most of the time, such dangerous drugs was planted in the Oromia National region. East shoa Zone at Shashemene region. The affected people are the dewaller of this region. B/c they live near to occurrence. There fore, the best solution will be legitimacy by the nearest concerning organ. But the proclamation No. 25/1996 under Article 4/10/ classified as jurisdiction of Federal Courts. Article 12 of this proclamation this offence as Federal high court jurisdiction. The Federal high courts jurisdiction was adjudicated by state supreme courts by delegation according to FDRE constitution Article 78/2/. Accordingly there is only one supreme state in region which will become agent of Federal high courts.

In contrary the parts of the same penal code portion like Article 627 which its penalty was 15-25 years rigorous imprisonment was adjudicated by state woreda courts with out legal constitutional ground.

Such indication for a simple case of Trafficking narcotic drug offence taking the power upper at the region and practicing the aggravated offence at low level with out testing the competence of that organ & authorized by law is emancipated from deprived the right of jurisdiction by constitution.

The writer of this paper also likes to address the same problem area. That is the case relating to cheque. Now a day, the Ethiopian Economic Policy is Free Economic Policy.

There are many areas of Investment which was free for the citizen of this area Banking is one of them according to Investment proclamation No. 280/2000 Article 5/3 and Regulation No. 84/2003 schedule No. 2/1. Natural negotiable Instrument was the key transaction material in banking of this negotiable instrument cheque is one of them. There are so many private Banks through out the country in Ethiopia. For ex. Hibert Bank, Oromia Cooperation Bank etc. If offence against cheque was happened, that is the cheque which serve in private banking sector where it adjudicated? Proclamation No. 25/1996 Article 4/6/ offence regarding forgery of instruments of the Federal Government was judicial jurisdiction of 1st instance court of Federal Court according to article 12 of the same proclamation such offence according to FDRE penal code Article 693 penalty was simple imprisonment.

The question raised here was:-

1. The private bank cheque was consider as Federal government negotiation able Instrument?

2. Now a day the state woreda court adjudicated the aggravated offence of FDRE penal code. Why this simple case consider as Federal matters?

Federal Judicial jurisdiction was promulgated by proclamation No. 25/1988. Such proclamation in addition to amended proclamation No. 454/2005 and proclamation No. 321/2003 enumerate the Federal court Jurisdiction of the Federal court²⁷. The FDRE constitution Article 78/2 announce until the parliament with 2/3 vote established “nation wide” Federal courts the state high & supreme courts delegated over the power of Federal 1st & high courts jurisdiction. Also the FDRE constitution Article 80 promulgated the concurrent power of the courts. B/c of the constitution did not identify the Federal matter & the state judicial matter, the concurrent power or delegation power state high & supreme courts is over jurisdiction of offence which enumerated on pro. No.25/1988 only? Or over the penal laws as a whole? Or who have the power over the left of Articles of criminal law is the issue under questions.

What further the writer give attention is that the judicial jurisdiction of state woreda courts was bounded to only state matter. This, constitutional explanatory document principle is true by the principle of some Federalism follower country for example when we take the U.S.A. court structure the Federal court Interpret Federal law, the state courts interpreter the state law²⁹. One idea which made to strong the above idea was the Indian principle. That is no concurrent power with out no ground state court adjudicate criminal law³⁰. There fore, the woreda state court of our country have no constitutional ground to adjudicated criminal law, which is enacted by Federal legislative. But the practice is the vise versa.

4.1. The Scope of power of state Woreda courts

As already discussed the state woreda courts are one branch of court structure of Regional government. It is constitutional. The state woreda courts adjudicated the civil law and in some legal delegation it adjudicated the labor law. Such jurisdiction of courts are authorized by civil procedure by the proclamation 84/1976, by proclamation 377/1997 etc. The inherent penal law was adjudicated by woreda courts have judicial jurisdiction of criminal law according to the criminal procedure schedule 1st legal notice No. 17/1976 proclamation No. 84/85 and 74/86 Article 8 and the schedule which was attached to it by department of criminal matters.

Now a day by the two greater reasons the above matter was fess out. That reason was.

1. The nomenclature "Woreda" was not on its previous status. B/c of our country was following the Federal ideology. Establishing of dual government was the main features of Federalism³¹. So, the state government have woreda and the Federal government have 1st instance structure. Even if its nomenclature abit difference contextual power was the some./ Using the above indicator of jurisdiction was create the confusion.
2. The current penal code was not the inherent code. It is the newly enacted law by Federal government legislative.

It is nomenclature was also the FDRE penal law. However, the present criminal procedure & other procedural proclamation was not repealed expressly, it does not match with the current penal code.

Lacking current criminal procedure is the legal problem of the country the Supreme law of the penal law, except the provision of FDRE constitution Article 55/5/ that constitutional provision is “State, may, however, enact penal law on matters that are not specifically covered by Federal penal legislation”. This constitutional provision which authorized the state to enact the penal law is the offences which are not covered by the 1997 E.C. FDRE penal code. For example in the Oromia National region there is a proclamation No. 72/2003. Megelat Oromia Proclamation of forest of Oromia region Article 15. It is proclamation of Forest. This proclamation has the penalty measures for those violets the prohibition provision of the Megalet Oromia proclamation No. 72/2003. There fore the woreda state courts have judicial jurisdiction which granted by the constitution. B/c this penal measurement was state matter it interpreted by state courts.

There fore, state woreda courts adjudicated only the state matters ³². Another area, I will try to analysis is article 52/1/ of FDRE constitution. This Article expressly says, all power not given expressly to the Federal government or concurrently to the Federal & state are reserved to the state. According to this constitutional message the offence which enumerated in the FDRE Penal code what excluded in the proclamation No. 25/1996 are reserved for state and the state according to regional government constitution and court establishment proclamation deducted the judicial jurisdiction until the law level of courts. There fore, the state Woreda courts have constitutional ground to adjudicate the criminal law. But the questions was raised here, Articles 55/5/ of the FDRE constitutional. This

constituent explains about the power and function of Federal legislative that is enacting penal law. Duty this penal law is Federal law. There fore, the owner of this power is already known that is the Federal government. The practice what observed day to day is the state woreda courts adjudicated the criminal offence.

Conclusion and Recommendation

Ethiopia for a long period follows or established the unitary political system of government. The judicial system of the country also re-structured following the political administrative of the system. That structure was one Supreme courts in the center and other inferior courts in the inferior administrative structure the inferior courts especially “woreda” courts was empowered to adjudicated the criminal law. But, starting from 1991 on words there were change. That change was happened over all the system of the country. Central point of the change was ideological change. The country decided to follow the Federalism. The courts of the country which was one of the system /organ/ of the government also re-organized with in the sense of the upper nucleus of the country. Duty this, there was dual system of courts are re-structured. However we observe two views concerning the dual structure of the courts before the 1995 FDRE constitution and after constitution not by shape but with content.

- The parallality of courts were enshrined in the country during the transitional period.
- On another hand such stand point wasn't going on as it is. Especially on the criminal law, after the adaptation of FDRE constitution.

To make easily, the confusion of jurisdiction the FDRE constitution lacked to idantify which one is Federal matter and state matters. Due to the origin of the law the penal law was categorized as the Federal law. As legal aspect, and as experience of federalism follower country

Federal law was interpreted by federal courts and state courts are interpreted by state courts. By keeping legal aspects of interpretations, our constitution choose to establishing nation wide Federal country by willing of parliament decision, until that decision was succeed the way of delegation was authorized by the constitution especially the state Supreme courts and high courts. This constitutional delegation was not elongated through law level of state court structure that is woreda courts.

The constitution principal especially the concurrent power of the courts and the specific provisions which are consider as jurisdiction of Federal courts by the proclamation No. 25/1996 are not may touch all the Federal law. Especially criminal offence were happened else where through the country. That criminal violence was may it is Federal government concern or may it is state matter. The constitution, rather than empowered the Federal parliament to enacted the penal law, it choice silent to give details idea concerning the jurisdiction of state about the penal law. This turned to address the conclusion of the state courts are deprived at liberty to enforce Federal law in their full scale constitutional empowered.

These theoretical aspects are not practiced through out the country. In practice criminal offence was adjudicated by state woreda courts with out ground of constitution and empowered of law.

There fore, in order to be clarify or solved the dilemma the writer of this paper recommended the following points:-

- Since the principle of Federalism was the system of democracy and that democracy served the people by the closer concerning organ. There fore, to achieve this goal the arrangement has to be made for the people to be served in State Woreda Courts with out encountering ups and downs.
- For the fact that constitution the supreme law of the land and any practice contradict with this law is invalid, our constitution has to be amended in the way that empower the state woreda courts to entertain criminal matters and then the activity of state woreda courts will be constitutional.
- In the concurrent power of the courts structure the Federal Supreme courts have the power of cassation over final decision of any courts. But this is not practiced over criminal judgment of state woreda courts. If this is practiced, the concerning governmental organ found the solution to the problem. So, it most practiced until the constitution be aware about the matters.
- Final offence was happened else where through the country. That violence of offence was interconnected through day to day activities of residual. That residual disturbance was now a day adjudicated by constitutional unauthorized judicial powers. Doing so even not constitutional the sovereignty of the state. People can do ever thing. So, to rearrange the state government enforce the Federal, for the sack of state sovereignty.

Summary

Respecting and guided by the supreme and law of land was the features of Federalism ideology. In fact, to identify the legal problem was investigated through the spectrum of constitution & other legal materials. By standing on the FDRE constitution and FDRE penal code when we investigate the legal lay Kuna and the practice of day to day activities,

The previous FDRE constitution, which follow the unitary governmental structure monopolized the power in the centre the inferior administrative region give the service fir the people on behalf of the central government. But what ever the power distribution it was the time, the courts jurisdiction of the rime perform according to the procedural schedule of the concerned law. That means the all level courts jurisdiction was enumerated by procedural law and other regal notice expressly. But now a day the FDRE constitution structured by Federal system. The Federal courts and the state courts are structured by Federal system. The Federal courts and the state courts are structured according to administrative structure which was promulgated by each constitution. However, the criminal law is considering as Federal law, the state woreda courts did it as it has judicial jurisdiction. The nomenclature “woreda” by it self has its own confusion area.

The criminal procedural law schedules call woreda as the unitary structure, But now a day the procedural law was not amended, the ideology of the government changed.

In its nature the criminal law happened else whether through out the country but, some case by regarding it's as Federal government matters its jurisdiction upper hung jurisdiction. This, injure the peoples Sovereignty, expose for unnecessary expensive.

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