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PROBLEMS OF CONSTITUTIONAL INTERPRITATION
IN ETHIOPIA

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Introduction

Constitution is the supreme law of the land. The interpretation of constitution is the big issue in the world. The House of Federation has ultimate power to interpret the constitution in Ethiopia.

Most of the members of the House of Federation are not legal expert to interpret the constitution. So the Council of Constitutional Inquiry is advisory body to the house of federation. But many systems prefer ordinary Courts, other have vested Constitutional Courts the interpret body of the constitution.

The first chapter has contained meaning and types of constitution, historical development of the constitution in Ethiopia, meaning of constitutional interpretation and the practices of the ordinary court and constitutional court of United States and Europe like Germany are respectively discussed.

The second chapter of this paper deals with the role of Court, the Council of Constitutional Inquiry and House of Federation.

The third chapter contains the problems of constitutional interpretation in Ethiopia. There evaluates the House of Federation Vs separation of power, the election problem of the member of House of Federation, independence and competence of the House of Federation, and the procedural problem will be seen by this chapter .

Finally the writer concludes the whole idea of the paper, and provides the possible recommendations for the existing problem.

CHAPTER ONE

1. CONSTITUTION AND CONSTITUTIONAL INTERPRETATION

1.1 Meaning of Constitution

The meaning of constitution has different fact for/in scholars (countries) .Its definition varies as follow.

Definition -1

“ The fundamental and organic law of a nation or state that establishes the institution and apparatus of government, defines it as the scope of governmental sovereign power and guarantees individual civil right and civil Right” ¹

Definition – 2

"A constitution of a country is claimed to be the supreme law to which all other laws of the land must confirms. But how can this claim be justified? According to DR. Wheare, there are two main types of answer of this question. First, from the nature of constitution it must fallow that it has superiority over the institutions it creates that is whole idea of constitutions, it is not just an ordinary law. Second, it is after prior in time to the legislature, but even if it is not, it is logically prior since its function is to regulate institutions and to govern a government. It can not be construed in the same way and up on the same principles as a law to regulate the licensing of dogs.” ²

Definition – 3

“The word constitution is commonly used in at least two senses in any ordinary discussion of political affairs. First of all it is used to describe the whole system of government of a country, the collection of rules which establish and regulate or govern the government these rules are partly legal, in the sense that courts of law will recognize and apply them, and partly non- legal or extra legal, taking the form of usages, understandings, customs, or conventions which courts do not recognize as law but which are not less effective in regulating the government than the rules of law strictly so called.”³

Definition – 4

"A constitution is the whole system of government and also a collection of rules that establish and regulate the behavior of the government. This is a correct statement because the constitution is a basic law that brings the system of the government in to reality and also governs it. However, this definition may lead to an erroneous understanding of the world to consider constitution as whole system of government .because the government system include other aspect of law (e.g. Administrative law). It has to be noted here that administrative law and other laws that deal with the government administrative have the constitution as the source of their power an validity. from this it could be understood that there are also other sets of law that regulate the behavior of the government. More over the definition indicates that a constitution is a collection of rules that establish and regulate or govern the government. It goes from this that the government is established by the constitution, not the other way round. Another very important point in this definition is the fact that the government itself is regulated or governed by the constitution.”⁴

All of the above definitions of constitution concentrate that constitution is the supreme of the land (country) and regulate the all system of government, human right, and others provisions.

1.2 Meaning of constitution under FDRE constitution

The term constitution clearly defined under Federal democratic Republic of Ethiopia (FDRE) constitution. This term of constitution according to Art 9(1) of the FDRE constitution say.

“The constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this constitution shall be of no effect.”⁵

According to Art 9 (1) of the FDRE constitution, the constitution is the supreme law of the land. So the constitution status is very high in Ethiopia even if customary practice, law or a decision of an organ of state or public officials contravenes the constitution shall be no effect. I will discuss in the next paragraph what customary practice, law and decision an organ of state or a public official mean.

Customary practice is “law constituting of customs that are conducted as legal requirements as obligatory rules of conduct, practices and beliefs that as so vital and intrinsic a part of a social and Economic system that they are treated as if they were laws.”⁶ According to the a Black’s law dictionary definition there are customary practice In Ethiopia but according to Art 9 (1) of the FDRE constitution this customary practice contravenes with the constitution there shall be no effect. And the other Law means, under Ethiopia law proclamation (House of People Representative), Regulation [Council of Minister), directive, decree, Ethiopia ratified international agreement etc. This listed laws may Contravene with the constitution there shall be no effect, according to

Act 9 (1) of the FDRE constitution. Finally decision of an organ of state or public officials means the organ (government body). It has proper authority to decide based on their authority. But in Ethiopia law their decision may contravene the constitution there shall be no effect according to 9 (1) under FDRE constitution.

1.3 Types of Constitution

There are various types of constitution in the world. Constitutional law whether written or unwritten may be described as the fundamental principle or the basal elements which determine the state's organization and function.⁷

1.3.1. Written and Unwritten Constitution.

A *written constitution* is: - “as describing a selection of the more important legal rules which govern a government, embodied in a document or sometimes, as in Sweden perhaps, in a collection of documents—most countries of the world have written constitution.”⁸ The written constitution of some countries are incorporated in one document and some other countries, they are included in a number of series of related documents.

In all other countries, they are basic written constitution. A typical constitutional document begins with a preamble setting forth the aims and purpose of the constitution and the government it establishes. There follows provisions declaring sovereignty, supremacy, etc. then comes division of the document that establish the legislative, executive, judiciary, and administrative areas of operation. Both the organization and powers of these government branches are noted along with limitations of the exercise of their powers. These limitations on the government are frequently further elaborated in the constitution as a bill of rights and freedoms, etc. there is also a section of the document

devoted for the prescription of the mechanisms of amendment of the document.⁹

unwritten constitution is 'the custom and values some of which are expressed in statutes, that provide the organic and fundamental law of a state or country that does not have not a single document function, as a constitution in British constitutional law, the constitution is a collection of historical document, status, decree, conventions, and royal, prerogative, documents and statutes include magna carta(1215), the bill of right (1989), and the European communities Act (1972).¹⁰

1.3.2. Rigid and flexible constitution.

Constitution may be classified according to the method by which they may be amended. We may place in one category those constitutions which may be amended by the legislature through the same process as any other law, and we may place in other category those constitutions which require a special process for their amendment. The first class is very small. The constitution of New Zealand is one of the few examples which can be cited. In the other class lie most of the constitution of the world, varying from those which, like that of the U.S.S.R.

Merely requires a two - thirds majority in each house of the Supreme Soviet, to those of the United States, Switzerland, or Australia, where the parliament itself alone can not amend the constitution but requires the co- operation and consent of other bodies of the people.

This method of classifying constitution has usually been described as a classification is to flexible and rigid constitution, a classification which owes its origin to Lord Bryce and is expounded by him in his studies in history and jurisprudence. Where no special process is required to amend a constitution, it is called flexible where a special process is required, a constitution is called rigid.¹¹

There is also another concept with respect to flexibility and rigidity of a constitution. That is, a constitution is presumed to set down fundamental or basic rules and principles. A constitution should state principles for an expanding future. When a constitution deals only with basic matters, it tends itself to future interpretation and adoption to changing conditions; the it can be classified as flexible. On the other hand, the more the constitution deals with details, the more it partakes of the nature of a statute the more rigid it becomes.¹²

1.3.3. Federal and unitary constitutions

Constitutions may be classified also in terms of the method by which the powers of government are distributed between the government of the whole country and any local governments which exercise authority over parts of the country. On this principle constitutions are classified as “federal” or “unitary” in a federal constitution. The powers of government are divided between a government for the whole country and government for parts of the country in such a way that each government is legally independent with in this our sphere. The government for the whole country has its own area of powers and it exercises them with out any control from the governments of the constituent parts of the country, and there latter in their turn exercise their powers without being controlled by the central government. In particular the legislature of the whole country has limited powers, and the legislatures of the states or provinces have limited powers. Neither is subordinate to the other; both are co - ordinate. In a unitary constitution, on the other hand, the legatine of the whole country is the supreme law making body in the country it may permit other legislatures to exit and to exercise their powers, but it has the right in law, to overrule them; they are subordinate to it.¹³

1.4 Historical Background of Ethiopian Constitution.

Ethiopia is one of the countries in the horn of Africa. And also has Pluralistic nature comprising different ethnic groups, religion and language.

There was social interaction among the people of Ethiopia. Prior to the enactment of the first written constitution of 1931 in Ethiopia, there were customary laws and conventions that embraced some legal principles on secular matters. These governed the actions and behavior of and relationship among members of society.¹⁴

Ethiopia has some kind of written constitution up to the present FDRE constitution. The first written constitution was the 1931 constitution, which was revised in 1955. After this the people Democratic Republic of Ethiopia (PDRE) in 1987 and finally the present Ethiopia (FDRE) constitution in 1995.

1.4.1. The 1931 constitution

This the first written constitution “drafted by the foreign educated minister of finance, Bejerond Tekle Hawariat.”¹⁵ This 1931 constitution directly copied “from Japanese constitution (meiji constitution) of in 1989¹⁶.” Its aim was to free the state from the crippling power of the traditional constitution, there by making the monarchy the supreme power VIS-a- VIS church and nobility, rather than establishing guaranteed liberties for the people.

The major innovation of the written constitution was creation of the deliberative chambers. A third of the constitutional provision dealt with these chambers of the embryonic parliament. The upper chamber, made of the entire important nobleman, was the more important. The members of the lower chamber also had to be from the nobility and were elected through indirect voting system in which only the nobility participated. The constitution anticipated this state of affairs to continue until the people are in a position to elect themselves¹⁷. In legislative purpose there are also two chambers in this constitution.¹⁸

The upper chamber, made of all the important noblemen, was the more important the members of lower chamber also had to be from the nobility and were elected through indirect voting system in which only the nobility participated¹⁹.

The primary feature of the chamber is advisory.²⁰

On the executive side, the written constitution institutionalized the ministerial system. The constitution mentioned both individual and collective ministerial responsibilities to the emperor. The collective responsibility was a novel idea and the council of ministers was in the making skill and there is no prime minister. ²¹

In the 1931 constitution there are executive bodies both individuals and collective ministerial responsibilities to the emperor. ¹⁷ but there was no prime minister.²²

The court system of 1931 constitution provides for separate system of court-regular court and Administrative tribunals.²³ This court system and the ordinary court handle criminal and Civil cases. Civil cases affecting government, however, would be withdrawn from the jurisdiction of the ordinary court and placed in administrative tribunals. At the apex of the court system there was the emperor's chilot, where

cases could be reviewed by the monarch in person when necessary and there is as much on the basis of equality of law.”²⁴

Finally in the 1931 constitution most of the legislative, executive and judiciary power were control by the emperor so that there was no separation of power. There was also no check and balance the legislative, executive and judiciary power.

1.4.2 The 1955 Revised Constitution

After the 1931 constitution revised in 1955, the *Negarit Gazeta* of November 4, 1955 carried the text of the revised constitution, after, a quarter century of its introduction as the first written constitution. In contrast to this introduction, there was a written constitution in 1931. Hence the grant of the revised constitution in 1955 was not surprised.²⁵ This revised constitution of 1955 was more modern than the first written constitution in (1931 constitution) this constitution the *Negarit Gazetta* of November 4, 1955 carried the text of the revised constitution.²⁶ The 1931 constitution was interrupted by Italian occupation and after the liberation in 1941, the legal structure of the government was completely organized and a number of important stapes were taken to create modern governmental institutions. Some of these includes:

- “The creation of the officials *Gazeta* called the *Negarit Gazeta* which was establishing in 1942.

- A revised procedure of election was adopted, to change art 32 of the 1931 constitution since the people had obtained sufficient experience to choose their own representative.
 - The council of minister was establishing by order 1 of 1943.
 - By order no 2 of 1943 the office of the prime minister was established.
- the federation of Ethiopia and Eritrea has come in to effect.²⁷

Based on the above listed steps the emperor had the power to create government agencies and to determine their function. To this the effect emperor's order appears in the Negarit Gazeta establishing and organizing ministries and other agencies. His appointment power extended power through the various branches of government. The appointed power dismissed the prime minister and other ministers, judges, and diplomats which rested with the emperor. All members of the senate and the two chamber parliaments were also appointed at his pleasure. With respect to parliament, the emperor had the power to dissolve either or both houses. He was also provided with co-legislative functions. Beside members of parliaments, only the emperor had the right to submit proposals; and approved proposal by both houses of parliament were not law unless and until signed by him. The emperor thus had veto power on legislation, and when parliament was not in session emperor decrees the government issues.²⁸

Finally the 1955 constitution “in September 1974 the emperor was deposed, the revised constitution suspended and a military junta or junior officers as the governmental military government.”²⁹

1.4.3 The 1987 (PDRE) constitution

At this constitution there was no monarchical government. After the prior constitution (1931 and 1955) Ethiopia transferred from absolute monarchy to the military dictatorship. After 1931 and 1955 the Derg government had not formally adopted constitution and the country was ruled by the military administrative council (Derg) from 1974 to 1987.³⁰

In 1987 the Derg government adopted the PDRE constitution. The constitution of the Peoples Democratic of Ethiopia had conferred ultimate state power on the national shengo and its standing organ, the council of state. The central committee and the politbureau of the party however, had ultimate decision making power parallel to the government institution. At the top government and party offices covered with the same person wearing two or more hands. At the same apex, the secretary general of the sole party was also the executive president of the Republic, the chairman of the National Shengo, and the commander- in- chief of the armed forces.³¹

The PDRE constitution become important to the birth of socialism and Ethiopia found itself in a system of socialism a deep from the feudo-Bourgeois system.³²

1.4.4 The FDRE constitution 1995

After the transitional government is formed by different political organization and concerned individuals, one of the duties was to finalize the preparation to transfer the power to the people. Hence the translational government formed drafting commission of a constitution. The draft commission, after exhaustion discussing exhaustively gathered opinion of the people of Ethiopia and a constituent assembly was held on December 1994. Thus, the Ethiopia nation, nationalities and peoples

through their democratically elected representative made a political contract, and adopted the draft constitution of December 8, 1994.³³

The constitutions of the Federal Democratic Republic of Ethiopia (FDRE) become the expression of nation nationalities and people.²⁹ The FDRE constitutions have contained 106 provisions which are divided by 11 chapter. This constitution has also contained government authority and human right provisions and other right of the people. The new FDRE constitution has adopted international convention dealing with fundamental human right all international agreement ratified by Ethiopic are an integral part of the law of the land.³⁵

The FDRE Constitution is the birth of federalism in Ethiopia. The FDRE constitution has given the power to federal and state government so that federal government and state government shall have legislative executive and judicial power.³⁶ finally based on this FDRE constitution the “constitutional interpretation power is the House of Federation.³⁷ And also the constitutional inquiry also have power investigate constitutional dispute.”³⁸ I will discuss in chapter two and three about the system of constitutional interpretation in Ethiopia. This FDRE constitution is modern compare with other prior constitution.

1.5 Meaning of Constitutional Interpretation.

It is difficult to give comprehensive definition of the constitutional interpretation. Webster defined the term as that as that which is"...in accordance with or authorized by the constitution of a state or a society and interpretation as the act or the result of interpreting ,as explanation of what is not immediately plain or explicit or unmistakable".³⁹

From the above definition, constitutional interpretation is the act of explaining of what immediately plain and explicit or unmistakable as being in accordance with or authorized by the state constitution.

And the other, the meaning of constitution was defined in the previous section. As constitution is the supreme law of the land. So that the interpretation is must be modern (scientific). Interpretation according to Black's law dictionary is "The process of determine what something e.g. the law as a legal document; other ascertainment of meaning to be given to words or other manifestation of intention."⁴⁰ According to this definition interpretation is important to the constitutional provision. The constitutional provision may be

- Where the law is not clear,
- Where the law is ambiguous,
- Where the law is silent,
- Where the law is contradictory. and
- Where the law is unreasonable.

Some foreign and domestic literatures however do not provide clear meaning of constitutional Interpretation. Some point raise in the next section from American and European (Germany) constitutional interpretation system

1.6. Constitutional Interpretation in America

The American system of constitutional interpretation has decentralized model. In this system means, ordinary court can interpret the constitution and all disputes, whatever their nature, are decide by

the same court, by the same procedures, in essentially similar circumstance. So according to the decentralized system, any court is empowered to declare any law or decision of executive body which is unconstitutional, if such law or decision does not confirm with the constitution. The Final appeal being reserved to the federal Supreme Court. The US Supreme Court requires a real controversy and adversary parties before it can decide a constitutional question. In US to present the real contravene parties, the court decides to the constitutional question.⁴¹

Besides the U.S Supreme Court would insists that the matter must be justifiable and must not involve political question. The ordinary court decides constitutional issue in the process of disposing their routine function and review constitutionality is, therefore, something that comes to the courses incidental to the case. The logic of decentralized system in a nutshell is that it is the duty of the judges to find contradiction and inconsistency between two laws of different hierarchies; it is the duty of the judges to apply higher law.⁴²

And the other one is that, the decision of the case argued in favor of enabling judges of all courts to interpret the laws, including constitutional prevision, and in the case of an ordinary legislation conflicting with the constitution to disregard the former and apply the latter.⁴³ As it is mentioned above the United States constitution does not expressly put provision empowering the court to adjudicate constitutional issues and the other dissatisfied parties can apply the case being reserve to the supreme court of US can reverse or confirm the decision of lower court.⁴⁴

Finally the American model of all power of judicial review gives to judicial organ. The constitution of Argentina, Brazil, Burma, Colombia,

Denmark, Greece, Ireland, Japan and Mexico, are few example for the America decentralize system.⁴⁵ In other constitutional such as that of Ireland, the power of adjudicate constitutional issues is conferred up on the high court but it is subject to appeal to the Supreme Court.⁴⁶ In India, such power is granted to the Supreme Court.⁴⁷

1.7. Constitutional Interpretation in Europe/Germany/

Most European countries follow centralized model to constitutional interpretation system. This system is the result of Australian Jurist Hans Kelsen who confers the power of review of constitutionality on one special constitutional court.⁴⁸ It is common in Europe to differentiate among categories of litigation (Criminal, Civil, Administration and commercial) and to have them decided by different courts. Constitutional litigation too is distinguished from the litigation and it is dealt with separately so, unlike United States courts, the ordinary Germany, Italian, Spanish and other European country counties court, not decide the constitutional Issue.

At most they can refer an issue to the constitutional court for a decision; the decision of the constitutional court will be binding on the ordinary courts.⁴⁹

Constitutional courts are not organized in exactly the same way as ordinary courts and judges serving in the constitutional court may be elected for a specific number of year and by different constitutional organs. Judges are appointed for their political inclinations by the political authorities.⁵⁰ In order for the court to play a role required of it, however the constitutions of this model prescribes the constitutional and political forces that would participate in the election of judges.⁵¹

Typical of which is the German constitutional court cauterized by its distinctive constitutional jurisdiction. It constitutes two services each with eight judges, one handling mainly basic human right cases, other wise known as constitutional compliant while the other senate decide disputes involving constitutional issue proper. Half the judges are selected for a single non- reasonable term of twelve years, by a special electoral committee of the bundestag while the other half are selected by the bundesrat and to the extent by the government of the states, in both cases a majority of two- third is required which is impossible to arrive at unless there is a consensus among parties. Thus the federal government and the states have their own influence on the selection of judges in the court.⁵²

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Chapter two

The role of the court, Council Constitution Inquiry, And the House of Federation to interpretation of constitution

Under this chapter it's attempted to discuss the role of the House of Federation (HOF), the council of constitutional inquiry and the ordinary court on interpreting the constitution of Ethiopia. That is to answer whether these organs are allowed to Interpret the constitution or not.

2.1. The role of the court to interpret the constitution.

The court of Ethiopia is one organ of government. The judiciary is believed to be independent of the other branch of the government. The judiciary is detached from the active politics and those who involve in the active politics (the legislative and executive organ) should not interfere in the function of the judiciary in most of country either ordinary court or constitutional court can interpret the constitution. In Ethiopia the house of federation has the power to interpret the constitution. What the role of Ethiopia court to interpret the constitution? This answer clearly defined in the section 2.3.4 of this chapter.

2.1.1. The structure and power of court under FDRE constitution.

Under FDRE constitution, the court is divided in to state and Federal court. The constitution of 1994, as may be expected in a Federal system, establishes two sets of courts and comparable jurisdiction. Thus the constitution provides for a three level court in federal matter which is,

Federal Supreme Court, the highest court in the Land. The two other court of the Federal government (i.e. the Federal high court and the Federal First Instance court) are also specifically mentioned and their Jurisdiction, which would be provided for in detail by relevant legislation clearly assumed by the constitution what is interesting, however, is that these two Latter Federal court are not automatically constituted¹. According to FDRE constitution, supreme Federal judicial Authority is vested in the Federal supreme court The house of people representatives may, by two thirds majority vote, establish nation wide, or in some part of the country only, the Federal high court and First Instance court deems necessary, unless decided this manner, the jurisdiction of the Federal high court and of the First. Instance court is hereby delegated to the state courts². This provision means, federal Supreme Court sit in Addis Ababa, but the federal high courts and the federal first -instance court sit in Addis Ababa, Diredawa and in such other places as may be determined in accordance with art 78(2) of the FDRE constitution. As it is provided in Art 78(2) of the constitution, the house of peoples representatives may, by two third majority vote, establish through put the country, or in some of the country only, the federal high courts and first instance courts if it finds necessary. However, when the federal high court and first instance courts are not established in this manner, the jurisdiction of the federal high courts and the first instance courts are delegated to the state courts. When the house of peoples representatives, by its two – thirds majority vote, did not establish the federal high courts and first instance courts in all parts of the country or in some part only, the jurisdictions of the federal high court and the federal first instance court would be exercised by state’s supreme court and state’s high court respectively.³

The constitution at the same time establishes a three tier court system of state supreme, high and First instance court. Unlike the

federal high and first instance court, and all three state courts automatically constitute. The state supreme court shall have the highest and final judicial power over state matters⁴. the state supreme court shall also exercise the jurisdiction of the Federal high court⁵. So does the state supreme court in addition to its state jurisdiction assume Federal high court powers in the absence of the latter.⁶ So state Supreme Court and federal high court are equal power by delegation.

2.1.2. The Federal Supreme court.

The Federal Supreme Court shall have the highest and final judicial power over Federal matter, and also state Supreme Court shall have the highest and final judicial power over state matters. They shall also exercise the jurisdiction of the Federal high court⁷. This means the federal high court also has judicial power of state supreme court by delegation.

The Federal Supreme Court has a power of cassation over any final court decision contradicting a "basic error of law".⁸ Such Final decision could be of a federal or state court, including a decision of the state supreme court for the Federal Supreme Court to make this exceptional move to review and correct a decision of another court and particularly of a state court on matters within state Jurisdiction seems at first glance out of character in the federal order. The fear may be expressed of diluting the Federal system and eroding the power and authority of state. There is no question that at the extreme there is risk that such authority can in theory be abused by its excessive employment.

The constitution, however, provides several safeguards. The Federal Supreme Court, first of all, has to sit in cassation to examine such a case. Secondly, such Authority of review is limited to correcting a basic error of law. In other words, it is only error in connection with "question of law" and not "question of fact" that gives rise to such authority. Moreover, the error is question of law has to be of a basic nature that may have unfortunate consequences of shaking the constitutional or legal order. The overriding objective for such authority is to ensure the protection of the constitution and the whole legal regime. It unfolds for safeguarding Fundamental Right and Freedoms and guaranteeing a lasting peace, Democratic order, and socio- Economic development.⁹

2.1.3. State Supreme and high court

It has already been mentioned that the State Supreme Court and State High Court exercise Federal high court and Federal First Instance court jurisdiction respectively until such delegation of authority is terminated. State supreme court in addition to its regular appellate Authority may also Review and correct basic error of Law in final decision.¹⁰ To do so however, it sits in cassation and deals only with state matter. What this means is that case dealing with state matters.¹¹ This means dealing with state matters which reach final decision at the state high court level may be reviewed and corrected by the state supreme court.¹²

And the other point is that decision rendered by a state high court exercising the jurisdiction of the Federal First instance court are appeal able to the state supreme court and also decision rendered by a state supreme courts on Federal matters are applicable to the Federal supreme court.¹³

With respect to appellate jurisdiction a question may arise that is not directly covered by the constitution, where House of people representatives establishes one level of Federal court and not the other, Federal mater cases may start at state high court and on appeal move to Federal high court. It is also possible that Federal cases that started at Federal First Instance court may on appeal continue to the state Supreme Court such move from one court system to the other is no problem from a legal point of view. It is the distance to be covered by concerned parties as they move from one place to the next that has to be taken in to account. In any case, if the house of people's representative establishes both Federal high and first instance court simultaneously, the question would be avoided.¹⁴

2.3.4. The role of Ethiopia court to interpret the constitution

This section of the paper explores the provisions of the FDRE constitution to justify the argument that one Federal and state court have constitutional mandate to `interpret` the constitution.

In Ethiopia the ultimate power of interpretation of the constitution is the house of federation. So all constitutional disputes are decide by the house of federation (HOF) but in the most part of the world, constitution interpreted by ordinary or special (constitutional) court, for instance, The American Federal supreme count is vested with the power of ultimately interpreting the United State constitution in other federal systems, In Germany the ultimate interpretation of the constitution rests with the constitutional court, although a special institution is still a court.

The ordinary court of Ethiopia has a constitutional mandate to interpret the constitutional commitment to respect and enforce the

fundamental right and freedoms. This fundamental right and freedom clearly stated in chapter two and three of FDRE constitution.

According to the FDRE constitution of provision human right is defined as.

1. Human right and freedoms, emanating from the nature of making, are inviolable and inalienable.
2. Human and Democratic right of citizens and powers shall be respected.¹⁵

The above definition of human right protection is good and has moral for the FDRE constitution so that the government must protect this human right. Because this right emanates from individual. These individual are from nations, nationalities, and peoples of Ethiopia. So it is guarantee of the individual or Nation, Nationalities and peoples right.

Art. 13(1) provision clearly stated:

"All federal and state legislative, executive and judiciary organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this chapter.¹⁶

Article 13 has far reaching as far as the role of the judiciary (at all levels) in enforcing and protecting human rights is concerned. The basis for this view of Art.13 is found in the age old view that the inclusion of fundamental rights and freedoms in any constitutional orders basic constitutional commitments to respect the right of minorities in the political, inherently, a limitation on the power of the ruling majority²¹. The entitlements of minorities can not be secure if their fate in the hands of those who in general are require to side with the majority.¹⁷

Although Art 13 equally imposes obligations on all branches of government at all levels, the interpretation and protection of these rights can not be effectively done by majoritarian organs against which the limits set by fundamental rights and freedoms are imposed. Consequently when Federal and state legislative as well as executive bodies fail to comply with their obligations to protect right and freedoms, a minority groups ultimately rests on the role played by an independent judiciary. The judiciary role is respected and enforcing fundamental right and freedoms is clearly enshrined in Art 13 and this role of ` respecting and enforcing fundamental rights and freedoms in illusionary unless the judiciary is, in one way or another involved in interpreting the scope and limitation of there rights and freedoms for which it is duty bound to "respect and enforce".¹⁸

By the words of Art 13(1) the role of the enforcement is not at all reserved for the judiciary only but to other components of government, executive and legislative. To this end, the executive enforces the law and according the law makes desired them to be implemented. The legislators as well may use the law making power with proper respect to human right in general and pass a resolution based on an international human rights instrument by passing enabling proclamation. And the other according to Art 83/1/ of the FDRE constitution stipulates that; “all constitutional disputes shall be decided by the house of the Federation” The Amharic version of Art 83/1/ of the FDRE constitution stated.

“የሕገ መንግስታዊ ክርክር ጉዳይ ሲነሳ በፌዴሬሽኑ ምክር ቤት ወሳኔ ያገኛል”

There are slight difference between the Amharic version and English version concerning 'All'. The word “All” is lacking in Amharic version. According to Art /106/ of the FDRE constitution the Amharic version of this constitution shall have final legal Authority so that the

Amharic version prevails. In this sense according to Art -13/1/ the court is responsible to respect and enforce the fundamental right and freedoms. This is included in chapter three of this constitution to accomplish their duties; courts shall interpret this chapter of the constitution. But it has to be noted here that the constitutional interpretation of the court is not the final one. The ultimate power to interpret the constitution is vested in the house of federation. Moreover, the scope of application of interpretation by court is limited only to the case they have entertained. However it shall have general effect and applicability on similar constitutional matters that may arise in the future (Art- 11/1/ of proc -No 217/2001/).

2.2. The role of Council of Constitutional Inquiry

The ultimate interpretation of FDRE constitution is as indicated in the earlier sections. The House of Federation is the political institution. This may show or imply that constitutional interpretation is considered as political matter. However, since constitution is not only a political document. Its Interpretation should not be left to political institution only. It seems this is the reason for the establishment of Council of Constitutional Inquiry mostly comprised of legal expert. Thus, the council of constitutionally Inquiry is established to cover the legal aspect of the constitutional Interpretation to fill the gap created due to the political nature of the House of Federation (HoF).

2.2.1 Structure of the Council of constitution Inquiry (ICC)

This council of constitutional inquiry facilitate and to help the House of federation (HOF) by legal expert (scholars) in which most of the member of Council of Constitutional Inquiry are Legal expert . The structure of council of constitution inquiry (CCI) according to FDRE constitution Article 82 clearly stated that.

The council of constitutional Inquiry shall have eleven members comprising;

-The president of the federal supreme court who shall serve as its president.

-The vice-president of the federal supreme court who shall serve as its vice-president.

- Six legal experts, appointed by the republic on recommendation by the House of people's representative, who shall have proven professional competence and high moral standing.

-Three persons designated by the House of federation (HOF) from among its members.¹⁹

So the total number of Council of Constitutional Inquiry consists of eleven members.

The purpose the establishment of Council of Constitutional Inquiry is to facilitate the house of federation by legal expert. Three members, however, are elected by the House of Federation based on the election form among its members. These three elected persons could be whether the legal expert or not. But the other nine members should be legal expert. Because the president and vice-president of federal supreme court who also serve respectively as chairman and vice chairman of the Council of Constitutional Inquiring (CCI). The six member of council of constitutional Inquiry are designated by the president of the republic with the recommendation of the house people representative and these six members must be legal experts.

2.2.2. Power and duty of Council of Constitutional Inquiry (CCI)

There are various kind of power and duty of council of constitutional Inquiry (CC1) in FDRE constitution and proclamation No-251/2001.

The first function of the council of constitutional Inquiry (ICC) is; that it shall have power to investigate constitutional disputes. The Council should consider on the matter which is necessary to interpret the constitution and it shall submit its recommendation to the House of the Federation.²⁰

This provision means the Council of Constitution Inquiry shall have power to investigate constitutional disputes. The Investigation may result in prima facie case calling for Interpretation the constitution, in which case the Council of Constitution Inquiry (CCI) is required to submit its recommendation to the house of federation (HOF) or remand the case and render a decision .if It finds there is no need for constitutional Interpretation.²¹

The second power of Council of Constitution Inquiry (CC1) is where any federal or state law is contested as being unconstitutional and such a dispute is submitted to it by any court or Interested party and the council shall consider the matter before the final decision of the House of Federation (HOF) .²²This means any court or interested party should first apply the matter (case) to the council before the final decision of the house of federation. In this provision” interesting party “includes dispute party, organization, Ngo, etc.

The other power of Council of Constitutional Inquiring is according to the FDRE constitution and the Proclamation No. 250/2000. When issues of constitutional Interpretation arise in the courts, the

council shall remind the case to the concerned court If it finds there is no need of constitutional Interpretation. Here the interested party, if dissatisfied party by the decision of the council can appeal to the House of the Federation (HOF).

This provision means, the Council of Constitutional Inquiry can matter no need for constitutional Interpret, the council can remand the case to the court. If the party is dissatisfied with the decision of Council of Constitutional Inquiry (CCI) appeal to the House of Federation (HoF).

The Council submits its recommendation to the House of the Federation for a final decision if it believes there is a need for constitution Interpretation.²³ The Council of Constitutional Inquiry is Advisory body to the house of federation since the council shall draft rules of procedure to the house of federation and implement them up on the approval. According to this provision, The council of constitutional inquiry gives proposal or procedure of the matter to the house of federation. The house of federation decision IS based on the proposal and the procedure received from the Council of Constitutional Inquiry.

2.2.3. The meeting and rules of procedure Council of Constitutional Inquiry (CCI).

The Council of Constitutional Inquiry have own meeting and rules of procedure. The council must meet quarterly. But there are the other choices to the council.²⁴ The council of constitutional inquiry may call extra-ordinary meeting when it deems it is necessary.²⁵ This extra-ordinary meeting may be at the time of staffing of case and other special program. But Council of Constitutional Inquiry does not meet after three months because each three month is obligatory. The other point is that the meeting and rules of procedures of the Council of Constitutional Inquiry (1CC) can not meet after three months because

it is obligatory. The other rules of procedure of the council of Constitutional Inquiry clearly stated proclamation No 250/2001. The first procedure of the meeting of the council is a quorum if two thirds of members are in attendance.²⁶ And the other procedure of the Council is at the time of examined case to decide use of unanimous vote.²⁷ This unanimous vote not obligatory. If the council of inquiry can not decide on a case with unanimous Vote, the opinion of the majority vote of the members attending the meeting shall be considered for ruling .Opinions of the minority vote or proposal for compromise shall be appended to the decision of the council of Inquiry.²⁸ The final procedure of the council of constitutional inquiry is that equal number of votes are taken on both sides the side the chair person votes for shall prevail.²⁹

2.3. The role of House of Federation interprets the constitution in Ethiopia.

Ethiopia has bi-cameral parliament. The house of people representative has legislative power. The House of Federation is the upper house in Ethiopia. Unlike most upper houses of the world, the house of federation has some vital functions. The House of Federation is composed of representative of nations, nationalities and peoples of Ethiopia. The most important power of House of Federation is interpreting the constitution. In the most part of the world constitutions are interpreted either ordinary court or by special court (constitutional court), but only in Ethiopia constitution is interpreted by the house of federation.

2.3.1 Structure of House of Federation (HOF)

The house of federation is one of the federal government organ composed of representatives of Nation Nationalities and people of

Ethiopia.³⁰ although the current member of the house of federation are appointed by the regional state, the member of house of federation (HOF) can be directly elected by the people by virtue of Art 61(3) of FDRE constitution and members of house of federation shall be elected by state council. The state council may themselves elect representatives to the House of the Federation (HOF), or they may hold elections to have the representatives elected by the people directly . The member designated by the regional state council and state council is directly elected by the people .³¹ People directly participate in the process of election of house of federation (HOF) and the other voting process is at least one member can be elected. Each nation nationality and people shall be representative in the house of the federation by at least nationality of Ethiopia. One member of each nation or nationality should be represented by one additional representative for each one million of its population.³² According to this provision principle the House of Federation is the expression of nation nationalities and peoples but the highest (larger) nation represents more than the smaller nation. Each nation and nationalities are represented by one additional member for each one million of its population. So the House Federation is the collection of Ethiopian nation and nationalities and people. Finally the term of mandate of the house of the federation shall be five years.³³ One member has a five year term.

Power and function of House of Federation

The houses (House of people's representatives and House of Federation) in Ethiopia have different functions. Other European and American houses however have legislative power. In Ethiopia the house of people representative has the legislative power but the house of federation (HOF) has the ultimate power to interpret the constitution

according to FDRE constitution Art 62 (1) and 83 (1) . The house of federation has the power to interpret the constitution and also all constitutional disputes shall be decided by the House of the Federation.³⁴ This opinion and all constitutional disputes are decided by the House of Federation (HOF). So according to the above provision, the house of federation has ultimate power to interpret the constitution. The other special power of the House of Federation shall in accordance with the constitution and decides on Issues relating to the right of nation, nationalities and peoples to self determination; including the right to secession.³⁵ This means any member of the House of Federation has the ultimate power to decide self determination. Any member of the house of federation has ultimate power to decide self determination.

Another weighty matter fully entrusted to the House of federation is the relationship among Nation Nationalities and people of Ethiopia. In this respect, the House of federation is first and foremost entrusted with the duty to promote the equality of the people enshrined in constitution and promote and consolidate their unity based on their mutual consent.³⁶ The last phrase “unity based on mutual consent” transports one to the preamble, which opens with, “we the nation nationalities and peoples of Ethiopia strongly committed..... to building a political community.....” in the same vein, the constituent goes on to mandate the house of federation (HOF) to seek solution to misunderstanding that may arise between states.³⁷

The other function of the House of Federation is determination in the division of finance in federal and state government. According to the FDRE, constitution the House of Federation shall determine the division of revenues derived from joint federal state tax sources and the subsidies that the federal government may provide to the state.³⁸ This revenue

determination is Important to the regional state because each state has different revenue form the other state.

The House of Federation determines civil matters which require the enactment of laws by the house of peoples representatives .Because the house of people representative has legislative power. It is clearly stated in article 55(1) and the house of federation must only participate civil mater to enact the law.³⁹With the view of establishing once economic community, that require the enactment of laws by the house of people representatives, it clearly stated in article 55/6/ and Art 62/8/.

The House of Federation is empowered to decide an issue relating to the right of nations, nationalities and peoples to self- determination, including succession. As opposed to its function in promoting the unity of the nation, nationalities, and peoples of Ethiopia, if one of these decides to go out the federal democratic republic, the House of Federation is the one who decides on the succession of a nation nationalities and peoples.

The other power of the House of Federation (HOF) shall order federal intervention if any state, in violation of this constitution, endangers the constitutional order.⁴⁰ This provision is important to the regional state because the federal intervention is important for peace or to stop violation of this constitution .As a result the House of Federation can order the federal government to stop the violation of this constitution.

The final power of the House of Federation (HOF) is to establish standing and adhoc committee and to adopt its own administrative and procedural rules.⁴¹ This adhoc committee is important of achieving its goal to the House. And it is by so doing that it can effectively organize its

own work and procedure and bring the desired result in handling its weight task.

2.3.3. Immunity of members of the House the Federation (HOF)

The House of Federation protects from some of their action. According to the FDRE constitution clearly stated. No member of the house of the federation may be prosecuted on account at any vote he casts or opinion he expresses in the House, nor shall any administrative action be taken against any member on such grounds.⁴² In this provision of the member of House of Federation (HOF) does not prosecute their participation in the parliament. Their participation includes their voting and opinion on the member of the House of Federation and can freely participate in the House.

The other right of the member of House of Federation (HOF) is also stated in FDRE constitution. No member of the house of federation may be arrested a prosecuted without the permission of the house except in the case of flagellant delicto.⁴³ The second protection of the House of Federation members do not arrest or prosecute without the permission of the House. In principle of criminal case any suspected person can be arrested or persecuted. But the members of house of Federation have protection except on the case of flagrant delecto.

A meaning of flagrant offence according to criminal procedures code of Ethiopia, Art-19, An offence shall be deemed to be flagrant where the offence is found commit the offence, or has just committed the offence. So flagrant offence means an offence which the suspect has been found appropriately committing or attempting to commit or has just completely committing. In this case the member of house of federation

can arrest without the permission of the house at the time of flagrant offence.⁴⁴

2.3.4. Decision and Rules of procedure the House Federation (HOF)

The house of Federation has its own decision and rules procedure. The first procedure is the presence at meeting of two third of the members of the House of the Federation constitutes a quorum. All decisions or members present and voting.⁴⁵ According to the provision there are requirement to the meeting .The meeting is valid when there is two third of the member of House of Federation (HOF). Present under two third of member presence the meeting is Invalid. And the other voting system is majority vote from presence in the house meeting. This presence must be greater than two- third of the member of House of Federation (HOF). And the other each members of the house of federation (HOF) present in person the member can not presence by agent the member must presence himself in the house. The sessions of the house of federation (HOF) is at least two times annually.⁴⁶ This provision means the session should not be not less than two times annually. Thus, two times annually is mandatory own the house can meet more than two annually. Finally the house of federation must decide within thirty days of receipt the proposal from the council of constitutional inquiring . In the principle of this provision the decision not more than thirty days.

END NOTE OF CHAPTER TWO

1. Fasil Nahom, Constitution Nations for Nation in Ethiopia Prospect, 1997, p.99.
2. Art-78(2) of the FDRE constitution.
3. St.Mary's University College, constitutional law module p.57 and 58
4. Art-78(3) of the FDRE constitution.
5. Art-80(2) of the FDRE constitution.
6. Art-80(4) of the FDRE constitution.
7. Art-80(1) and (2) of the FDRE constitution.
8. Art-80(3) (a) of the FDRE constitution.
9. Supra Note_1, p.101 and 102.
10. Ibid, p.102.
11. Art-80(3) (B) of the FDRE constitution.
12. Supra Note_1, p.102.
13. Art-80(5) and (6) of the FDRE constitution.
14. Supra Note_1, p.103.
15. Art-10 of the FDRE constitution.
16. Art-13(1) of the FDRE constitution.
17. Assefa Feseha, Proceeding of the symposium on the role of court in the enforcement of constitution, 2001, p.14.
18. Iid, p.14.
19. Art-82 of the FDRE constitution.
20. Art -84(1) of the FDRE constitution.
21. Assefa Feseha, St Marry's University College, Mizon Law review, Vol.1, 2007, p.14.
22. Art-84(2) of the FDRE constitution.
23. Art-84(3) of the FDRE constitution.
24. Pro.No-250/2001, Art-13(1).
25. Pro.No-250/2001, Art-13(2).
26. Pro.No-250/2001, Art-30(1).

27. Pro.No-250/2001, Art-30(2).
28. Pro.No-250/2001, Art-30(4).
29. Pro.No-250/2001, Art-30(5).
30. Art-61(1) of the FDRE constitution.
31. Art-61(3) of the FDRE constitution.
32. Art-61(2) of the FDRE constitution.
33. Art-67(2) of the FDRE constitution.
34. Art-62(1) and 83(1) of the FDRE constitution.
35. Art-62(3) of the FDRE constitution.
36. Art-62(3) of the FDRE constitution.
37. Supra Note_1, p.74.
38. Art-62(10) of the FDRE constitution.
39. Supra Note_1, p.74.
40. Art-62(9) of the FDRE constitution.
41. Art-62(10) of the FDRE constitution.
42. Art-63(2) of the FDRE constitution.
44. St.mary's University College, criminal procedure module.
45. Art-64(1) of the FDRE constitution.
46. Art-67(1) of the FDRE Constitution.

Chapter Three

3. Problem of constitutional interpretation in Ethiopia

As you know, I was explain in chapter-2 of this paper about, the structure, power and function , decision and rules of procedure, of the House of Federation and Council of Constitutional Inquiry. There are varies problem in constitutional interpretation in Ethiopia. The problems are, House of Federation Vs Separation of power, representation problem, independency and competence, and procedural problem, of the house of Federation. The problem will be discussed in the next sections.

3.1. House of Federation Vs Separation of power.

The House of Federation (upper house) is the interpreter of the constitution. The house in which "Nation, Nationalities and peoples" are elected by the people. The house is composed of at least one representative from each of all ethnic groups in the country, and one additional representative for every one million population of each ethnic group. The constitution established on ethnic-based Federal Republic comprising nine regional states. Except two federal territories, Addis Ababa and Dere Dawa. What is House of Federation position in the doctrine of separation of power? Separation of power is:-According to Montesquieu, French juries and philosopher was the father of separation of power. The idea of separation of power was developed by Montesquieu. In this regard, Montesquieu says that:

“There can be no liberty when legislative and executive power is joined in the same person or body of hands because it is to be feared that the monarch or body of lords, it is to be feared that the monarch or body

of lords will make tyrannical laws to be administered in tyrannical way. Nor is there any liberty if the judicial power is not separated from the legislative and executive power. If the three functions merge in to one organ, every thing will come end”¹.

The separation power means, as the Montesquieu explanation the legislative, executive and judicial function must be separate and distinct from each other. The three governmental organs have different duties.

Legislative- the legislative is law making organ. The parliament the law maker body, in Ethiopia is referred and differed to as the federal houses. There are two houses of parliament in Ethiopia. Many countries have a bicameral parliament, that is, there parliament have two chambers. There are also countries with a unicameral parliament.²

Executive- the federal executive consists of the priminister and the council of ministers, of the three organs of the states, the biggest institutions to the executive. It has so many departments as it mobilizes the country's resources, for the purpose of implementing its function effectively, the executive is given much power and plays vital roles in the governmental activities.³

Judiciary- in all democratic countries, it depends on its democratic functions. It is believed that the judiciary is detached from politics and hence expected to act in a neutral manner. That is, it is expected to render impartial decision, even if one of the disputing parties is the government.⁴

According to the explanation the government organ must be separated and distinct from each other. There ought to be separate organs for each, working together, but none of them should be dependent on and discharge the function belonging to the other.

For instance, France understood separation of powers, in a strict sense which has separated function of the different organs of state. One organ of government should not be interfering with the function of other. For example, the court should not interfere in the function of the administration (the executive organ) and administration disputes shall be resolved by Administrative tribunals, instead of being judged by court.⁵

Thus the doctrine of separation of power is important to avoid abuse of power by one organ. There is a mechanism of control of one organ by another which is referred to as checks and balance. That is to say the power of one branch of government are checked and controlled by another branch.

According to the explanation, The House of Federation difficult to say legislative, executive, or judiciary. The probability there is some relation with the judiciary. The structure of House of Federation is different with the judiciary. Because the constitution is a political document between Nation, Nationalities and peoples of Ethiopia. It is clearly stated in the preamble of the constitution. So to interpret the constitution the body shall Representative Nation, Nationalities and people. So the House of Federation is arguable institution to fulfill the preamble. But FDRE constitution have not only political document, there are also legal document. This legal document can not interpret the House of Federation. The House of Federation is not judicial body. And the

other according to the doctrine of separation of power who shall interpret the constitution? In principle the judiciary interprets laws. Constitution is the kind of law. But it is supreme law of the land. There are different with other laws so that House of Federation is not judicial organ. The power of House of Federation is totally opposite with the principle of separation of power. Because the House of Federation is not judicial organ. Most country in the world parliament (house) duty is legislation power. House (parliament) has not judicial power. So the House of Federation has not power in Legislative, executive, or judiciary. There is lack of separation of power, and no check and balance in House of Federation.

3.2. Representation problem in the House of Federation

The House of Federation (HOF) represent from Nation, nationalities and people of Ethiopia. In accordance of Art-62(2) of the FDRE constitution, each nation nationality and peoples of Ethiopia shall be represented in the House of Federation by at least one member. Each nation nationalities and peoples shall have one additional representative for one million of its population⁶. So House of Federation is the representative of Nations, Nationalities and peoples of Ethiopia.

The House of Federation is the expression of Nation, Nationalities and people. Because the preamble of the FDRE constitution, this constitution is the political contract between Nation, Nationalities and people. So all Nation, Nationalities and People must represent in House of Federation.

In order to have general picture of representation of nations, nationalities and peoples of Ethiopia in the house of federation, it is useful to consider the following information for the 2001-2004 term of offices.⁷

Table-1

Region	Ethnic group	No. of representatives.	Percent of seat
Tigray	1.Tigraway	4	5.15
	2.Kunama	1	
	3.Irob/Saho	1	
Afar	Afar	2	1.85
Amhara	1.Amhara	13	15.74
	2.Agew/Hemera	1	
	3.Agew Awi	1	
	4.Argoba	1	
	5.Oromo	1	
Oromiya	Oromo	16	14.81
Somalia	Somali	4	3.7
Benishangul/Gumuz	1.Mao	1	3.7
	2.Gumuz	1	
	3.Komo	1	
	4.Shinasha	1	
SNNPRS	1.Gurage	3	
	2.Sidama	3	
	3.Gedeo	2	

	4.Hadiya 5.Wolayita 6.Gamo 7.40 others	2 2 2 1 each Total 54	50
Gambela	1.Anuak 2.Nuer 3.Mejenger 4.Upo	1 1 1 1	3.7
Harari	Harari	1	0.92
Total		108	

According to the tables of the members of House of Federation there are 108 total members composed of 64 nation, nationalities and peoples. According to the tables the SNNPRS with 46 ethnic group alone has 50 percent of the seats, and alone Harari has only one representatives. Amhara and the ormos, which jointly constitute more than 60 percent of the total population of Ethiopia, however, have only 33 seats out of the total of 108 seats. The multiethnic federal territories of Addis Ababa and Dire Dawa have no representation in the House of Federation.

The basic problem is the numbers of representation system of House of Federation since the number of representative of each region has very high gap. For example, SNNPRS have 54 numbers of seats out of 108 and the other Harari has only 1 representative out of 108 seats. This kind of different totally influence in the voting system of House of Federation, the decision to be only the interest of the highest representatives. Smaller seat in number losses their decision and become

in favor of the larger one. It is not fair to all the, nation nationalities and peopleS of Ethiopia.

3.3. Independence and Competence of the House of Federation

The House of Federation has constitutional interpretation power. Most of the members of House of Federation in Ethiopia, are not lawyers. They are layman to interpret the constitution, but to facilitate the decision of the house of federation the council of constitutional inquiry established. The Council of Constitution Inquiry has been established by the federal constitution to give professional support to the House of Federation which has been given the power to interpret the federal constitution. It has also been deemed necessary to organize and strengthen the Council of Constitutional Inquiry so as to further consolidate the task of interpreting the constitution and to render professional services with efficiency and effectiveness to the house of federation. So the council is the advisor, body to the House of Federation. In this case the House of Federation lacks the competence to give a binding decision and also lack of effective structural and professional expert to analyze the meaning of the relevant constitutional provisions⁸ .because most of the member of House of Federation are layman to interpret the constitution. It is impossible for the House of Federation to interpret the constitution efficiently since there is lack of competence.

But in other system of constitutional interpretation, Judges of constitutional courts of many European countries are professors of universities who have deep knowledge and skills of laws. The judges of Supreme Court of America models are very much experienced and highly trained, too further more, and the justice of United States Supreme Court are nominated free from the politics of, campaigning and political favors.⁹

The other lack of independency of House of Federation is that in the member of the House of Federation, the state council shall elect these representatives¹⁰. The state council may be appropriate body to see it that concerned nations, nationalities and people elect their representatives, but for the state council to directly elect the representative of House of Federation, directly is not keeping with the claim to represent the nation, nationalities and people. So the Ethiopia nations, nationalities and peoples indirectly elect the members of House of Federation and because the state council, directly elected by the people directly. But most of the members of state council are from the member of different political parties. So the election process of House of Federation is not independent. Because influence state council, the members of House of Federation to be political party members. The House of Federation gives priority for their political party rather than nation, nationalities and peoples of Ethiopia. The House of Federation can not the expression of nation, nationalities and peoples. Thus the House of Federation lack of independence to interpret the constitution.

The system of United State a good example for the independence of the constitutional interpreter body. The justice of United States Supreme Court is nominated free from the politics of campaigning and political favors.¹¹

Another point that, both the Council of Constitution Inquiry and the House of Federation do not sit all the year round. Because, the House of Federation shall hold at least two sessions annually¹². The council of constitutional inquiring shall also hold regular quarterly meeting¹³. This may take a long time for a single case to be decided. Interpreting the constitution is more technical and a thoroughly conducted research on it. The over all effect of this is that only a few number of cases have been decided with in a year time. As a consequence there will be staffing of cases.

As mentioned in the above discussion that the House of Federation does not seem to be competent and independence to discharge its heavy duty of interpreting the constitution.

3.4. Procedural problem of House of Federation

The House of Federation has ultimate power to interpret the constitution. Despite for legal technicalities to interpret the constitution, the House of Federation is assisted by Council of Constitutional Inquiry (CCI), consists of eleven members. The president and vice-president of the Federal Supreme Court, who shall serve as its president and vice-president of the Council of Constitutional Inquiry. Six legal experts, appointed by the president of the republic on the recommendation of the House of Peoples Representatives shall have professional competence and high moral standing. Three persons designated by the House of Federation (HOF) from among its members.¹⁴ The Council of Constitutional Inquiry shall have power to investigate constitutional disputes. The Council, upon consideration of the matter, find it necessary to interpret the constitution, and submit its recommendations thereon to the House of the Federation.¹⁵ The recommendation of the Council to the decision of the House of Federation (HOF) is basic. But there are one situation the absence of the recommendation council of constitutional inquiry. according to FDRE constitution Art 84 /3/ /a/" when issues of constitutions interpretation arises in the courts, the council shall; remand the case to the concerned court if it finds there is no need for constitutional interpretation; the interpreting party, if dissatisfied with the decision of the council, may appeal to the house of federation" there is difficult questions because House of Federation can not decides with out the recommendation of Council of Constructional Inquiring. So the House of Federation how interpret the constitution

without the recommendation of Council at the time of appeal? The House Lack of competence to decide the appeal of dissatisfied party case without the recommendation of Council of Constitutional Inquiry. Because it is contradict with the purpose of establishment of Council of Constitutional Inquiry. The council establishment purpose is render professional services of due efficient and effectiveness to the House of Federation.

END NOTE OF CHAPTER THREE

1. St.Mary's University College, constitutional law modjule-1, P.44.
2. Ibid, p.46
3. St.Mary's University College, constitutional law modjule-3, P.29.
4. Ibid, p.50.
5. Ibid, p.53.
6. Art-62 of the FDRE constitution.
7. Abera Degefa, The Scope of Rights of National Minorities under the constitution of the Federal Democratic Republic of Ethiopia, vol.1, p.134 and 135.
8. Pro-No-250/2001, preamble.
9. Vikic.Jackson and Mark Tushnet, comparative constitutional Law, New York foundation press, 1999, p.465.
10. Art-62(3) of the FDRE constitution.
11. Supra Note_9, p.465.
12. Art-67(1) of the FDRE constitution.
13. Pro-No-250/2001, Art-13(1).
14. Art-82 of the FDRE constitution.
15. Art-84(1) of the FDRE constitution.

Conclusion

Constitution is the supreme law of the land. Countries of the world have come up with their own constitutional laying down the basic principle of human right, the form of government, and system of controlling it. There is various kind of constitution in the world. Which are written and unwritten, rigid and flexible, and federal and unitary. Constitutional interpretation is the act of explaining of what is not immediately plain or explicit or unmistakable as being in accordance with or authorized by the constitution of a state. Prior to the FRDE constitution, Ethiopia was adopted three constitutions. The first written constitution in Ethiopia is the 1931 constitution. It's revised in 1955. This two constitutions under the reign of Haile Selassie. The Derg constitution in 1987. There is centralized and decentralized model to interpret the constitution in the world. Centralized (European) model, there are constitutional court to interpret the constitution. Decentralized (American) model the ordinary court can interpret the constitution.

The court established in the constitution. The constitution has mandate to interpret the constitution. Where human right provision are called. The decision of court is not the final one; Because House of Federation has ultimate power to interpret the constitution. The House of Federation elected from Nation, Nationalities and Peoples of Ethiopia. The House of Federation a very limited number of sessions, minimum of two sessions annually. The presence at meeting of two-third of from the members of House of Federation. The rule of the decision is majority vote among presence members. The term of members is five years. The Council of Constitutional Inquiry established to render professional service to House of Federation. The Council contains eleven members. The president and vice-president of federal supreme court who shall serve as its president and vice-president. six legal expert designated by the Republic president on the recommendation of House of People's

Representatives. The other three designated among the member of House of Federation. The Council have regular quarterly meeting. The court or interested person can submit the case to the Council. the Council consider the case and submit to House of Federation for the final decision. There is no need constitutional interpretation the Council remands the case to appropriate court. Dissatisfied party can appeal to house of Federation.

Finally there are various problems in the constitutional interpretation in Ethiopia. The first is of House of Federation position is not clear by the doctrine of separation of power. It is not legislative, executive, or judicial organ. Because according to the preamble of the FDRE constitution house of Federation is political organ. But the FDRE constitution also contain legal document. The doctrine of separation of power the judiciary has interpretation power. The House of Federation not judicial organ.

The other is the representation problem. The number of representative high gap between one state the other. This consequence the smaller seat in number loss their decision and become in favor the larger one.

The other demerit is, the Council is advisory body to House of Federation. It is to be effective and efficient the interpretation system. Because the mistake of constitutional interpretation is imminent. Most of the member of House of Federation layman to interpret the constitution. At the time of appeal the house of Federation difficult to decide with out the recommendation of Council. So the house Federation lack of competence.

Finally the member of House of Federation elected from state council. The state council is the collection of different political party members. The influence of this the House of Federation not being independent body. And also the sit of house of Federation and the council not sit all the year round. So there will be staffing of cases.

Recommendation

The power of House of Federation arguable according to the preamble of FDRE constitution. But the FDRE constitution also contain legal document. According to the doctrine of separation of power interpretation of law power given to judiciary. The righter argue that, the FDRE constitution shall be amend to give the interpretation power to the house of Federation and the court, and demarcate between the legal document and political document. The legal document shall interpret by court . The political document interprets by House of Federation.

The number of representative in House of Federation very high gap one state to the other. The owner of high seat totally influence the lower one at the time of voting. The writer believed that, the gap shall be edit. Lower seat shall be adding some representative.

The House of Federation must be competent body. The writer argues that, the constitutional interpretation is more technical. There is different technique to interpret the constitution. The legal expert shall interpret the constitution. So at the time of election the Ethiopia Nation, Nationalities and Peoples shall give priority to legal expert. According to the argument the procedural problem in this paper also solved.

Finally the sit of House of Federation and the council shall be added, to protect staffing of cases.

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