

THE RELATIONSHIP BETWEEN THE FEDERAL AND REGIONAL STATES' CONSTITUTIONAL REVIEW SYSTEM IN ETHIOPIA: THE CASE OF OROMIA REGIONAL STATE

*Muluken Kassahun**

ABSTRACT

Ethiopia follows non-judicial model of constitutional review system, which empowers the House of Federation (HoF) and the Council of Constitutional Inquiry (federal CCI) at federal level. At Oromia level, the Constitutional Interpretation Commission (CIC) and the Regional Council of Constitutional Inquiry (regional CCI) are the organs entrusted with the task of constitutional reviewing. This article has examined the vertical relation between these federal and regional¹ constitutional review systems. The study reveals that there are no specific rules or mechanisms that govern the impact of diversity of constitutional recognition of rights between the federal government and the regional state. Moreover, there is no system to resolve or demarcate jurisdictional overlap of constitutional claims that may arise on laws, over decisions and on cases decided by cassation over cassation. Consequently, the HoF has monopolized all constitutionality claims by devouring the power and functions of the regional constitutional review organs.

Key Words: *Constitutional review, FDRE Constitution, Revised Oromia Constitution(ROC), House of Federation (HoF), Constitutional Interpretation Commission (CIC), and Council of Constitutional Inquiry (CCI).*

*LLB (Jimma University), LLM (Ethiopian Civil Service University), Lecturer of Law at Mettu University School of Law. Email address: [Mulka2003 @ gmail .com](mailto:Mulka2003@gmail.com) .

¹ Central government and Constituent units are known by different names in federal countries. Many federations refer to central government as the 'federal government' including Ethiopia, While in India (Union Government), Spain (State), South Africa (National government), and in Australia designated as a Commonwealth government. Similarly, the term 'states' commonly used in Australia, Brazil, Ethiopia, India, Malaysia, Mexico, Nigeria, and the USA. The term 'province' preferred in Argentina, Canada, Pakistan and South Africa. Other terms 'Lander' in Germany and 'Canton' in Switzerland employed. (See George Anderson, *Federalism: An Introduction*, Oxford University Press, 2008, Pp.2-3). In this paper, the terms 'central' and 'federal' are used to refer to the central government and the terms 'regional', 'state', and 'sub-national government' are interchangeably used to refer the Ethiopian Constituent units.

1. INTRODUCTION

Ethiopia adopted Ethnic/Multinational federalism, at least *de jure*, since the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution. At federal level, the constitution empowers the House of Federation (*here after* HoF) to entertain constitutional disputes while it is silent on how to interpret state constitutions. Due to such constitutional space, among nine regional states of the country, the Southern Nations, Nationalities and Peoples (SNNP) authorizes the Council of Nationalities and the remaining eight states entrusted the function to the organ called Council of Constitutional Inquiry (*here after* CIC).² Moreover, the regional states have adopted a diversified approach to select the members of this organ. However, in almost all states, the composition of members, expressly or impliedly involves the two-fold formula of ethnic identity and political affiliation. The Constitutional Interpretation Commission (*here after* CCI) is separately established to serve as an advisory body of these constitutional adjudicating organs.

The Revised Oromia Constitution (*here after* ROC), in force, assigns the task to the regional CIC and CCI. These organs have started operation in 2014 after nearly two decades of its recognition in the regional constitution.³

The Federal and regional constitutional review organs are empowered to perform their function independent of one another. In doing so, governing the relationship between the central and state constitutional review is vital, among other things, to balance the independent interpretation of state constitutions (self-rule) and federal unity values (shared rule), and to avoid overlap of jurisdiction that may occur between the federal and regional constitutional reviews.⁴ Furthermore, because of a substantial number of

² Christophe Van der Beken, *Minority Protection in Ethiopia - Unraveling and Improving Ethnic Federalism*, *Recht in Afrika* (2010), Pp.262-263.

³ Interview with Ob. Abdi Kedir, Senior Legal Expert at Oromia CIC, Finfinne, November 28, 2015.

⁴ Getahun Kassa, *Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian System*, *Afrika Focus* (2007), Vol. 20, No. 1-2, P.76.

cases that were brought to the Federal CCI arise from Oromia,⁵ it's decisive to deal their linkage. In spite of this, there is no law which governs the relationship between central and sub-national constitutional reviews. In effect, currently, the federal constitutional adjudicating organs admit and render decisions on the cases, which is more appropriate to be entertained by regional constitutional adjudication organs. This act demises the power and function of Oromia constitutional review organs that are empowered by the ROC.

Hence, this article intends to examine the relationship between the federal and state constitutional reviews in Ethiopia with particular emphasis on the Oromia constitutional review system. To this effect, the writer have conducted interview with concerned federal and regional officials and analyzed the recently decided cases in addition to examining primary and secondary sources. In this regard, the scope of the study does not extend to considering administrative relations and investigating the standards for the success of constitutional reviews such as independence, impartiality, and competence of the organ and its members. Instead of that, the paper focuses on identifying how these organs entertain the constitutionality claims that are brought before them particularly on issues tied with human rights.

The article, in addition to introducing both tier constitutional review system, answers the following questions: How the Oromia regional state interpret the regional diversified constitutional rights within the FDRE Constitution frameworks? To what extent the regions have autonomy, from federal constitutional interpretation, to interpret the regional constitutional rights? Oromia regional state in interpreting its own constitution what possible conflict of interest over jurisdiction of entertaining constitutionality issue may arise with federal constitutional review? What is its impact and how could we resolve the problem? To what extent both tier constitutional review organs cooperate and control one another in exercising their respective powers and functions?

⁵ For instance, from April 20/2015- March 17/2016, 265 cases were brought to Federal CCI from all regions, including Addis Ababa and Dire Dawa cities. From all cases, 52 (nearly 20%) of them arises from Oromia region (Interview with Ms. Gebeyanesh Abebe, Federal CCI Registrar Officer, Addis Ababa, March 17, 2016).

With the view to address the above raised questions the paper is organized into six sections. Following this introductory section, section two reviews the current federal and Oromia constitutional reviews with the view to present their legal and institutional frameworks with their common features. It also highlights the general guiding rules that can regulate the relationship between each tier review system. Section three briefly examines the relationship between the federal and regional constitutions in interpreting the diversified human rights incorporated in each constitution. This helps us to understand the upshot of convergent and divergent rights on interpreting chapter three of both constitutions. Section four demonstrates the possible grounds of jurisdictional overlap and ways of fixing the problem in order to overcome the problem of forum shopping and duplication of efforts. Then after, the scope of mutual responsibility between the two review systems will be examined in section five. This section aims at showing the demarcation between the federal comity and the level of integration as well as vertical check and balance among each review systems. Finally, section six concludes the article.

2. BRIEF OVERVIEW OF THE FDRE AND OROMIA REGIONAL STATE CONSTITUTIONAL REVIEW SYSTEM

According to Hans Kelsen, a constitution without constitutional review is just like not having a constitution at all since the constitutional adjudication system is an institutional safeguard for constitutionalism.⁶ That is why adopting constitutional review system is proliferated at alarming rate since World War II. Toms Gins Burg and Mila Versteeg reveal that from 1787 of first USA constitution up to 1951, some 38% of all constitutional systems had a constitutional review, whereas, by 2011, this percentage increased to 83% out of 204 countries.⁷ However, the existence of a constitutional review system alone is not sufficient to guarantee for constitutionalism.

In countries having federal and state constitutions, some nation's constituent units constitutions are interpreted by the federal government (e.g. by the

⁶Dieter Grimm, *Constitutional Adjudication and Constitutional Interpretation: Between Law and Politics*, NUJS Law Review (2011), Vol.15, No. 4, P.18.

⁷Tom Ginsburg & Mila Versteeg, *Why Do Countries Adopt Constitutional Review?* Journal of Law, Economics, and Organization (2014), Vol. 30, P.588.

Federal High court in Switzerland).⁸ In Ethiopia, HoF is the final constitutional interpreting body of the federal government. The HoF is structurally upper legislative house and functionally performs acts other than lawmaking.⁹ This body comprises the representatives of the nations, nationalities, and peoples of Ethiopia, which the FDRE Constitution empowers them as the source of sovereign power in the country.¹⁰ Currently, the House composes 153 members that weightily represent 76 ethnic groups.¹¹ Each member, legally speaking, shall be selected by State Council or directly elected by people.¹² In addition to this, the federal CCI, advisory

⁸Anne Twomey, *The Involvement of Sub-national Entities in Direct and Indirect Constitutional Amendment within Federations*, P.2 (Retrieved from <http://camlaw.rutgers.edu/statecon/workshop11greece07/workshop11/Twomey.pdf>, <last accessed on December 8, 2015>.

⁹ FDRE Constitution, Art.53 & 62.

¹⁰ FDRE Constitution, Arts. 8 and 61.

¹¹ According to Art. 61(2) of the FDRE Constitution, each nations, nationalities, and peoples shall be represented in the House of Federation by at least one member. Each Nation and Nationality shall be represented by one additional representative for each one million of its population. The current ethnic representation in the HoF looks as follow:

- i. From Oromia Region Oromo represented by 31 members,
- ii. From Amhara Region, among 29 representatives that represent six ethnic groups of the region, the representation scheme shows Amhara (24), Argoba (1), Waghimra (1), Hawi (1), Kimant (1) and Oromo (1) representatives,
- iii. From Tigray Region among 8 representatives from the region, three ethnic group represented as Tigre (6), Erob (1) and Kunama (1),
- iv. From Afar Region, Afar ethnic group represented by two (2) members,
- v. From Somale Region, Somali Ethnic group represented by 6 persons,
- vi. From SNNP among 67 representatives that represent 55 ethnic groups of the region Sidama (4), Gurage (3), Walayta (3), Kaficho (2), Silte (2), Hadiya (2), Gamo (2), Gedeo (2) and the remaining ethnic groups independently represented by 1 members in the HoF.
- vii. From Benishangul Gumuz Region, five indigenous ethnic groups (Berta, Gumuz, Shinasha, Mao, and Komo) represented by one member, separately.
- viii. From Gambella, four indigenous ethnic groups of the region (Majanger (1), Anyuak (1), Nuer (1) and Upo (1)) represented totally by four members in the HoF and
- ix. From Harari Region, Harari ethnic group represented by one member. (Interview with Ato Woldu Merineh, Constitutional Interpretation and Rights Affairs Directorate Director, House of Federation, Addis Ababa, January 27, 2016); የኢ.ፌ.ዴ.ሪ የመንግስት ኮሙኒኬሽን ጉዳዮች ጽ/ቤት፣ የኢትዮጵያ ዓመታዊ መጽሐፍ (2008)፣ P.23, 29. This data implies among 76 ethnic groups represented in the HoF only 14 (Fourteen) have more than one million population, which constitute about 18.4 % of total ethnic groups. These 14 ethnic groups occupy more than 2/3rd of HoF seats whereas the remaining 62 ethnic groups (81.6%) have below one million populations separate occupy less than 1/3rd of the house seats.

¹² Here, the FDRE Constitution doesn't distinguish the circumstances of State Council selects members of HoF or selection through conducting direct election. Though, the FDRE

body of HoF, comprises eleven members selected from the judiciary, HoF and those selected by parliament and executive.¹³ The details of the establishment, organization, power, and function of HoF and CCI is provided in Proclamations No. 251/2001 and, No. 798/2013 respectively.

The 2001 ROC entrusts the function of constitutional adjudication to CIC and its advisory body, regional CCI. The establishment laws of the CIC and CCI enacted by *Caffee* are Proc. No. 167/2011 and 168/2011, respectively. The CIC has been mandated to resolve any constitutional dispute that arise in Oromia laws and has the duty to ensure regional constitutional supremacy. The body comprises of representatives nominated based on the principle of territoriality from each District Council. Each district, including Urban Councils, is represented by one member.¹⁴ Thus, the CIC has composed 265 rural district and 44 Urban Council representatives.¹⁵

The Oromia CCI, advisory body of CIC has mandated to investigate the existence of a constitutional dispute and submit its recommendation to CIC for a final decision.¹⁶ The organ comprises 11 members; President and Vice President of Oromia Supreme Court, respectively who serve as Chairperson and Vice Chairperson of CCI. Six lawyers are also appointed by *Caffee* up

constitutional explanatory note tries to point out the circumstances direct election applicable. Accordingly “*direct election conducted where disagreement happen between members of State Council having more than one NNP, on who shall represent and who will be represented in the HoF*” (Translation mine). The contrario reading of this statement implies that State Councils which represent only one ethnic group to HoF such as in case of Oromia and Somale, even if disagreement arises on representation, they can’t resolve by direct election. But, this statement was not provided in the FDRE Constitution. (Constitutional Explanatory note, Unpublished, P.116 (Retrieved from <http://www.abyssinialaw.com/constitutions#> , last accessed on March 19, 2016). Practically, direct election has never been conducted.

¹³Accordingly, the President and Vice President of the Federal Supreme Court, serve as Chairperson, and Vice Chairperson of CCI, respectively, Six lawyers appointed by President of Republic up on the recommendation of House of Peoples’ Representatives on the basis of their professional excellence, three persons designated by HoF from its members (See FDRE Constitution, Art. 82).

¹⁴ A Proclamation Enacted to Establish Oromia Region Constitutional Interpretation Commission and Determine Its Power and Duties, Proc. No. 167/2011, Art. 2(9).

¹⁵ Interview with Abdi, *Supra* note 3. This number currently increased to 315 from 309 *Woreda* and Urban Councils due to recent restructure of Oromia Zones and *Woreda*’s.

¹⁶ Revised Constitution of Oromia National Regional State, Proc.No. 46/2001, Art. 69(2); A Proclamation Enacted to Establish Oromia Council of Constitutional Inquiry, Proc.No. 168/2011, Art. 8(1).

on the recommendation of the Regional President and three other persons are designated by the *Caffee*¹⁷ presented by the speaker of *Caffee* for approval.¹⁸

Generally, both at federal and Oromia state tier, the winners of each election, periodically make up their own constitutional adjudicator. For this reason, local government electorates of each *Woreda*/Urban Council selects the Oromia CIC members, and the *Caffee*, regionally, selects Oromia CCI members and the representatives of Oromo nation to HoF. The ROC and FDRE Constitution used the term ‘constitutional interpretation’ and ‘constitutional dispute’ interchangeably. At both tiers, each organ is empowered to entertain the cases of abstract and concrete review¹⁹, political and non-political questions²⁰ and constitutional complaints²¹ through posteriori review system. Though, unlike Oromia CIC and CCI, the HoF is further authorized to give advisory opinion, consensually.²²

In Ethiopia, there is no law which specifically regulates the relationship between the federal and regional constitutional review systems even if such

¹⁷ The English Version of the ROC Art. 68(2c) doesn't require designation from *Caffee* members, whereas the Afan Oromo version (the final legal authority as per Art. 113 of ROC) require membership of *Caffee* for such designation.

¹⁸ Accordingly, the Oromia CCI composes the first two members from the judiciary, the appointment of those six legal experts involves the role of executive and legislative and the last three members represented from legislature itself. Though, unlike Federal CCI, all Oromia CCI members are directly or indirectly selected by *Caffee*. In case of final approval of 11 Federal CCI members, it involves at least three bodies (Parliament, President, and HoF). Also, in Oromia both legally and practically, there are no different procedures to be followed during the appointment and designation by *Caffee* (See Minute of *Caffee* meeting, 4th term, 1st year, 4th regular session, unpublished, 2011, P. 39).

¹⁹ The abstract review is a kind of review not incidental to cases, while the concrete review is an instant of an event of the case. The earlier is recognized in Oromia CCI Procl. No. 168/2011 of Art. 22 (4) as it says; “*A case requiring constitutional interpretation which may not be handled by courts may be submitted to the CCI by, at least, 1/3rd of the members of Caffee or regional executive bodies.* Also, Art. 3(2C) of the Federal CCI proclamation states “*constitutional interpretation on any unjusticiable matter may be submitted to the Council by one-third or more members of the federal or State Councils or by federal or state executive organs*”. Accordingly, Abstract review serves for non justiciable matters, for cases not handled by courts. Besides, the concrete review is constitutionally guaranteed in Art. 69(2) of the ROC and Art. 84(2) of the FDRE Constitution.

²⁰ Art. 22(4) of Oromia CCI Procl. No. 168/2011 and Art. 3(2C) of the Federal CCI Procl. No. 798/2013.

²¹ See Art. 22(1) of the Oromia CCI Procl. No. 168/2011 and Art. 5 of the Federal CCI Procl. No.798/2013.

²² Adem Kassie and Charles Manga Fombad, *Advisory Jurisdiction of Constitutional Courts in Sub-Saharan Africa*, The Geo. Wash. Int'l L. Rev. (2013), Vol. 46, P.98.

law is crucial to maintain the shared rule and self-rule principles of federalism, to celebrate the diversified guarantees of fundamental human rights and to overcome the possibilities of overlap of jurisdictions. Yet, there are some scattered general provisions in the FDRE Constitution that can possibly guide such relationships. For instance, the preamble swear for building one political and economic community,²³ supremacy of federal constitution (Art. 9), principle of federal comity (Art. 50/8), government duty towards fundamental human rights and freedoms of chapter three (Art.13)²⁴ and consistency clause (Art. 50/5) that mandate the central and regional governments conform with these provisions in performing their tasks. In the broadest sense, these clauses can also serve as guiding principles in dealing the linkage of federal and regional states constitutional review system in Ethiopia.

3. THE DIVERSITY OF RECOGNITION OF RIGHTS UNDER THE ROC AND FDRE CONSTITUTIONS AND ITS IMPACT ON INTERPRETING CONSTITUTION

The issue of fundamental human rights and freedoms are one of the core areas that could arise in the relationship between the federal and states constitutional review systems. The sub-national recognition of a diversity of rights as a symbol of constitutional autonomy can either be similar to or lesser or better protection than the federal constitution. This helps us to comprehend the extent of exercising autonomy in interpreting the regional states diversified constitutional rights within the FDRE Constitution frameworks or balancing self-rule (diversity) and shared rules (unity) values.

²³According to Dr. Assefa, the notion interrelated with the protection of minorities in the constituent units in a manner that strikes proper balance between the nationalities right to self-rule and the free movement of labor and capital as a matter of necessity (*See Assefa Fisseha, Federalism and Accommodation of Diversity in Ethiopia: A Comparative Study, (3rd ed., Nijmegen: Wolf Legal Publisher (ELP), 2010),P.384.*

²⁴ This provision states that ‘all Federal and State organs’ shall have the responsibility and duty to respect and enforce the fundamental human rights provisions of Chapter three. Those rights, also, shall be interpreted in a manner conforming to the principles of the international human rights instruments adopted by Ethiopia.

This conception is deeply rooted in the understanding of state constitutionalism as an intrinsic element of federalism.²⁵

3.1. IDENTICAL OR SIMILAR OR CONVERGENT PROVISIONS

In Ethiopia, adopting the provisions that are similar to federal constitutional rights is a simple choice of states autonomy rather than ordered by the FDRE Constitution. Many of the ROC fundamental human rights and freedoms of chapter three provisions are the reproduction of chapter three of the FDRE Constitution. In relation to the interpretation of those similar rights, there is no clear legal rule developed. In other federations, such as in Switzerland, when cantonal provisions do not expand beyond federal guarantees, they have no independent impact, but in USA and Germany, both have an autonomous impact and can be interpreted independently.²⁶ Although in those countries the supremacy clause applies only in case of a conflict between two rights provisions.

In our country, arguably, pursuant to Art. 13 (1 and 2) of the FDRE Constitution, both federal and states are required to interpret human rights provisions of Chapter three of the constitution to conform to the principles of international human rights (*here after, IHR*) instruments adopted by Ethiopia. Accordingly, the constitution does not order states to follow the decision of federal precedent rather they have a responsibility to follow IHR standard. This implies there is a parallel relation between state and federal constitutional review in relation to chapter three of both tiers constitution.

3.2. STATE PROVISIONS LESS PROTECTIVE OR RESTRICTIVE THAN THE FDRE CONSTITUTION

Restrictive protection of rights in state constitution occurs either of when state constitution protects the same rights as the federal constitution but restricts the scope of the protection offered, insert broader restriction or when

²⁵ Giacomo Delledonne, *Sub-national Constitutionalism: A Matter of Review*, Perspectives on Federalism (2012), Vol. 4, Issue 2, P. E-311.

²⁶Célin Fercot, *Diversity of Constitutional Rights in Federal Systems: A Comparative Analysis of German, American, and Swiss Law*, European Constitutional Law Review (2008), Vol. 4, No.2, Pp. 307-309.

they ignore certain rights protected by the federal constitution.²⁷ In USA, states should not go below federal constitution as Art. VI (2) of the USA Constitution declares as the supreme law of the land. Similarly, under Art. 49 of the Swiss Constitution, state constitutions can only guarantee protections that are at least equal to the federal constitutional requirements.²⁸

The FDRE Constitution recognizes the supremacy of federal constitution under Art. 9 and Art. 50 (5) require State Councils to adopt and amend state constitution consistent with the FDRE Constitution. This means if states adopt laws inconsistent or recognize rights below FDRE Constitution their effect will be null and void. But, in practice, the regional states including Oromia have incorporated conditions on some federally guaranteed rights. For instance, according to article 39 of the ROC, the right to secession is made conditional²⁹ which the federal constitution makes it unconditional right. Some argue this is a clear violation of the federal constitution as it limits the rights guaranteed under the federal constitution while others argue that this conclusion works only in the case of regions which the right to self-determination is given to more than one ethnic groups (Divided Sovereignty).³⁰

3.3. BETTER PROTECTION OF RIGHTS IN STATES CONSTITUTION

States can protect rights in a better way through broadening the scope of state constitutional rights or limit the restrictions that can be imposed on federal rights to stricter conditions.³¹ The regional states constitution protection of rights beyond the national minimum constitutional guarantees is an important area for sub-national constitutional textual innovation and evolution, which makes states to serve as a laboratory of democracy and a place of evolution of constitutional rights. For example, in the USA, various

²⁷ *Ibid.*

²⁸ *Id.*, Pp.310-311.

²⁹ According to Art. 39(4) of ROC, the right to secession is exercised when the right of internal self-determinations provided in Art.39(1-3) are suspended or encroached up on and when such cannot be remedied under auspices of the union with other peoples. This condition was not provided under Art. 39 of the FDRE Constitution.

³⁰ Teferi Bekele, *Human Rights Protection under the FDRE and the Oromia Constitutions: A Comparative Study*, Oromia Law Journal (2016), Vol. 5. No.1, Pp. 55-56.

³¹ Celin, *Supra* note 26, P.311.

states have recognized privacy and socio-economic rights & in Mexico, Oaxaca state constitution has provided rights for indigenous peoples that do not appear in their federal constitutions.³²

Similarly, Art. 32 of the ROC has broadened the scope and list of the components of freedom of movement³³ and the lists of non-derogable rights in the ROC³⁴ are wider in coverage than those provided in the FDRE Constitution. States are at liberty to interpret those rights in a better way. Yet, the Oromia CIC proclamation, Art.19 (3), and CCI statute Art. 18 (2) is problematic on the issue.³⁵ Both laws mandate each body to follow the interpretation of IHR instruments and HoF decision, not only on convergent rights but also on divergent ones. At this point, if interpretation of both documents is similar particularly on identical rights it's not as such problematic, whereas if both interpretations conflict each other, both laws are silent on which one should prevail.

However, both Art. 13(2) of the FDRE Constitution and ROC provide interpretation of chapter three should be in a way that conforms to IHR standards adopted by the country. This implies states are not mandated to follow federal precedent, rather ordered to meet the IHR standard. Also, non-inclusion of the term '*conform to HoF decision*' can't prevent to consider the

³² Robert F. Williams, *Teaching and Researching Comparative Sub-national Constitutional Law*, Penn State Law review (2011), Vol. 115, No. 4, P.1122; Martha F. Davis, *The Spirit of our Times: State Constitutions and International Human Rights*, New York University Review of Law and Social Change (2005), Vol. 30 , P. 372.

³³Accordingly, Art. 32 of the FDRE Constitution guarantees the right to liberty of movement, freedom to choose residence, the freedom to leave and return to the country, whereas Art. 32 of the ROC further recognize the right to work, possess and own property in the region.

³⁴The FDRE Constitution makes the prohibition against inhuman treatment (art. 18), equality before law (art. 25) and the right to self-determination (Art. 39 (1 and 2) as non-derogable rights, while Art. 108(4) of the ROC, in addition to above rights further extends non derogability of rights to right to life (Art. 15), right to security of person (Art. 16), the right to respect human dignity of detained or imprisoned person (Art. 21(1)), the right to recognition of status of person (Art. 24(1)), and freedom of thought, conscience and religion (Art.27(1)).

³⁵ Christophe Van der Beken, Sub-national Constitutional Autonomy in Ethiopia: On the Road to Distinctive Regional Constitutions, Paper Submitted to Workshop 2: Sub-national constitutions in federal and quasi-federal constitutional states, P.19 (*Retrieved from <https://www.jus.uio.no/english/research/news-and-events/events/conferences/2014/wccl-cmdc/wccl/papers/ws2/w2-vanderbeken.pdf>*, <last accessed on July 8, 2017>); Teferi, *Supra* note 30, Pp. 65-66.

later, as the federal standard is a minimum guarantee to protect rights in regional states.

4. JURISDICTIONAL OVERLAP BETWEEN OROMIA AND FEDERAL CONSTITUTIONAL ADJUDICATORS

4.1. GROUNDS FOR POSSIBILITIES OF JURISDICTIONAL OVERLAP

The dual system of constitutional control could cause the problem of jurisdictional overlap over its adjudication due to a number of resemblances exhibited in the contents of both constitutions, especially chapter three of federal and Oromia Constitution.³⁶ This could possibly happen on laws and decisions as well as due to judicial practice of cassation over cassation.

4.1.1. Overlap on Laws

The jurisdictional overlap over laws could happen when the same state laws have the possibility to be entertained by both tiers of constitutional adjudicators. For instance, if a law enacted by is inconsistent with the ROC, the case should be brought before the regional CCI and CIC. This may happen when the subject matter is purely regional matter disputed with regional constitution. However, if any law enacted by the regional legislature infringes federal constitution, the case will be brought before the Federal CCI. Because, Art. 84(2) of the FDRE Constitution empowers the federal CCI to review the constitutionality of any law enacted by State Council irrespective of whether it involves both pure state matter or federal issue. Moreover, there is a possibility when a law enacted by *Caffee* contravenes with the FDRE and ROC simultaneously. It is not clear to which body the case should be brought when these jurisdictional overlaps happen.

Correspondingly, unlike the FDRE Constitution, the ROC expressly empowered CCI and CIC to entertain the subordinate legislations enacted by executives when it is contested unconstitutional with the regional constitution as per Art. 69(2) of the ROC. However, it is silent towards who

³⁶ Getahun, *Supra* note 4, P. 95.

resolves if the regional regulation or directive contrast with the FDRE Constitution. Moreover, the FDRE Constitution has nothing to say on who should be engaged to resolve where state/federal subordinate legislations contravene with the federal constitution. In effect, at federal level, there are squabbles among scholars on the appropriate organ to entertain the constitutionality of subordinate laws of federal and regional governments.³⁷ However, irrespective of whether the constitutionality of subordinate legislations entertained by regular courts or federal CCI/HoF, it can't prevent the possibility of the occurrence of overlap of jurisdiction between the federal and states.

4.1.2. Overlap on Disposing Constitutionality of Decisions

The federal and state constitutional adjudicators review the constitutionality of decisions given by organs of government or public officials or acts of customary practices.³⁸ At this juncture, constitutionality issue arises not with the law, rather with the act or decision of a government body or officials. Such decision could have the possibility of violating both tiers constitution simultaneously. For instance, in the case between *Alima Mahamad vs Adem Abdi* on the issue of possession of the rural land, the federal CCI rules decision of the Oromia Supreme Court Cassation Bench and Federal Supreme Court Cassation Bench infringes Art. 40(3) and 40(4) of the FDRE Constitution and

³⁷Accordingly, several scholars argue regular courts have the power to review the constitutionality of laws issued by federal and regional executive bodies based on Art. 84(2), 13(1) and 79 of the FDRE Constitution. For instance, *Assefa Fisseha* and *Menberetsehai Tadesse* argued courts are empowered by the FDRE constitution to interpret laws other than federal and state proclamations. Similarly, Ibrahim Idris concludes the constitutionality of any administrative acts/decisions is within the jurisdiction of ordinary courts. Tsegaye Regassa, also, propagates courts have inherent power to review the constitutionality claim of laws that contradicts with the constitution. Other scholars expressly or impliedly propagate the centralized approach which the HoF/federal CCI are the sole institutions to resolve constitutionality disputes of any laws including regulations and directives based on cumulative reading of Art. 83(1) and 84. For instance *Yonatan Fisseha* states the courts have the power only to apply constitution and if constitutionality issue arises their role is limited to referral. *Girmachew Alemu* also notes courts are denied the power to interpret the constitution. *Getachew Assefa* moreover concludes all constitutional disputes involving federal and state proclamation, regulation, directive and decisions of federal and state organ within constitutional interpretation is the power of HoF/ Federal CCI.

³⁸ See Art. 9(1) and 62(1) of the FDRE Constitution and Art. 9(1) and Art. 67(1) of the ROC

ROC.³⁹ This implies the existence of the possibility of jurisdictional overlap on the issue.

Also, in the cases between *Mamite Seble vs Mulu Gurmu* (possession of rural farmland)⁴⁰, *Aliy Dawe vs Mahamad Adem* (sale of land)⁴¹, and *Wedere Tachbele vs Likke Gurmu* (possession of farmland and property claims)⁴², HoF quashed the decisions of courts based on the FDRE Constitution. The above cases can also have the possibility to be claimed before the Oromia CCI and CIC since the original claims were entertained by Oromia courts, based on regional laws. Besides, the governing proclamation of both state and federal constitutional review doesn't provide the exhaustion of local remedy by one another, except identity claims.⁴³ In such case, the claimant can bring his/her case to either of both institutions.

4.1.3. Judicial Practice (Constitutionality issue in Cassation over Cassation Cases)

The current judicial practice of cassation over cassation by the Federal Supreme Court in Ethiopia, in turn, became one of the contentious issues, on its compatibility with the overall federal system and its constitutionality.⁴⁴ This sub-section focuses on addressing the implication of cassation over cassation on the jurisdictional overlap of constitutional review.

³⁹ Federal CCI recommendation, *Alima Mahamad vs Adem Abdi*, File No. 713/04, Nehasie 07/2006 (August 13, 2014, Unpublished).

⁴⁰*Mamite Seble vs Mulu Gurmu*, Decision of HoF, Sene 18/2007 E.C (June 25, 2015, Unpublished).

⁴¹ *Aliy Dawe vs Mahamad Adem*, Decision of HoF, Sene 18/2007 E.C (June 25, 2015, Unpublished).

⁴² *Wedere Tachbele vs Likke Gurmu*, Decision of HoF, Sene 18/2007 E.C (June 25, 2015, Unpublished).

⁴³ A Proclamation to Consolidate the House of the Federation and the Definition of Its Power and Responsibilities, Procl. No. 251/2001, Arts. 19(1) and 20.

⁴⁴ See Muradu Abdo, *Review of Decisions of State Courts over State Matters by the Federal Supreme Court*, Mizan Law Review (2007), Vol.1, Pp.60–74; Mehari Redae, *Cassation over Cassation and its Challenges in Ethiopia*, Mizan Law Review (2015), Vol. 9, No. 1, Pp. 175-200; Hussein Ahmed, *Uniform Application of Law in Ethiopia: Effects of Cassation Decisions of the Federal Supreme Court*, African Journal of Legal Studies (2014), Vol. 7, Pp. 203-231.

The writer observes two kinds of arguments related to the Oromia and federal constitutional adjudicator officials. Some officials argue that the case should be brought before the Federal CCI as the case once decided by federal organ, state organs and officials have no legal and moral capacity to review or reverse the federal organ (Supreme Court) decision.⁴⁵ While others argue, both institutions can review the case based on the claimant's constitutional basis. Accordingly, if a person bases his claim on the ROC, it should be brought before Oromia CCI and if the claimant's constitutional claim base is the FDRE Constitution, such case can be entertained by the Federal CCI.⁴⁶ This argument, however, come up with the problem of forum shopping in entertaining constitutionality issue.

The current practice shows that the Federal CCI and HoF accept and decide on cases decided by Federal Supreme court Cassation Bench through cassation over cassation on state matters. The federal CCI, admit each case only by considering whether the issue involves the FDRE constitutional matter, rather than deciding on whether the jurisdiction of the case is appropriate for federal or state. This limits the Oromia CIC and CCI autonomy to exercise their powers entrusted by the ROC. Also, the act infringes the doctrine of vertical separation of power and federal comity principle that is provided under Art. 50 (8) of the federal constitution.

4.2. THE PROBLEM OF FORUM SHOPPING

Forum shopping is one of the negative impacts of jurisdictional overlap that is caused by the existence of the blend of multi-state legal intercourse and legal diversity (pluralism) through the use of the jurisdictional options to affect the outcome of a lawsuit.⁴⁷ Such incidence occurs where a plaintiff is provided with more than one forum to be chosen by his own calculus of interest. In a federal system, forum shopping exists due to plurality of

⁴⁵ Interview with Ato Woldu, *Supra* note 11; Interview with Abdi, *Supra* note 3.

⁴⁶ Interview with Ob. Melese Abayneh, the drafting member of Oromia CIC and CCI Proclamation, Jan. 22/2016.

⁴⁷Martha A. Field, *Removal Reform: A Solution for Federal Question Jurisdiction, Forum Shopping, and Duplicative State- Federal Litigation*, Indiana Law Journal (2013), Vol. 88, P.646.

jurisdiction between federal and states (vertical) and conflict of law among states (horizontal) choice of laws.⁴⁸

Ethiopia is also subject to the trouble, not only in regular court cases but also in cases of the federal and state constitutional review. In Oromia, for instance, CCI law provides 30 days period of limitation to claim for constitutional interpretation,⁴⁹ whereas the federal CCI law extends the time to 90 days.⁵⁰ So the party, who has been barred by period of limitation in Oromia, can claim his right before federal CCI. Still, according to Oromia CIC officials, if a person claims constitutional review after 30 days, they informally refer or recommend such party to claim before the federal CCI.⁵¹ This may further expose defendants into a vexatious position because his opponent with the view to weakening him institutes an action in an inconvenient forum. This can be reduced either by ways of demarcating the boundaries of the jurisdiction between federal and state constitutional adjudicator, or through adopting federal choice-of-law rules, which renders the plaintiff a choice between several laws for a given case.⁵²

4.3. WHO IS COMPETENT TO RESOLVE JURISDICTIONAL OVERLAP?

In Ethiopia, we have no clear mechanism or empowered institution to delimit the respective competencies of federal and state constitutional adjudicator,⁵³ unlike other federal countries that give the function to the highest court of ordinary judicial structure (such as the USA, Canada, and Australia) or to a specialized court (like Germany and Spain).⁵⁴ While Art.32 of HoF proclamation stipulate, '*misunderstanding other than border dispute, first*

⁴⁸ Robert A. Schapiro, *Polyphonic Federalism: State Constitutions in the Federal Courts*, California Law Review (1999), Vol.87, Issue 6, P.1468.

⁴⁹ See Oromia CCI Procl. No. 168/2011, *Supra* note 17, Art. 20(5) and Art. 21(4).

⁵⁰ See A Proclamation issued to Amend Council of Constitutional Inquiry, Procl. No. 798/2013, Art. 4(3).

⁵¹ Interview with Abdi, *Supra* note 3.

⁵² Amanda Frost, *Inferiority Complex: Should State Courts Follow Lower Federal Court Precedent on the Meaning of Federal Law?*, Vanderbilt Law Review (2015), Vol. 68, No. 1, P. 93.

⁵³ See Assefa, *Supra* note 23, P.341.

⁵⁴ Christophe, *Supra* note 2, Pp.262-263; Christophe Van der Beken, *Unity in Diversity – Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia*, Zuerich/Muenster, Lit Verlag, 2012, P.316.

can be resolved through peaceful means and discussion'. If this failed, HoF takes the responsibility to give solutions. Here, the term '*other than border dispute*' in its widest sense extends to deciding over the dispute of jurisdictional overlap between the federal and state constitutional adjudicators.

This assumes the HoF is a more competent body to resolve such conflict. Moreover, as the composition of the members of the HoF reflects the sovereignty of each nations, nationalities, and peoples, on one hand, and they are not regularly engaged in law making that can cause conflict of interest, on the other hand, makes the HoF is in a better position to be assigned to such job. Consequently, based on the scenario of Art. 32 of the HoF proclamation that provides the procedures required to be followed in resolving such misunderstanding; if such kind of dispute arise, the House first facilitate to disputant party to resolve their problem through amicable dispute resolution in order to come up with a win-win solution and only if this fails, it strives to give mandatory decision among parties on the issue.⁵⁵

5. SCOPE OF MUTUAL RESPONSIBILITY AMONG THE FEDERAL AND OROMIA CONSTITUTIONAL REVIEW ORGANS

5.1. CAN STATES REVIEW THE CONSTITUTIONALITY OF LAWS/ ACTS OF FEDERAL JURISDICTION?

The FDRE Constitution is silent on whether states review the constitutionality of laws or acts of federal jurisdiction. However, there are common issues such as shared powers, fundamental human rights, and delegated jurisdictions which both tiers of government are entrusted with.⁵⁶ For instance, as per Art. 9(2) of the FDRE Constitution, all federal and state organs should ensure the observance of the constitution, and also, as per Art. 13 to respect and enforce fundamental human rights. In such case, constitutional review is one of the mechanisms to ensure the adherence of constitution and enforcing of such rights.

⁵⁵ Constitutional Explanatory note, *Supra* note 12, P. 117.

⁵⁶ See FDRE Constitution, Art. 9(1-2), 13, 55(5), 55(2a) and 52(2d), 80(4-6).

According to Hamid, if an interested person challenges the decision of Oromia courts or tribunals as it infringes his rights guaranteed in the ROC, the CIC can review such decision even if the case is brought to it based on federal laws.⁵⁷ Because, the claimant challenges the decision of Oromia courts, not the federal law. But, if a person challenges the constitutionality of federal law instead of decision, such case should be brought before the federal CCI.⁵⁸ This implies the Oromia CCI and CIC can't review the constitutionality of federal laws. However, in connection to the jurisdiction of ordinary courts to review the constitutionality issue under the FDRE constitution, several scholars argue regular courts (even if they can't identify whether federal or state or both tier courts) are empowered to adjudicate constitutionality issue with the FDRE Constitution.

For instance, Dr. Assefa, the prominent scholar on Ethiopian Federalism, argues based on the contrario reading of Art. 84(2), “*subordinate regulations issued by the executive and decision of governmental bodies other than ‘laws’ (state and federal proclamation) were left to the courts*”.⁵⁹(*Emphasis added*) In the article, he doesn't specify which tier of court (federal or state or both) and scope of the power of each court to entertain the case. To the author, this statement can be interpreted into three different scenarios in relation to the power of state courts to review the constitutionality claims on the laws/acts of federal jurisdiction or arise under the FDRE constitution. The first understanding is both the federal and state courts are empowered to see the constitutionality issue of their respective subordinate legislations. The Second scenario is that state courts are empowered to see the constitutionality issue of both federal and state regulation brought before them. The third approach is only federal courts entertain the constitutionality issue of both federal and state regulation and directives.

In this regard, the writer argues state courts are not empowered to see the constitutionality of any federal law. Because, primarily state courts have no original jurisdiction on ‘federal laws’, rather they have delegated

⁵⁷Interview with Ob. Hamid Hirkiso, The Director of Oromia Constitutional Interpretation Affairs at Oromia CIC, Finfinne, January 28, 2016.

⁵⁸ *Ibid.*

⁵⁹Assefa Fisseha, *Constitutional Adjudication in Ethiopia: Exploring the Experience of HoF*, Mizan Law Review (2007), Vol. 1, No. 1, P.16.

jurisdiction.⁶⁰ In other words, federal jurisdictions delegated to each level of state courts are the maximum power of those courts on federal law, not minimum. That is why the FDRE Constitution has not empowered state courts to see the basic error of law aroused on federal law.⁶¹ In that sense, constitutionality issue is above error of laws. Thus, if states are not entrusted to entertain basic error of laws of federal jurisdiction, it's illogical to argue that they can entertain constitutionality issue of federal laws since the constitution is hierarchically above other ordinary laws.

For this reason, if constitutionality issues arise under federal law or with federal constitution in state courts, the courts should refer such matter to the Federal CCI. But, in case where subordinate laws are in dispute with the federal constitution in state courts, the constitution is silent. In the view of the writer, if the issue cannot be resolved by primary legislations based on the principle of avoidance⁶², it's better to refer to federal courts having original jurisdiction on the issue as state courts are not delegated to do so.

Hence, what is left to state courts regarding federal constitution is questionable. The Oromia Regular Courts Re-establishment Proclamation No.141/2008 Art. 3 states, state courts have '*safeguarding role*' towards both the FDRE and Oromia Constitutions. So, the cumulative reading of Art. 80 (4-6) of the FDRE Constitution that delegates federal jurisdiction to state courts and Art. 3 of Oromia Courts re-establishment proclamation imply that the regional states have to ensure the observance of the federal constitution by correcting unconstitutional decisions through indirect interpretation

⁶⁰ See FDRE Constitution, Art. 80 (4-6).

⁶¹ The FDRE Constitution delegate states courts to see factual matters of federal jurisdiction. In such case, as delegation exceptional, it should be expressly provided and interpreted narrowly. Thus, the silence of the FDRE Constitution presumed to be a denial of delegation, not only on dealing cassation of the federal jurisdiction, but also constitutional dispute arise under the federal law or with the federal constitution in state courts.

⁶²Based on the principle of avoidance, if subordinate federal and state laws contravene a primary legislation (proclamation), it is rendered null and void by the very reason of superior laws prevailing over inferior ones. Accordingly, direct constitutional review is the last resort remedy, and the court must attempt to resolve the constitutional issues indirectly through the application of proclamations before testing regulations directly against the constitution. Thus, there would be no need or way to test it immediately against the constitution directly, before comparing its normative content with other primary legislations which could offer solutions.(See Takele Soboka, *Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory*, African Journal of International and Comparative Law (2011), Vol.19, No.1, P.107.

(principle of avoidance) and, using the provisions of the constitution in their day to day activity other than entertaining constitutional disputes.⁶³ In this regard, the HoF decision on the case between *Aliy Dawe vs. Mahamad Adem*, also, fortifies this argument.⁶⁴ In this case, the HoF criticizes both the state and federal courts for non-quashing of sale of land between individuals. This implies courts have the duty to quash acts like sale of land that are constitutionally prohibited.

5.2. CAN THE FEDERAL CONSTITUTIONAL ADJUDICATORS REVIEW OROMIA CCI /CIC'S DECISION?

Art. 19 (1) of the HoF Procl. No. 251/2001 stipulates that there should be exhaustion of local remedy at the state level on identity claims with the possibility of review by the HoF. However, with regard to cases other than identity issues no law allows or prohibits whether the decision of states should be reviewed by the federal CCI/HoF. Also, no cases happen yet on the issue. In other federations, such as in USA, Switzerland, and Germany though diversity is still possible in state courts it has to be checked by the top federal judiciary or constitutional court in order to avoid the risk of divergent jurisprudence that is usually considered to be dangerous to the functioning and survival of federalism.⁶⁵ In Ethiopia, the FDRE Constitution and ROC, as well as the Oromia CIC law, are hushed on whether the HoF reviews or not, if the state CIC renders decision that contravenes the federal constitution.

However, arguably, even if there is a federal comity, such mutual respect as it should be within the federal constitutional supremacy, various scholars and officials argue as the HoF exceptionally review state constitutional adjudicators decision.⁶⁶ Because of, firstly, HoF is the ultimate defender of

⁶³ Interview with Mr. Tashoma Girma, Member of Oromia CCI Legal Expert, Finfinne, Jan. 22, 2016.

⁶⁴ *Aliy Dawe vs Mahamad Adam*, HoF decision Sene 18/2007 E.C (June 25, 2015, Unpublished)

⁶⁵ Celin, *Supra* note 26, P. 320.

⁶⁶ Confidential Interview with HoF official, Addis Ababa, January 2016; Interview with Melese, *Supra* note 46; Solomon Emiru, Compatibility of the Revised Oromian National Regional State Constitution with the FDRE Constitution with Respect to Adjudication of

the constitution and entrusted to correct erroneous decision of any organ against the constitution as per Art. 9 and 62 (1) of the FDRE Constitution. Accordingly, the HoF can review the CIC decision, not for the very reason of involving the FDRE Constitution issue, but if the CIC decision violate the FDRE Constitution. This emphasizes that the FDRE Constitution adopts the doctrine of constitutional supremacy, unlike USA where the Supreme Court can review state decision when it violates the '*federal law*'.⁶⁷ This is because USA follows federal law supremacy (paramountcy clause).⁶⁸

Another justification for HoF to review the state CIC decision is the consistency clause of Art. 50(5) that apply to all regional laws and acts based on Art. 9 (1) of the FDRE Constitution. So, if any contradiction happens between the Oromia CIC decision and FDRE Constitution, HoF has the duty to ensure consistency principle through reviewing such decision. In addition, as per Art. 13 (2) of both tiers constitution, states are required to interpret chapter three of the constitution in conforming to IHR standards adopted by the country. Hence, if the Oromia CIC decides against such international standard, the HoF is required to correct the decision.

Finally, it is important to address the above arguments effect on states autonomy. In view of that, if the HoF can decide on state divergent rights that are protected in better way, it's against the principle of federal comity as such act amounts to arbitrary intrusion on states exclusive competence. Exceptionally, if such state's decision will have risk to build one political and economic community and the survival of shared rule of federalism the HoF should have the power to review such decisions. Besides, with respect to convergent matters, the diversity of decision by state constitutional

Constitutionality Issue and Its Possible Effects(AAU Faculty of Law, Unpublished LLM Thesis, June 2011).P.69.

⁶⁷ In the USA, based on the Doctrine of '*adequate and independent state ground*', the Supreme court has no jurisdiction to review a state decision which is adequately based on state grounds. Consequently, state decisions which extend protections beyond those provided by the federal constitution will be respected by the federal courts and will not be subject to review even if the case also raises federal constitutional issues only so long as no '*federal law*' is violated. (See Celin, *Supra* note 26, P. 318).

⁶⁸ See L.F.M. Besselink, *The Protection of Human Rights in Federal Systems- The case of Ethiopia*, Ed. by Yimam, et. al, *Ethiopian Studies at the End of the Second Millennium Proceedings of the 14th International Conference of Ethiopian Studies*(Institute of Ethiopian Studies, Addis Ababa, Vol.3, 2002), Pp. 1365-1368.

adjudicators should be respected and tolerated by the federal CCI/HoF unless such judgment clearly infringes the FDRE Constitution. In doing so, the HoF should be careful from over utilizing and misusing its power.

6. CONCLUSIONS AND RECOMMENDATIONS

The current model of constitutional interpretation in Ethiopia is operated by the CCI and the HoF at the federal level. This mandate is assigned to the CIC and State CCI in regional states except for SNNP that entrust the function to Council of Nationalities. The constitutional review organs at both federal and regional level are empowered to perform their function independent of one another. In Ethiopia, there is no legal parameter and institutional frameworks that govern the relationship and the impact of diversity of recognition of rights between the federal and state constitutions. However, even if states are not required to adopt identical rights provided in the FDRE Constitution, they are required to guarantee the protection of the rights at least equal to what is provided in the FDRE constitution. Actually, states including Oromia have included several identical rights, have restricted some rights and have protected some rights better than the federal constitution. Also, the ROC and, the FDRE Constitution do order states to follow the decision of HoF precedent in interpreting the rights guaranteed in the regional constitution.

Jurisdictional overlap on constitutional review between the federal and regional state mechanisms may likely occur on entertaining state laws, and final decisions of government bodies including judgments given on cassation over cassation cases. The Federal CCI and HoF are currently accepting and deciding cases decided by the Federal Supreme Court Cassation bench through cassation over cassation. This limits the Oromia CIC and CCI autonomy to exercise their powers entrusted by the ROC. Also, the problem of forum shopping is observed between each review system particularly in the case of period of limitations.

Further, this paper argues that the HoF is the more appropriate organ to resolve the jurisdictional overlap since the HoF is the ultimate defender of the constitution and reflects the sovereignty of NNP. Elsewhere, regions ensure the observance and respecting to the FDRE Constitution through indirect constitutional interpretation such as correcting unconstitutional

decisions or acts and, guided by the provision of the constitution in their regular activity other than disposing of constitutional disputes. Further, the decision of Oromia CIC should not be reviewed by HoF, unless such decision clearly violates FDRE Constitution and is to endanger the survival of federalism.

For aforementioned shortcomings,I forward the following recommendations:

- There should be guiding rules and strong governing institution that regulates the relationship between state and federal constitutional review to balance state autonomous interpretation and national unity principle. In doing so, the rights guaranteed in state constitutions should provide at least equal or better protection than federally guaranteed rights and in the event of the occurrence of lesser protection, there should be a strong institution or mechanisms that correct such errors. To realize this, it is better to establish a separate constitutional court like most European states with which Ethiopia shares the parliamentary system of government.
- In order to reduce the possibility of jurisdictional overlap the boundaries of of the jurisdiction between federal and state constitutional review should be clearly demarcated. Consequently, there should be only one jurisdiction where the plaintiff could bring suit, use system of having a federal choice-of-law rules in which the plaintiff has a choice between several laws for a given case and/or through requiring each party first exhaust the remedies of state constitutions.
- The Oromia CIC proclamation, Art. 19(3) and CCI statute, Art. 18(2) should be repealed since it limits the interpretation of fundamental human rights to the HoF decision instead of conforming to the international human rights standards adopted by Ethiopia.
- The Federal CCI and HoF should refer the constitutionality claims that are alleged based on state laws, to the concerned regional constitutional adjudicating organs.