

# The justiciability of human rights in the Federal Democratic Republic of Ethiopia

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## Summary

*Making human rights domestically justiciable by clearly defining their content and subjecting them to judicial and quasi-judicial mechanisms of enforcement is important for their effective protection. Although a legal framework for the justiciability of human rights exists in Ethiopia, the judicial practice reveals some problems. Lawyers and courts tend to avoid invoking and applying human rights provisions in the Constitution of the Federal Democratic Republic of Ethiopia and ratified international human rights treaties which form part of the law of the land. There is confusion regarding the mandate of the House of Federation to 'interpret' the Constitution. Procedurally, the basic laws of the country limit 'standing' in human rights litigation to those with a vested interest, failing to make public interest litigation possible and hence limiting the justiciability of rights. The article examines the justiciability of human rights in Ethiopia from a substantive, jurisdictional and procedural perspective. It juxtaposes law and practice in an attempt to show the extent to which rights are justiciable in the Ethiopian legal system.*

## 1 Introduction

Domestic legal systems take precedence over international human rights systems in terms of their effectiveness in the protection of human rights. This is because domestic systems offer a more accessible forum for victims of violations and because they have more effective enforcement mechanisms. The effective protection of human rights requires, among others,

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that they be justiciable. Justiciability refers to the capability of rights to be enforced by a judicial or quasi-judicial organ and the existence of procedures to contest and redress violations. The extent to which rights are justiciable at any level depends on the content or definition of rights and the existence of procedures for their judicial and/or quasi-judicial enforcement. This is not, however, to forget the role progressive judges play in ensuring the practical justiciability of rights. It is also worth noting that making rights justiciable is only one of the ways of protecting them – policy and related measures should also be taken to realise human rights.

In elaborating a framework for the domestic protection of human rights, emphasis is usually placed on their inclusion in a constitutional bill of rights and ordinary legislation and the reviewability of their implementation by judicial and quasi-judicial organs.<sup>1</sup> The effect of international human rights instruments is also recognised.<sup>2</sup> Less attention is paid to the existence of procedures that allow persons or organisations to institute cases on behalf of victims of violations of human rights (*actio popularis*). These substantive, jurisdictional and procedural elements of the protection of human rights determine the extent to which rights are justiciable in a domestic legal system. This article evaluates the laws and practices in Ethiopia with regard to the above components of human rights protection.

Ethiopia is a federal state with nine regions and two administrative cities. While there is a federal Constitution with nationwide application, the regional states do also have their own constitutions with provisions on human rights and constitutional interpretation modelled after the former. As its title suggests, the article deals with the system established by the Ethiopian Constitution,<sup>3</sup> and hence does not deal with regional constitutions. Furthermore, both federal and regional legislative bodies have the power to issue legislation relating to human rights that are compatible with the provisions of the Constitution.<sup>4</sup> As a result, there is a wide array of ordinary legislation that provide for specific justiciable rights in Ethiopia.<sup>5</sup> This contribution does not discuss all such legislation in any depth.

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<sup>1</sup> See, eg, S Liebenberg 'The protection of economic and social rights in domestic legal systems' in A Eide *et al* (eds) *Economic, social and cultural rights: A textbook* (2001) 55-84.

<sup>2</sup> F Viljoen 'National legislation as a source of justiciable socio-economic rights' (2005) 6 *ESR Review* 7.

<sup>3</sup> Constitution of the Federal Democratic Republic of Ethiopia, Proclamation 1/1995.

<sup>4</sup> Arts 55 & 9 Ethiopian Constitution.

<sup>5</sup> Such ordinary legislation to give effect to constitutionally-protected rights and their justiciability are not usually questioned. Legislation regulating aspects of civil and political rights includes the Proclamation to Establish the Procedure for Peaceful Demonstration and Public Political Meeting 3/1991, the Mass Media and Freedom of Information Proclamation 590/2008 (amending the Press Law Proclamation 34/92), the Broadcasting Service Proclamation 533/2007, and the Proclamation to Make the Electoral Law of

## 2 Entrenchment of human rights in the Bill of Rights of the Ethiopian Constitution

Human rights are most securely protected where they are entrenched as fundamental norms of a supreme constitution through a comprehensive bill of rights with strict amendment requirements and where they are enforceable by courts of law. According to article 9 of the Ethiopian Constitution, the Constitution is the supreme law of the land and any law, customary practice or decision of an organ of state or a public official which contravenes it shall be of no effect. Chapter 3 provides for a long list of ‘fundamental rights and freedoms’ grouped as ‘human rights’ and ‘democratic rights’.<sup>6</sup> Aside from this seemingly artificial distinction between rights,<sup>7</sup> the Bill of Rights of the Constitution enshrines classic civil and political rights, economic, social and cultural rights and collective rights. Article 105 of the Constitution ends with an

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Ethiopia Conform with the Constitution of the Federal Democratic Republic of Ethiopia 111/1995 (amended by Proclamation 438/2005). The Revised Family Code (Proclamation 213/2000) was adopted to replace the family law provisions in the 1960 Civil Code of Ethiopia (Proclamation 165/ 1960), which were found inconsistent with the constitutional right to equality of women, and to give effect to arts 34 and 35 of the Constitution, which provide for marital, personal and family rights, and the rights of women respectively. While the newly adopted Criminal Code (Proclamation 414/2004) protects various aspects of the rights of individuals (including the right to life, bodily integrity, the right to property, etc) by making certain conduct punishable, the 1961 Criminal Procedure Code of Ethiopia, which is also under revision, provides for the rights of accused and detainees. Among economic, social and cultural rights there is legislation governing such rights as the right to work (Labour Proclamation 377/2003), the right to housing and land (Proclamation Providing for the Expropriation of Urban Lands and Extra Houses 47/1975; Condominium Proclamation 370/2003; Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation 455/2005; and Urban Land Lease Holding Proclamation 272/2002), and the right to health (Public Health Proclamation 200/2002; HIV/AIDS Prevention and Control Council and the HIV/AIDS Prevention and Control Office Establishment Proclamation 276/2002; and Drug Administration and Control Authority Proclamation 176/99). There are also proclamations adopted to regulate environmental rights (Environmental Protection Proclamation 295/2002; Environmental Pollution Control Proclamation 300/2002; and Environmental Impact Assessment Proclamation 299/2002). The Civil Code of Ethiopia also enshrines provisions relating to all categories of rights.

<sup>6</sup> Arts 14-44 Ethiopian Constitution.

<sup>7</sup> The basis for the distinction between human and democratic rights is not clear from the Constitution, neither is one able to draw a conclusive basis of distinction from the nature of rights and freedoms listed under these categories. However, art 10 of the Constitution and some commentators indicate that human rights and freedoms emanate from the nature of mankind and democratic rights and are those which are ‘conferred’ upon their beneficiaries or holders in a democratic system. A close look at the rights listed under the latter heading shows that the distinction is artificial in that they include rights classically defined as human rights. This fictitious categorisation also does not affect the justiciability debate as the relevant provisions of the Constitution refer to them by the general name ‘fundamental rights and freedoms’.

extremely stringent requirement for the amendment of its chapter on fundamental rights and freedoms.<sup>8</sup>

## 2.1 Rights protected

The Ethiopian Constitution enshrines robust provisions on civil and political rights, including the right to life, security of the person and liberty, the right to protection against cruel, inhuman or degrading treatment or punishment, the rights of arrested, accused and convicted persons, the right to dignity, the right to equality, the right to privacy; freedom of religion and belief, freedom of thought, opinion and expression, the right to assembly, demonstration and petition, freedom of association; freedom of movement, the right of nationality, marital, personal and family rights, the rights of women and children, the right to vote and to be elected, and the right to property. The contents of the rights protected by these and other provisions are more or less in line with internationally recognised standards of protection of similar rights.

The Constitution further incorporates economic, social and cultural rights under the crudely-formulated provisions of article 41. Without specifically listing and defining these rights, the article generally requires the creation of equal opportunities to freely chosen means of livelihood and the allocation of ever-increasing resources for health, education and other social services. It is argued that certain economic, social and cultural rights can be read into the broad provisions of article 41.<sup>9</sup> However, the poor formulation of the article increases the ambivalence regarding the justiciability of this group of rights as it is difficult to clearly delineate the precise scope of the rights.

Collective rights such as trade union rights, the right to development and environmental rights are also included in the Bill of Rights of the Ethiopian Constitution. Under chapter 10, the Ethiopian Constitution provides for 'National Policy Principles and Objectives' that guide any government organ in the implementation of constitutional provisions, other laws and public policies.<sup>10</sup> These objectives, among others, require the government to promote self-rule and equality of the people, to formulate policies that ensure equal economic opportunities and benefits, and to adopt policies that aim at providing all Ethiopians access to public health and education, clean

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<sup>8</sup> As different from the requirement for the amendment of other provisions, art 105 requires the approval of the majority in all state councils, and a two-third majority of the House of Peoples' Representatives as well as that of the House of Federation for the amendment of the provisions of the Constitution on fundamental rights and freedoms.

<sup>9</sup> S Yeshanew 'The constitutional protection of economic and social rights in the Federal Democratic Republic of Ethiopia' *Journal of Ethiopian Law* (forthcoming).

<sup>10</sup> Arts 85-92 Ethiopian Constitution.

water, housing, food and social security to the extent the country's resources permit. While the provisions of the Bill of Rights provide for individual and group entitlements, the policy objectives extend this protection by imposing the duty to adopt policies that ensure the enjoyment of rights by citizens. Policy Principles and Objectives are akin to what are, in other systems, called 'Directive Principles of State/Social Policies' (DPSP) which are deemed expressly non-justiciable.<sup>11</sup> I argue that they are not out of the total reach of courts. They may be used as tools that guide the interpretation of fundamental rights and freedoms. Policies should also be developed and implemented with due respect to fundamental rights. A court may, for instance, find a policy adopted to realise the right to health (as a DPSP) in violation of the right to equality (which is part of the Bill of Rights) if it happens to be discriminatory.

## 2.2 Judicial enforcement

Article 13(1) of the Ethiopian Constitution establishes the duty of all federal and state legislative, executive and judicial organs to respect and enforce fundamental rights and freedoms. The duty of the judiciary to enforce rights is an expression of the justiciability of the fundamental rights and freedoms provided by the Constitution. Article 37(1) further provides that everyone has the right to bring a justiciable matter to court, and to obtain a decision or judgment by a court of law or any other competent body with judicial power.<sup>12</sup> While article 13 declares the judicial enforceability of fundamental rights and freedoms, article 37 makes bringing justiciable matters before judicial and quasi-judicial organs and get decision thereon a right by itself.

However, according to articles 83 and 84 of the Constitution, all 'constitutional disputes' shall be decided by the House of Federation upon the recommendation of the Council of Constitutional Inquiry that it is necessary to interpret the Constitution. In my view, these provisions

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<sup>11</sup> See the Constitution of Ireland (1937), art 45, and the Constitution of India (1949/1950), arts 36-51. The Supreme Court of India turned the principles to justiciable guarantees by reading them with the fundamental rights. In two cases (*Mohini Jain v State of Karnataka* (1992) 3 SCC 666, AIR 1992 SC 1858 and *Unni Krishnan JP v State of Andhra Pradesh* (1993) 1 SCR 594, AIR 1993 SC 2178) which concerned the right to education, the court held that fundamental rights and DPSP are complementary because what is fundamental in the governance of the country could be no less significant than that which was fundamental in the life of an individual. Note that the Ethiopian Constitution does not say that the principles and objectives are non-justiciable.

<sup>12</sup> Art 37 of the Constitution shows that the institutional aspect of justiciability includes institutions with judicial power other than proper courts of law. In one case, the Federal Supreme Court interpreted the article as including organs such as the National Electoral Board of Ethiopia in respect of its jurisdiction to decide on electoral complaints. See *National Electoral Board v Oromo Federalist Democratic Movement*, Appeal File 21387, judgment 27 September 2005.

define the mandate and procedure of 'judicial or constitutional review' — a procedure by which the constitutionality of laws and decisions is controlled — rather than determine whether constitutional provisions may be applied by courts of law.<sup>13</sup> Articles 83 and 84 have nevertheless served as grounds for the objection of some courts and lawyers in the country against directly applying constitutional provisions, and for considering cases in which constitutional provisions are invoked as 'constitutional disputes'.<sup>14</sup>

A close look at the relevant laws shows that the mandate of the Council of Constitutional Inquiry and the House of Federation 'to interpret' the Constitution, as the title of article 83 shows, does not exclude courts from enforcing constitutional provisions on fundamental rights and freedoms. The provisions of article 84 of the Constitution and articles 6, 17 and 21 of the Council of Constitutional Inquiry Proclamation show clearly that 'constitutional disputes' are those in which the constitutionality of laws or decisions is contested and those which make the interpretation of some constitutional provisions necessary.<sup>15</sup>

It may be that the precise meaning and scope of a constitutional provision is disputed or that legislation invoked by parties or relied on by the court, or a decision given by a government organ or official is

<sup>13</sup> For a detailed discussion on the Ethiopian approach to constitutional review, see YT Fessha 'Judicial review and democracy: A normative discourse on the (novel) Ethiopian approach to constitutional review' (2006) 14 *African Journal of International and Comparative Law* 53-82; A Fiseha 'Federalism and the adjudication of constitutional issues: The Ethiopian experience' (2005) 52 *Netherlands International Law Review* 1-30.

<sup>14</sup> In a workshop (Training of Judges, organised by the Federal Supreme Court in cooperation with USAID, Summer 2001, Adama, Ethiopia) in which this author took part, most judges of the Oromiya Regional State took the position that arts 83 and 84 of the Constitution in effect debar them from directly applying constitutional provisions, especially when the constitutionality of a law or decision is in issue. See also Fessha (n 13 above) 79-80 (observing that there is a practice of shying away from considering the provisions of the Constitution, including those in the bill of rights even when parties invoke them); and T Regassa 'State constitutions in Federal Ethiopia: A preliminary observation' (2004) 3 <http://www.camlaw.rutgers.edu/statecon/subpapers/regassa.pdf> (accessed 27 April 2007).

<sup>15</sup> Council of Constitutional Inquiry Proclamation, Proclamation 250/2001, Federal Negarit Gazeta 7th Year 40, 6 July 2001. See also Proclamation to Consolidate the House of the Federation of the Federal Democratic Republic of Ethiopia and to Define its Powers and Responsibilities, Proclamation 251/2001, Federal Negarit Gazeta, 7th Year 41, 6 July 2001. According to arts 6 and 17 of Proclamation 250/2001, the power of the Council is to investigate constitutional disputes (including disputes relating to the constitutionality of laws) and submit recommendations to the House of Federation if it finds that it is necessary to interpret the Constitution. These articles as well as art 21 indicate in essence that for the mandate of the Council to be invoked, there should be an issue that necessitates constitutional interpretation in the first place. For an argument that both courts and the House of Federation should have the power to decide on the constitutionality of laws and decisions, see Fiseha (n 13 above) 19-22. (This author fails to address the issue of whether there should be a need to 'interpret' specific constitutional provisions (for lack of clarity or some other reason) for the jurisdiction of the House of Federation to come into the picture).

contested as inconsistent with the Constitution. Such instances may give rise to 'constitutional disputes' that make constitutional interpretation necessary. When such disputes arise in a case already before a court of law, the court is not precluded from deciding the case.<sup>16</sup> The court will submit a legal issue to the Council of Constitutional Inquiry only if it believes that there is a need for constitutional interpretation in deciding the case. If the court believes that the constitutional provision in question is clear, it can apply it without referral to the Council.

The article 13(1) duty of the judiciary to enforce the rights enshrined in the Constitution definitely extends to applying the provisions in specific cases. That ordinary courts have jurisdiction over cases arising under the Constitution is further confirmed by article 3(1) of the Federal Courts Proclamation which provides that '[f]ederal courts shall have jurisdiction over cases arising under the Constitution, federal laws and international treaties'.<sup>17</sup>

### 2.3 Judicial practice

In practice, Ethiopian courts generally tend to avoid adjudicating cases based on constitutional provisions (including the ones on human rights) even where such provisions are invoked and are relevant. Such cases are referred to the Council of Constitutional Inquiry, especially when the constitutionality of a law or decision is contested, sometimes in a way that contravenes the relevant constitutional and legislative provisions. One relatively recent case sheds light on the practice in this regard.

The plaintiff, an opposition political party called Coalition for Unity and Democracy (CUD), contested the decision of the Prime Minister of Ethiopia to ban assembly and demonstration in Addis Ababa and its surrounding area for a month after the May 2005 elections.<sup>18</sup> CUD argued that the federal first instance court had jurisdiction over the matter by reciting the constitutional (articles 13(1) and 37) and legislative provisions discussed above in establishing that the human rights provisions of the Constitution are justiciable. It further argued that ordinary legislation have a constitutional basis and, with the express wish to preclude the court from referring the case to the Council of Constitutional Inquiry, stressed that the suit was based on the Proclamation to Establish the Procedure for Peaceful Demonstration and Public Political

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<sup>16</sup> See art 21 Proclamation 250/2001 (n 15 above). The court forwards only the legal issue that, it considers, needs to be interpreted and keeps the case pending before it for final decision after receiving the authoritative interpretation of the House of Federation.

<sup>17</sup> Federal Courts Proclamation, Proclamation 25/1996, Federal Negarit Gazeta 2nd Year 13, 15 February 1996.

<sup>18</sup> *Coalition for Unity and Democracy v Prime Minister Meles Zenawi Asres*, Federal First Instance Court, File 54024, decision 3 June 2005.

Meeting.<sup>19</sup> The court framed the issue as follows: Was the directive of the Prime Minister, whose constitutional power as the chief executive it underlined, in contravention with the Constitution? It then referred the matter to the Council by invoking the provisions of articles 17 and 21 of Proclamation 250/2001, according to which courts may refer cases in which the constitutionality of the decision of a government official is disputed and the interpretation of the Constitution is needed.<sup>20</sup>

The court did not consider the provisions of Proclamation 3/1991 on which the plaintiff claimed to have primarily relied. As has been shown earlier, it is not the case that any case in which it is argued that a law or decision is unconstitutional should always be referred to the Council of Constitutional Inquiry. There must first be a lack of clarity necessitating the interpretation of the Constitution.<sup>21</sup> In the instant case, however, the court did not consider the clarity or otherwise of the relevant constitutional provisions. In further elaborating its order,<sup>22</sup> the court said that it referred the matter for the Council to decide whether there was a need for constitutional interpretation. Considering that Proclamation 3/1991 provides for the right to demonstration and public political meeting and declares any directive which is in violation of this right null and void, the court could have evaluated the contested directive of the Prime Minister against these provisions and decided the case without referring the matter to the Council of Constitutional Inquiry. Even if the decision had to be based on the Constitution,<sup>23</sup> the court should have first investigated the clarity or otherwise of the relevant provisions.

In the instant case, the Council of Constitutional Inquiry never considered the issue of whether there was a 'constitutional dispute' giving

<sup>19</sup> Proclamation 3/1991, *Negarit Gazeta* 50th Year 4, 12 August 1991. The plaintiff based its case on art 3(1) of the Proclamation that provides for the right of any individual to organise and participate in peaceful demonstration and public political meeting and art 11 of the same which declares any law, regulation, directive or decision that violates the Proclamation null and void.

<sup>20</sup> The Federal High Court dismissed an appeal against the decision to refer the case to the Council of Constitutional Inquiry as an interlocutory order.

<sup>21</sup> See n 15 above. The Supreme Court of the Amhara Regional State has demonstrated in one exceptional case that an issue of constitutionality of a law should not necessarily be referred to the Council of Constitutional Inquiry. In *State v Haile Meles & Another* (Supreme Court of Amhara Regional State, File 21/90, decision 1998 (1990 EC)), the defence argued that the Criminal Procedure Code of Ethiopia is unconstitutional in as far as it denies bail for suspects accused of crimes that entail imprisonment for 15 years or more. The Court decided that the contested provision (art 63) of the Code was not unconstitutional because the right to bail under art 19(6) of the Ethiopian Constitution has clear exceptions.

<sup>22</sup> In justifying the punishment of a lawyer accused of criticising the court's decision (in a newspaper opinion piece) in the same file.

<sup>23</sup> Of course, CUD has alternatively argued that the decree of the Prime Minister is in violation of art 30(1) of the Ethiopian Constitution, which provides that 'everyone has the right to assemble and to demonstrate together with others peaceably and unarmed, and to petition', and hence shall be of no effect based on art 9(1) of same.



rise to its jurisdiction.<sup>24</sup> It rather took it upon itself to decide the case as presented to the court. While the matter took a different version at the level of its examination by the Council, it effectively decided the case by concluding that the directive issued by the Prime Minister was not unconstitutional.<sup>25</sup> This decision was sent to the court, but the case was not reopened on the same matter as the contested ban of assembly and demonstration had expired. Surprisingly, a perusal of the records of the court and the Council does not reveal that the matter was referred to the House of Federation. Though symptomatic of the Council's erroneous understanding of its mandate, this is not the general practice in the exercise by the Council of its power in relation to constitutional disputes as there is evidence that the House of Federation gives final decisions.<sup>26</sup>

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<sup>24</sup> Council of Constitutional Inquiry, decision taken on a regular meeting of 14 June 2005 — the date when the contested ban expired (on file with author).

<sup>25</sup> The Council framed two issues for its consideration: (1) whether the decree issued by the Prime Minister was in violation of the Constitution; and (2) who decides as to whether there are sufficient circumstances to issue such a decree. It picked up the argument of CUD that the decree shall be of no effect as it is in contravention of art 30(1) of the Ethiopian Constitution. It reproduced the article and attempted to interpret its provisions in an effort to settle the matter rather than indicate the way they should be interpreted by the court that referred the matter to it. The Council criticised the submission of CUD as relying on only part of art 30(1) — the statement of rights — leaving out the possible limitations that may be imposed in the interest of public convenience or for the protection of democratic rights, public morality and peace during a meeting or demonstration. But the Council itself left out the specific and explicit circumstances in relation to which regulations may be made, namely, the location of open-air meetings and the route of movement of demonstrators. Surprisingly, the decree which was finally found by the Council to be constitutional is a total ban without any reference to location and direction of demonstrations and meetings. In dealing with the issue, the Council referred to the constitutional provisions which define the powers of the Prime Minister, the status of Addis Ababa and the Charter of the City and then came to the decision that the responsibilities of the Prime Minister to respect the Constitution and follow-up and ensure the implementation of laws and policies adopted by the House of Peoples' Representatives make the decree constitutional. It also found that it was up to the Prime Minister to decide whether there were sufficient circumstances to justify issuing the decree.

<sup>26</sup> House of Federation of the Federal Democratic Republic of Ethiopia, 1st term 5th year, Minutes of Extraordinary Meeting, Addis Ababa, 7 July 2000 (on file with author). The representative of the Council of Constitutional Inquiry submitted recommendations on two issues of constitutionality which were referred to it by the House of Federation itself (which received them from the sources first) and the latter took a final decision. One of the cases concerned the compatibility of the electoral law (art 38(1)(b) of Proclamation 111/87) that requires candidates to know the language of the region in which they compete for election, with art 38 of the Ethiopian Constitution which provides that every Ethiopian national has the right to vote and to be elected without any discrimination based among others on language. While the majority in the Council decided that the electoral law is unconstitutional as it discriminates based on language, the House upheld the dissenting opinion of two members of the Council that the language issue should be seen in the context of the general principles on which the Constitution is based and in light of the provisions of the whole Constitution, and came to the conclusion that the electoral law is not unconstitutional.

Considering the misunderstanding around the meaning of 'constitutional dispute' and the position of some courts that issues that require applying or interpreting the Constitution should be referred to the Council, some lawyers in Ethiopia have adopted a litigation strategy by which reference to specific constitutional provisions is avoided or claims are as much as possible based primarily on ordinary legislation. This strategy proved fruitful in a couple of cases brought against the National Electoral Board by non-governmental organisations (NGOs) which claimed to have been excluded from observing the May 2005 elections. In two landmark cases, local NGOs contested the decision (or failure to make a decision) of the Board based on electoral legislation specifically while referring to the Constitution (and international law) only generally lest the court may refer the case to the Council of Constitutional Inquiry and the time the process takes would effectively bar them from observing the elections which were fast approaching.<sup>27</sup> Both the cases were decided in favour of the NGOs three days ahead of Election Day. The same approach was followed in a case in which an opposition party contested the announcement of provisional poll results by the National Electoral Board.<sup>28</sup>

Ethiopian courts also generally avoid referring to or applying the Constitution even in relation to issues the disposition of which the provisions on fundamental rights and freedoms are directly relevant. In recent years, some members of the judiciary have taken steps to invoke and directly apply constitutional provisions. Still, such decisions remain exceptions to the general trend of evasion.

In one case, the plaintiff, a former President of Ethiopia, contested the legality of the decision of the speakers of the House of Peoples' Representatives and the House of Federation to terminate his benefits under Proclamation 255/2001 on the ground that he had violated his obligation to avoid partisan political activities by running for parlia-

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<sup>27</sup> *Organisation for Social Justice in Ethiopia & 13 Others v National Electoral Board of Ethiopia* Federal High Court, File 38472, Addis Ababa, judgment 3 May 2005. (The author has taken part in the preparation of the application submitted to the court that followed the above-mentioned litigation strategy); *National Electoral Board of Ethiopia v Organisation for Social Justice in Ethiopia & 13 Others*, Federal Supreme Court, Appeal, File 19699, judgment of 11 May 2005; and *Ethiopian Human Rights Council v National Electoral Board of Ethiopia*, Federal High Court, File 38890, Addis Ababa, judgment 12 May 2005.

<sup>28</sup> *Coalition for Unity and Democracy v National Electoral Board*, Federal High Court, Addis Ababa, judgment 10 June 2005. The court in effect upheld the submission of the Coalition that the Board had violated the Constitution (referred to in general terms) in announcing provisional results for polling stations in relation to which the former has complaints pending before it.

mentary elections as an independent candidate.<sup>29</sup> The federal first instance court decided against the former President, arguing that his functions, should he eventually be elected, make him partisan.<sup>30</sup> In reversing this decision, the Federal High Court underlined first that, under articles 29 and 38 of the Ethiopian Constitution, the plaintiff has the right to hold an opinion and has freedom of expression without interference, as well as the right to vote and to be elected without any form of discrimination.<sup>31</sup> Coherently interpreted, the court observed, the obligation to avoid partisan political movements is a prohibition against being a member or supporter of a certain political party and not a duty to avoid all forms of political movement which would be in violation of the President's democratic rights. The Federal Supreme Court finally reversed this decision in a judgment that relied heavily on the Proclamation.<sup>32</sup> It held that the respondent had exercised his constitutional right in winning a seat in the highest political organ and, by taking part in political activities making use of his rights, he forfeits the benefits granted by Proclamation 255/2001.

Finally, some legal professionals in the country argue that constitutional provisions are too broad to apply in specific cases and hence

<sup>29</sup> Proclamation Governing the Administration of the Office of Both the Former and Current Presidents, Proclamation 255/2001. Art 7 obliges the President to avoid partisan political movement during or after presidency; art 13 provides for benefits; and art 14 empowers the Speakers of the two Houses to jointly decide on termination of benefits of former President if he fails to respect obligations imposed by the Proclamation.

<sup>30</sup> *Dr Negaso Gidada v the House of Peoples' Representatives and the House of Federation (Former President's case)*, Federal First Instance Court, File 54654, Addis Ababa, judgment 5 August 2005. The court argued: 'Even if the former President ran as an independent candidate, if eventually elected, his role would make him partisan as he votes on either side of the issues that arise and hence the termination of his benefits under the Proclamation was not illegal.' The court failed to appreciate that members of parliament voting on one side may belong to political parties with diverse agenda in which case the independent member's vote may not be associated with that of members of any single political party.

<sup>31</sup> *Dr Negaso Gidada v the House of Peoples' Representatives and the House of Federation*, Federal High Court, Appeal, Addis Ababa, judgment 4 January 2006. The court said that it had the mandate to interpret the provisions of Proclamation 255/2001 in light of the Constitution and international treaties ratified by Ethiopia. After mentioning that the vote of a member of parliament is an expression of his opinion rather than support for those who vote in the same side and that the appellant was not elected by people who organised themselves as political party, the court held that the former President had not violated his obligation to avoid partisanship and hence the decision of the Speakers of the respondents was illegal and of no effect.

<sup>32</sup> *House of Peoples' Representatives and House of Federation v Dr Negaso Gidada*, Federal Supreme Court, Appeal, Files 22980 & 22948, judgment 25 October 2006. The court startlingly argued that those who take seat in the House of Peoples' Representatives, which is the highest political organ of the state, are politicians with certain partisan political positions and that the announcement of their political agenda (and their difference with that of others) during their campaign makes the movement partisan even if one is an independent candidate.

disputes are better settled by the application of ordinary legislation.<sup>33</sup> In my view, such an argument fails on two grounds. Firstly, it is not true that the generality of constitutional provisions precludes their application by courts of law. The Ethiopian Constitution enshrines provisions specific enough to be applied by courts (examples are rights of persons under arrest and rights of the accused under articles 19 and 20 respectively). Moreover, the small number of cases in which the Constitution has been referred to by the courts of Ethiopia and the judicial practice of other states disprove this argument.<sup>34</sup> Secondly, there are constitutional rights which do not have a perfect substitute in ordinary legislation. An example is the right of accused persons to 'full access to any evidence presented against them' under article 21(4) of the Constitution. Courts cannot totally avoid referring to constitutional rights, especially in the latter cases.

### 3 The status and application of international human rights instruments in the Ethiopian legal system

#### 3.1 Status

Ethiopia has acceded to almost all the major international human rights treaties.<sup>35</sup> Under its supremacy clause, the Ethiopian Constitution provides that all international agreements ratified by Ethiopia are an integral part of the law of the land (article 9(4)). This formulation implies that the provisions of these international instruments are part of the law of Ethiopia.<sup>36</sup> The domestication of international human rights instruments is further fortified by article 13(2) of the Constitution, which provides

<sup>33</sup> R Messele *Enforcement of human rights in Ethiopia* (2002), Action Professionals' Association for the People (APAP) 39 [http://www.apapeth.org/ Docs/ENFORCEMENT OF HR.pdf](http://www.apapeth.org/Docs/ENFORCEMENT OF HR.pdf) (accessed 24 April 2007) (observation of some judges and advocates).

<sup>34</sup> In *State v Dr Taye Wolde Semayat & Others* (Federal High Court, File 4780/88, 5 August 1996), eg, the court observed that it is against the Constitution to deny a detainee his right to communicate with counsel. In many states (eg South Africa) constitutional rights have been applied by courts in specific cases.

<sup>35</sup> Ethiopia has acceded to: the Convention on the Prevention and Punishment of the Crime of Genocide (1 July 1949); the International Convention on the Elimination of All Forms of Racial Discrimination (23 June 1976); the International Covenant on Economic, Social and Cultural Rights (CESCR) (11 September 1993); the International Covenant on Civil and Political Rights (CCPR) (11 June 1993); the Convention on the Elimination of All Forms of Discrimination against Women (10 October 1981); the Convention on the Rights of the Child (13 June 1991); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (14 March 1994); the African Charter on Human and Peoples' Rights (15 June 1998); and the African Charter on the Rights and Welfare of the Child (27 December 2002). See <http://www2.ohchr.org/english/bodies/ratification/index.htm> and [http://www.achpr.org/english/\\_info/index\\_ratifications\\_en.html](http://www.achpr.org/english/_info/index_ratifications_en.html) (accessed 18 April 2007).

<sup>36</sup> Ethiopia follows the monist tradition where international treaties become an integral part of national law upon ratification. For a discussion on the monist/dualist distinction and the fallacies involved therein, see F Viljoen *International human rights law in Africa* (2007) 530-538.

that the fundamental rights and freedoms shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights (Universal Declaration), international covenants on human rights and international instruments adopted by Ethiopia.<sup>37</sup> To the extent that the rights protected by these instruments are guaranteed in the Ethiopian Constitution, the provisions of these treaties would supplement them. In relation to rights which are not expressly guaranteed in the Bill of Rights, the provisions of the treaties shall be taken as Ethiopian law. Detailed provisions of the international instruments would also be used to define the content and scope of rights which are protected in very general terms in the Constitution. Article 41 of the Constitution may, for instance, be juxtaposed with the International Covenant on Economic, Social and Cultural Rights (CESCR) to read classic economic, social and cultural rights into the Constitution.

While it is clear that treaties ratified by Ethiopia are part of the law of the land, their status in the hierarchy of laws is not clear. Going by the requirement of interpretation of fundamental rights and freedoms in conformity with international instruments, one may say that these instruments are hierarchically parallel to (or even above) the Constitution. However, considering that international instruments get ratified by the organ that adopts legislation, the House of Peoples' Representatives,<sup>38</sup> and that the Constitution is the supreme law of the land (article 9(1)), one would reach the conclusion that international human rights treaties are hierarchically below the Constitution and have a status equal to legislation. Accordingly, if, for instance, a provision of a human rights treaty ratified by Ethiopia is inconsistent with the Bill of Rights, the latter prevails.

### 3.2 Judicial application and practice

As explained earlier, articles 13(1) and 37 make the fundamental rights and freedoms guaranteed by the Ethiopian Constitution justiciable. By making international human rights treaties ratified by Ethiopia part of Ethiopian law, article 9(4) of the Constitution extends the jurisdiction of Ethiopian courts to apply their provisions. Article 3(1) of the Federal Courts Proclamation specifically provides that federal courts shall have jurisdiction over international treaties and article 6(1) of the same proclamation states that federal courts shall settle cases or dis-

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<sup>37</sup> It is worth noting also that where a constitutional dispute relating to the fundamental rights and freedoms enshrined in the Constitution is submitted to the Council of Constitutional Inquiry, it shall interpret the provision in question in a manner conforming to the principles of the Universal Declaration, international covenants on human rights and international instruments adopted by Ethiopia. See art 20(2) Proclamation 250/2001 (n 15 above).

<sup>38</sup> Art 55(12) Ethiopian Constitution.

putes submitted to them on the basis of, among others, international treaties.<sup>39</sup>

In practice, however, litigants as well as courts avoid referring to international human rights instruments ratified by Ethiopia even in cases where they are directly relevant. There is very limited number of cases in which provisions of such instruments are applied. An example is the judgment of the Federal High Court in the former President's case, discussed above.<sup>40</sup> In affirming the right of the appellant to freedom of opinion and expression and his right to vote and be elected, the court referred to articles 18 and 19 of the Universal Declaration and the International Covenant on Civil and Political Rights (CCPR), which it said are part of the law of the land by virtue of article 9(4) of the Constitution and that, in accordance with article 13(2), fundamental rights and freedoms shall be interpreted in conformity with these international instruments.

Otherwise, many members of the judiciary believe that rights included in ratified international treaties but which are not clearly guaranteed in domestic laws are not justiciable.<sup>41</sup> Some lawyers also argue that the judicial practice in which the provisions of international human rights instruments are rarely referred to is a result of the fact that domestic law, especially the Constitution, incorporates the provisions of international instruments.<sup>42</sup> However, the truth is that the Bill of Rights in the Ethiopian Constitution is not substitutive of the diversified and elaborate provisions of international human rights treaties. As well, courts rarely refer to relevant constitutional provisions.

It has been argued that, even if a ratified treaty is part of domestic law, the direct applicability of its provisions would depend on the 'self-executing' nature of each individual treaty right which is determined, *inter alia*, by the wording of the treaty provision.<sup>43</sup> But the characterisation of treaty provisions as 'self-executing' in the context of justiciability

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<sup>39</sup> n 17 above.

<sup>40</sup> n 31 above. See also the first decision in the trial of officials of the previous regime for genocide, namely, *Special Prosecutor v Col Mengistu Hailemariam & 173 Others*, Federal High Court, Criminal File 1/87, decision 9 October 1995 (instruments referred to include the Universal Declaration, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment).

<sup>41</sup> S Yeshanew *Protection of the right to housing and the right to health in Ethiopia: The legal and policy framework* (2006) Action Professionals' Association for the People (APAP) 23 (conclusion reached after interviews with judges and advocates of the various levels of courts in Ethiopia).

<sup>42</sup> See Messele (n 33 above).

<sup>43</sup> F Coomans 'Some introductory remarks on the justiciability of economic and social rights in a comparative constitutional context' in F Coomans (ed) *Justiciability of economic and social rights: Experiences from domestic systems* (2006) 7; and Viljoen (n 36 above) 533.

of rights is rejected for want of a strong jurisprudential foundation,<sup>44</sup> and it is in the power of the courts to decide the exact content of legal rules that are normally expressed in general and abstract terms. In the practice of Ethiopian courts, ratified international human rights treaties are sidelined even where the relevant provisions are unambiguously specific. That they are part of the law of the land and that courts are specifically mandated to apply them should be enough for their direct justiciability.

On 6 November 2007, the Cassation Division of the Federal Supreme Court passed a landmark decision which has set a precedent for the future application of international human rights treaties by courts of law in Ethiopia.<sup>45</sup> The case concerned a dispute between a father, who had never provided for his son, and a maternal aunt of the same child, who had brought him up from early childhood, over the administration of the minor child's inheritance from his deceased mother. The aunt pleaded for the reversal of the legal guardianship which the father had obtained upon the death of the child's mother, which he used to his own benefit, based on the best interest of the child. All three levels of courts of the southern region dismissed her case upon the basis that the aunt could not have a legitimate claim while the father was alive. The Cassation Division of the Federal Supreme Court, to which the aunt applied on the basis of a fundamental error of law in the decision of the regional courts, upheld her argument that the best interest of the child as a primary consideration trumps the 'stronger blood relationship' test of the lower courts by citing article 3(1) of the UN Convention on the Rights of the Child (CRC) and article 36(2) of the Ethiopian Constitution. On this basis it reversed the decision of the regional courts and appointed the aunt as legal guardian. By virtue of article 4 of Proclamation 454/2005, federal as well as regional courts on all levels are bound by the Cassation Division's interpretation of law.<sup>46</sup>

The general trend of avoiding reference to ratified international human rights treaties by both litigants and courts is partly attributable to the fact that the full texts of the treaties have not been published in the official gazette of the state. A specific proclamation with the title of the treaty is usually issued upon the ratification of a certain international treaty by the House of People's Representatives.<sup>47</sup> Such proclamations incorporate an article with a succinct statement that a treaty (in its full

<sup>44</sup> See M Scheinin 'Direct applicability of economic, social and cultural rights: A critique of the doctrine of self-executing treaties' in K Drzewicki *et al* (eds) *Social rights as human rights: A European challenge* (1994) 73.

<sup>45</sup> *Miss Tsedale Demissie v Mr Kifle Demissie*, Federal Supreme Court Cassation Division, File 23632, judgment 6 November, 2007.

<sup>46</sup> Federal Court Proclamation Amendment Proclamation 454/2005, Federal Negarit Gazette, Year 11, 42.

<sup>47</sup> See, eg, Convention on the Rights of the Child Ratification Proclamation 10/1992 and Proclamation to Provide for Accession to the African Charter on Human and Peoples' Rights, Proclamation 114/1998.

name) is ratified or acceded to. They never reproduce the full text of the treaty in question and translate the treaty provisions into the official languages of the country.<sup>48</sup> More strikingly, such proclamations (providing that a treaty is ratified or acceded to) in the official gazette do not exist in relation to some international human rights treaties, including CESCER and CCPR.<sup>49</sup>

According to article 2(2) of the Federal Negarit Gazette Establishment Proclamation, all laws of the federal government shall be published in the Federal Negarit Gazette.<sup>50</sup> Article 2(3) of the same Proclamation provides that all federal or regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of laws published in the Gazette. It has been argued, based on these provisions, that ratified international treaties should be published in the official gazette for their provisions to be enforced at the domestic level.<sup>51</sup> However, the above provisions apply to federal laws, while the provisions of the Federal Courts Proclamation, defining the jurisdiction of federal courts and the substantive laws they apply, refer to international treaties as a different set of laws than federal laws.<sup>52</sup> International instruments may therefore be applied by federal courts irrespective of their publication in the official gazette. There is an additional argument, based still on the provisions of the Proclamation that established the Federal Gazette, that courts take judicial notice *only* of legal texts or provisions published in the official gazette. This is also a skewed argument as the law requires only that judicial notice be taken of laws published in the gazette. It does not necessarily imply that the laws that courts may take judicial notice of and apply are only those of which the texts are published in the Gazette.

In relation to international human rights instruments, the ratification of which is published in the official gazette, one may argue that the statement that the treaty is ratified or acceded to is as good as publishing the full text of such an instrument. Those who insist on the need to

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<sup>48</sup> The Committee on the Rights of the Child has expressed its concern about the failure to publish the full text of the Convention in the official gazette. See Concluding Observations of the Committee on the Rights of the Child: Ethiopia CRC/C/15/Add 144 (31/01/2001) para 14.

<sup>49</sup> Most international human rights treaties were ratified or acceded to by the transitional government of Ethiopia between 1991 and 1994. While ratification instruments were deposited with the UN and hence the treaties bind Ethiopia, their ratification was not published in the official gazette, let alone their full texts.

<sup>50</sup> Proclamation to Provide for the Establishment of the Federal Negarit Gazeta, Proclamation 3/1995, 22 August 1995, art 2. Incidentally, regional states have different official gazettes of their own.

<sup>51</sup> Messele (n 33 above). (Several interviewed judges believe that the provisions of the Proclamation establishing the gazette hinder the application by courts of the international human rights treaties.)

<sup>52</sup> Proclamation 25/1996 (n 17 above) art 3(1). Art 6(1)(a) also states that federal courts shall settle cases or disputes submitted to them on the basis of federal laws and international treaties.



publish the full text maintain that it is only upon publication of the treaty in the official gazette that it can be deemed to have been known by the public — the publicity function of the Gazette. A counter-argument is that publication, which is required for the benefit of the public, should not serve as a reason to bar citizens from enjoying or invoking their rights in the international instruments ratified by the state and that the knowledge of the public, though important, should not matter that much (in relation specifically to the judicial applicability of the treaty provisions), as such instruments impose the state's obligations rather than individual responsibilities. In addition, domestic laws and other obstacles, such as the non-publication of international treaties ratified by a state, cannot justify the failure to apply (including judicially) the treaties domestically.<sup>53</sup>

Still, it should be underlined that the publication of the full text of these human rights instruments would make a substantial contribution towards the enforcement or justiciability of the rights they protect. It would make it easier for litigants as well as courts to refer to the treaty provisions. It is therefore submitted that the text of treaties, including the ones whose ratification was not promulgated, be published in the official Gazette, including translations in domestic official languages.

#### 4 National human rights institutions

National institutions, such as a Human Rights Commission and an Ombudsman, provide an easily-accessible forum for the implementation and enforcement of human rights that enjoy constitutional or legislative protection. Such institutions ensure the justiciability of human rights through quasi-judicial procedures. The Human Rights Commission and the institution of the Ombudsman were established in Ethiopia in 2002. Article 6 of the Proclamation that established the Human Rights Commission states that it has the powers and duties to ensure that the human rights and freedoms recognised by the Constitution are respected by all citizens, organs of state, political organisations and other associations as well as by their representative officials; and to ensure that laws, regulations and directives as well as government decisions and orders do not contravene the human rights of citizens guaranteed by the Constitution.<sup>54</sup> According to article 6(1) of the Proclamation that established the institution of the Ombudsman, it shall have powers and duties to ensure that directives and decisions

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<sup>53</sup> See Vienna Convention on the Law of Treaties (adopted in 1969 and entered into force in 1980), Treaty Series Vol 1155 331, arts 26 & 27.

<sup>54</sup> Proclamation to Provide for the Establishment of the Human Rights Commission, Proclamation 210/2000, 4 July 2000. It is also worth noting that art 1(5) of the Proclamation defines 'human right' as including fundamental rights and freedoms recognised under the Constitution and those enshrined in the international treaties ratified by Ethiopia.

given by executive organs do not contravene the constitutional rights of citizens.<sup>55</sup> The establishment of these institutions with the mandates given to them could potentially contribute to the justiciability of human rights. Through the branch offices that both institutions shall have over the country, they could offer easily-accessible and speedy quasi-judicial remedies to violations of human rights.<sup>56</sup>

While the Proclamations establishing these two institutions entered into force in 2000, they have not been fully operationalised until recently. By 2007, the two institutions had adopted strategic plans and begun investigating complaints. At the time of writing, the two institutions have investigated and decided a fairly large number of complaints on various human rights issues.<sup>57</sup> Both institutions face problems that relate to the execution of their recommendations or decisions and a shortage or lack of manpower and facilities that are needed for their effective functioning.<sup>58</sup> They have also failed to apply human rights treaties and the provisions of the Constitution.<sup>59</sup> With more experience and support, and the opening of branch offices down to local levels, which is underway, these institutions will make a much greater contribution towards the justiciability of human rights.

## 5 *Locus standi* in human rights litigation in Ethiopia

The issue of standing, that is, capacity to file a suit or petition invoking the human rights provisions in various legal instruments of a state before judicial and quasi-judicial organs, affects the justiciability of the rights. So as to ensure the full justiciability of rights, the law defining standing in human rights cases should allow for the *actio popularis* or public interest litigation, where a person or organisation may institute a case on behalf of a third person or an indiscriminate mass of people with similar grievances without being required to show a vested personal interest in the case. Especially in developing countries, victims of violations of human rights are often unable to bring their cases before

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<sup>55</sup> Proclamation to Provide for the Establishment of the Institution of the Ombudsman, Proclamation 211/2000, 4 July 2000.

<sup>56</sup> Art 9 of both Proclamation 210/2000 and Proclamation 211/2000.

<sup>57</sup> In 2007/2008, the Commission received 301 complaints out of which it managed to investigate and dispose of 272 – the remaining 29 are pending. Interview with Mr Paulo's Firdissa, head of Human Rights Education and Research Department, on 31 July 2008. From August 2007 to April 2008, the Ombudsman received 1315 cases (492 house and land possession cases, 316 employment dispute cases, 95 social security cases, 369 'partiality and unlawfulness' cases, and 43 related cases) by 11 549 complainants out of which decisions and appropriate measures have been taken on 1073 of them – the rest are pending. Interview with Tigist Fisseha, legal expert of the Institution, on 30 July 2008.

<sup>58</sup> As above.

<sup>59</sup> As above.

judicial or quasi-judicial organs by themselves, partly as a result of their victimisation. NGOs have been in the forefront in fighting against the violation of human rights by, among others, taking cases to national organs with judicial power and international monitoring bodies. In the absence of a procedure for *actio popularis*, NGOs (or some public spirited persons) cannot play this vital role.

In Ethiopia, the Constitution and the Civil Procedure Code<sup>60</sup> do not really allow the *actio popularis*. To begin with, article 37 of the Ethiopian Constitution gives the right to an individual or group of persons to bring a justiciable matter to a judicial or quasi-judicial body. However, it requires the person to be a member of the affected group or an association representing the interests of its members. Even where the person is interested in the case, she needs to be authorised by the people on whose behalf she takes the case. The Civil Procedure Code of Ethiopia has the same rule regarding representation in civil cases.<sup>61</sup> For a case of a group of people to be taken to court, all those who are interested should give power of representation to one or more of them (class action) or a power of attorney to a lawyer; such power is also required to take a case on behalf of an individual.<sup>62</sup> This means that, for example, the case of an Ethiopian street child, who is the victim of a violation of human rights, for whom no relative can be called, may not reach a court of law and, even if it does, may be dismissed for lack of standing.

There are, nonetheless, some special laws that allow for public interest litigation. The Federal Courts Advocates Licensing and Registration Proclamation that was issued in 2000 has a section dealing with the *actio popularis*.<sup>63</sup> Article 10 of this Proclamation provides that any Ethiopian who defends the general interests and rights of society will be issued with a Federal Court Special Advocacy Licence, provided certain requirements are fulfilled. These requirements include having a degree in law from a legally-recognised educational institution, knowing the basic Ethiopian laws and having work experience of five years, among others.<sup>64</sup> NGOs that advocate a respect for human rights in the country may also be issued with such a licence. This means that a lawyer or

<sup>60</sup> The Civil Procedure Code, Decree 52 of 1965. This Code defines the procedure for all types of civil cases in court unless otherwise provided by the specific legislation providing for a particular right.

<sup>61</sup> Art 38 of the Civil Procedure Code governing class actions in civil cases provides: 'Where several persons have the same interest in a suit, one or more of such persons may sue or be sued or may be authorised by the court to defend on behalf or for the benefit of all persons so interested on satisfying the court that all persons so interested agree to be so represented.'

<sup>62</sup> See Civil Procedure Code (n 60 above) arts 57-64.

<sup>63</sup> The Federal Courts Advocates Licensing and Registration Proclamation 199/2000.

<sup>64</sup> As above, art 10. The other requirements are: not receiving any kind of reward from a section of society; having a suitable character for shouldering such responsibility; not being convicted; and sentenced for an offence showing improper conduct.

human rights NGO may help an individual victim or a group of disadvantaged individuals whose rights are violated by taking their case to court after securing a Special Advocacy Licence. In practice, however, no NGO has ever been issued with such licence.<sup>65</sup>

The proclamations establishing the Human Rights Commission and the institution of the Ombudsman also allow the *actio popularis*. Under their article 22, both instruments make it possible for complaints to be lodged by a third party (without the need to show a vested interest) and even anonymously.<sup>66</sup> This needs to be exploited by CSOs to set the human rights protection mandate of the institutions in full motion by submitting complaints on behalf of groups or members of society whose rights are violated.

The Environmental Pollution Control Proclamation,<sup>67</sup> under article 11, allows any person, without the need to show a vested interest, to lodge a complaint to the environmental authority or the relevant regional environmental agency against any person causing actual or potential damage. Moreover, if the concerned authority fails to take measures within 30 days or if the applicant is dissatisfied with the decision; such person may institute a court case.<sup>68</sup> In a similar manner, article 17 of the Environmental Impact Assessment Proclamation<sup>69</sup> allows any person dissatisfied with the decision or monitoring of the environmental authority/agency to submit a grievance notice to the head of the authority. These provisions should also be exploited by CSOs and civic-minded individuals.

## 6 Conclusion

Fundamental rights and freedoms are well-entrenched in the Ethiopian Constitution. The major international human rights treaties are part of the law of the land. There are many pieces of ordinary legislation protecting various aspects of human rights. A coherent reading of these legal instruments shows that the classic human rights are protected in the Ethiopian legal system and that their contents are sufficiently defined.

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<sup>65</sup> The maiden trial of APAP, a local NGO of lawyers, to secure a Special Advocacy Licence as an organisation failed. The Ministry of Justice demonstrated in this application that it would rather issue a licence for individual staff of NGOs who fulfil the requirements set by art 10 of Proclamation 199/2000 and actually licensed two employees of APAP.

<sup>66</sup> Art 22(1) of both proclamations provides: 'A complaint may be lodged by a person claiming that his rights are violated or, by his spouse, family member, representative or by a third party.'

<sup>67</sup> Proclamation 300/2002.

<sup>68</sup> Art 11(2) Proclamation 300/2002.

<sup>69</sup> Proclamation 299/2002.

According to the Constitution and ordinary legislation, human rights are enforceable through judicial and quasi-judicial mechanisms. However, constitutional provisions are rarely invoked and applied by the courts. There is an erroneous tendency to take all cases in which constitutional provisions are invoked or the constitutionality of a law or decision is questioned as 'constitutional disputes' that are within the jurisdiction of the House of Federation. However, according to the applicable law, courts may refer an issue to the Council of Constitutional Inquiry only when they believe that a certain constitutional provision needs authoritative interpretation. They are not at all barred from deciding cases in which a constitutional provision is invoked or the constitutionality of a law or decision is contested.

International human rights treaties ratified by Ethiopia are rarely invoked by litigants and applied by courts of law, even in cases that would best be settled by their application. There is now a precedent requiring the judicial application of relevant provisions of ratified treaties. The non-publication of the treaties in the official gazette is partly the reason and hence they should be printed with translations into local languages.

The above overview shows that the substantive and institutional aspects of justiciability of human rights are guaranteed in Ethiopia. The *actio popularis* should be allowed as part of the basic procedural laws of the country so as to ensure a higher degree of justiciability of the rights protected. The judicial practice should be brought in line with the law and courts should develop human rights jurisprudence through the application and enforcement of the human rights provisions of the Constitution and ratified treaties. Specialised training in human rights and their justiciability targeting members of the judiciary would reinforce such an endeavour.