

The Revised Constitution of the Afar National Regional State of Ethiopia: An Overview on Some of the Key Principles

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Abstract: *This article provides brief an overview on the key constitutional principles of the Revised Afar Regional state Constitution of Ethiopia. Inter alia, it covers the principles of fundamental human rights, constitutional supremacy, and rule of law, judicial independency, and separation of power and so on. However, it does not consider factual situations and only looks into or and describes the constitutional landscape. Indeed, it attempts to cover a wider spectrum of issues, but and its purpose is not to discuss each principle in detail, but just to forward an overview and offer some insights on some of the key principles enshrined under the Revised Constitution of the Afar National Regional State of Ethiopia.*

1. Introduction

The Afar people are one the ancient endogenous ethnic group live in the Horn of Africa “Qafar Afrikah gaysal sugeeti”. The Afar is the considered to be the first cradle home of humanity. Archaeological findings like Lucy (Australopithecusafarensis) and many other human fossils have affirmed and witnessed this scientific and historical truth.

The Afars’ live in three adjacent states in the horn of Africa- (Ethiopia, Djibouti and Eritrea). Like in many parts of Africa, the colonial map-making has left its deep-seated negative mark on the political, and socio cultural unity of the Afar people in the horn of Africa. . As the making of the boundaries was entirely based on the vested interest of European expansionists that absolutely ignored the socio- cultural and ethno-linguistic make-up of the Afars were cut up them into three or adjacent states- Ethiopia, Djibouti, and Eritrea.¹

The language they speak known as ‘Afaraf’ which is categorized with the Cushitic language Family of the Horn of Africa. The Afar National Regional State in Ethiopia is located at the North eastern part of the country- Ethiopia, being one of the nine founding members of Ethiopian Federation. The Regional state has revised its former constitution by 2000 . And it entered into force since May of the same year-2000. The Afar State constitution is officially known as the ‘**Revised constitution of the Afar National Regional State of Ethiopia.**

The writing process of this constitution Was led by the three young Afar Law professionals (Ambassador Hassan Abdulkadir, Ali Hussein Weissa and Ahmed Hussein) . And it is composed of preamble, eleven chapters and one hundred eleven articles.

In its preamble, it provides set of fundamental principles, which include, the principle of basic human and Democratic Rights and fundamental freedoms, supremacy of the constitution, public sovereignty Constitutionalism and limited government, sustainable peace and development, secularism, the rule of law, separation of power ,Judicial independency, good governance and decentralization and so on.

This article seeks to provide brief an overview on these key principles and silent features of the Constitution of the Afar National Regional State of Ethiopia. Fundamentally, it will help to understand the key and silent features of the revised constitution of the Afar National Regional state. In doing so, it uses both descriptive and analytical approaches.

2. Fundamental Rights and Freedoms

Fundamental rights can be defined as those entitlements which are due to a human being because he or she is a human being and these can be divided into civil liberties as well as social-economic and cultural rights.

In contemporary democratic constitutions, fundamental rights are usually provided for under the Bill of Rights. The Revised Afar constitution is not an exception and it provides safeguards in the same way under its preamble and substantive articles as well. It enshrines or declares that respect for and protection of fundamental rights and freedoms as one of its founding constitutional objective and value.

The Constitution of the Afar Region, under its preamble declares that protection of human and Democratic rights, rule of, Justice and equality, ensuring sustainable peace and development are among its strongly reiterated constitutional commitments. The Declaration of human and Democratic Rights found under Chapter three serves as the Bill of Rights of the Regional constitution. Its recognition ranges from traditional civil and political rights to socio-economic and group or Solidarity rights. It embodies several civil and political rights most of which are adopted from the provisions of the constitution of the

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http://www.gigahamburg.de/sites/default/files/openaccess/afrikaspectrum/2008_1/giga_as_2008_1_yasin.pdf

Federal Constitution which was initially adapted from the Universal Declaration of Human rights.² The list includes the right to life (Which forbids deprivation of life under its article 15) security of the person, to liberty (which prohibits arbitrary arrest and deprivation of liberty articles 19 and 20), protection against cruel, inhuman, or Degrading treatment or punishment etc.³

Moreover, the Revised Constitution of the Afar National Regional state further guarantees the right to equality and equal Protection of the law⁴.

The right to privacy which can be limited only and if only compelling circumstances exist, and in accordance with law.⁵ In the same way, (Article 26). The freedom of religion, belief and opinion (Article 27); freedom of thought and Expression including access to information of public interest, linguistic rights etc are well recognized and protected under the Revised constitution of the Afar National Regional state.

It also incorporates various rights that Every Afar and dwellers of the Region has the right to freely engage in economic activities; to choose his/her means of Livelihood, occupation and profession; and equal access to publicly funded Services. It further requires the state to allocate ever-increasing resources to provide social services; provide funds for the rehabilitation of persons with disabilities, the aged and children without parents The right of the non negotiable of the Afar to self-determination, up to secession, includes the right to speak, write, develop their language; to express, Promote and develop their culture; preserve their history; and to self and equitable representation in the federal Administration.⁶

In spite of the sharp homorganic nature of the Afar community in terms of culture, history, religion and language the constitution the constitution accepts and promotes diversities. For instance it granted right to self administration to the Argopa minority ethnics groups in the region the as self administering district called “Baxsa le Argubbi da,ara”⁷. Moreover, the Revised Afar National Regional constitution granted **Economic, social and cultural rights (ESC Rights)**. Every Afar or Ethiopian **has** the right to freely engage in economic activities; to choose his/her means of livelihood, occupation and profession; and equal access to publicly funded Services. It further requires the state to allocate ever-increasing resources to provide social services; provide funds for the rehabilitation of persons with Disabilities, the aged and children without parents etc⁸ The Constitution also guarantees several labour rights. These rights include the

right to association including the right to form trade unions for collective bargaining purposes; the right to strike; equal pay for equal work; paid leaves; reasonable limits to working hours; and a healthy and safe work environment.⁹

The Economic Social and cultural rights guaranteed the revised constitution of the Afar National Regional state. The constitution creates clear constitutional obligation up on the Regional state to strive for the practical realization of Socio economic and cultural rights granted under the constitution. Moreover, the provisions create government obligations, rather than individual or collective rights, in a manner similar to the state policy principles and objectives.

One essential feature of the revised Afar National Regional constitution is the recognition of third generation or group or solidarity rights. The right to self-determination up to secession, the right to development and the right to a clean and healthy environment are clearly enshrined.¹⁰

The right to development is recognized as a benefit of the peoples of the Afar people and any Ethiopian dweller of the region as a whole, and in the form of a right to participation. The right to clean and healthy environment similarly recognizes the right for the benefit of all persons; as such it appears more like a guarantee which accrues to each individual.

Linguistic and cultural rights are well recognized and includes the right to speak, write, develop their language; to express, promote and develop their culture; preserve their history; and to self-government.

3. Constitutional Supremacy and Limited Government

The edifice of constitutional democracy is founded on the subordination of the exercise of Governmental power to established legal rules in the constitution.¹¹

Constitutional supremacy is therefore a principle that elevates the constitution to the level of being the supreme law of the land unto which all other laws and conduct must conform to. In essence, this is a Principle of constitutionalism whose implication is to put government and every citizen below the constitution, so that, no one can claim to be above the constitution.

In a constitutional democracy, it is important that the constitution be the supreme law of the land because, constitution is an expression of values and principles by

² See chapter three of the constitution of Federal Democratic Republic of Ethiopia.

³ See Revised Afar Regional constitution article Constitution, Arts. 14 – 18

⁴ Ibid Article 25.

⁵ Ibid art 26

⁶ Ibid art 37

⁷ Ibid art 43

⁸ Ibid art 39

⁹ Ibid art 40

¹⁰ See articles 37,41-42 of the revised Constitution of the Afar National Regional state.

¹¹ 21 Diescho J.B., The paradigm of an independent judiciary: Its history, implications and limitations in Africa in Horn N and Bosl (eds), *The Independence of the Judiciary in Namibia* (2008) at 40.

which the people would like to be governed.¹² Thus by insisting on constitutional supremacy, those values and principles are raised to the level where they become the standards against which all other laws and conduct is measured. Assuming that these values and principles are democratic, their supremacy facilitates the protection of human rights and democracy because undemocratic laws and decisions will be invalidated for their want of constitutionality if such laws and conduct is challenged in the relevant courts of law or any other competent organ for invalidation.

The concept of limited government requires the constitution to limit government's powers to those provided for under the constitution and law, and requires such power to be exercised in the manner prescribed under the constitution.¹³

In other words, government must not have any other powers other than or beyond those provided for under the law. As the popular saying goes, power tends to corrupt, and absolute power corrupts absolutely and as such it is safer to limit governmental powers than to give governments a free reign.¹⁴

The idea of limited government is therefore a constitutional measure which can be used to check against or prevent possible arbitrary rule by the government of the day. The Revised Constitution of the Afar National Regional State declares itself as the supreme law of the of the Region and requires all other laws and practices to be consistent with it and goes as follows : his Constitution is the supreme law of the land. All laws, customary practices, and decisions made by state organs or public officials inconsistent therewith, shall be null and void. Article 9(1) of the Constitution of the Afar reads as follows:

'All citizens, state organs, political organizations, other associations and their officials, have the duty to comply with this Constitution and abide by it..'

It is therefore, all other laws and practices are required to be consistent with those values and principle Provides in the constitution for limited government in the Region, by requiring that, the powers of all governments and its organs officials are limited to those provided for under the Constitution as well as the other relevant laws of the Region or the country.

4. Judicial Independence and Impartiality

As it has been mentioned in the introduction part, establishing rule of law, ensuring sustainable peace,

development justice and rule of law are among the pillar objectives mentioned under the preamble of the Afar Regional constitution. Indeed it is almost impossible to achieve these objectives without having an independent and impartial judicial system in the Region. Judicial independence is a principle which requires that the judiciary branch of government must be independent and officers of the courts should be protected from political influence or other pressures and that, the courts must practice fidelity to the law in their adjudication.¹⁵

Judicial impartiality is the principle that the judiciary must apply the law without fear, favour or prejudice. The Revised Constitution of the Afar National Regional state essentially provides for the independence and impartiality of the judiciary through its various articles.¹⁶ An independent and impartial judiciary is essential for the task of applying and upholding the constitution. Essentially this is a sensitive task that involves applying the law to adjudicate disputes. As such, an independent and impartial judiciary is perhaps the most important check and balance on executive and legislative power, the transgression of fundamental rights and freedoms .The judiciary must be able to exercise fidelity to the law and therefore must operate in such a manner that it is independent of influences from any other Institution or persons but is subject only to the constitution and the law.

A judiciary that is not independent cannot render the checks and balances implicit in the democratic system ineffectual.¹⁷ Thus the independence and impartiality of the judiciary is essential for the survival and proper functioning of all the other constitutional mechanisms for the protection of democracy such as constitutional supremacy, separation of powers, the rule of law and fundamental human rights. Protecting democracy lies in their enforcement. Thus such mechanisms are only able to facilitate the protection of constitutional democracy as long as the judiciary is independent and impartial enough to apply them when adjudicating legal disputes. For instance, a comprehensive and extensive bill of rights remains meaningless unless the judiciary is able to apply it when called upon to do so by the affected citizens. Equally, a constitution may declare itself or certain constitutional values supreme but such supremacy can only facilitate the protection of democracy against manipulation by the executive if the judiciary is not capable of applying and insisting on the observance of the supremacy of the constitution. Thus the effectiveness of all the mechanisms that are put in place through a constitution, to protect human freedom and democracy is dependent on the strength of the judiciary and the strength of the judiciary largely depends on its independence and impartiality. This is why some scholars have described the independence and impartiality of the judiciary as the anti-

¹² Currie et. al., *The New Constitutional and Administrative Law* (2001) at 24-25.

¹³ Ibid at 10-11.

¹⁴ Becker 'What is Democracy' 2008, 4. Available at: <http://library.fes.de/pdffiles/bueros/madagascar/05860.pdf>

¹⁵ Ibid

¹⁶ See articles 64-66 of the Revised constitution of the Afar National Regional state.

¹⁷ Goredema C. Whither Judicial Independence in Zimbabwe? In Raftopoulos, B. and Savage, T. (eds.), *Zimbabwe: Injustice and Political Reconciliation*, (2005) Harare, Weaver at 100

thesis of arbitrary rule and a cornerstone of constitutional democracy.¹⁸

5. Separation of Powers

Constitutional separation of powers is the idea that the State must be divided into three arms namely the executive, the judiciary and the legislature.¹⁹ These three arms must operate independent of each other but must have powers to check and balance against each other.²⁰

Thus separation of powers creates a system of checks and balances amongst the three branches of government, which protects democracy by making sure that power is not concentrated in one institution or one person, but is distributed across the government. The checks and balances system may lead to greater accountability between the three arms of government, and such accountability helps check against abuse of power. Broadly speaking, there are two types of separation of powers. Separation of powers can be 'strict' whereby the executive and the legislature are completely separated from each other and there is no overlap in terms of functions or personnel.²¹ Alternatively, it can also be 'partial' in which case, some degree of functional and personnel overlap between the executive and the legislature is allowed.²² The partial version of separation of powers is more effective as it allows smooth coordination of government functions and promotes checks and balances between the three arms. The 'strict' version has a tendency of leading to deadlocks between the executive and the legislature and this prevents government from taking action especially when faced with a crisis.²³ This is why contemporary democratic constitutions would rather provide for the partial separation of powers in order to allow government to discharge its duties but in a manner that is accountable and subject to internal checks by other branches of government.

The new Revised Constitution of the Afar Regional State formally provides for separation of powers²⁴ Article 45 Deals with separation of the power among legislative, executive and judicial organs of the Regional states. It vests legislative power into the regional legislative council and executive authority in the regional executive Council and cabinet, lead by the president of the Regional state, similarly article 64 vests judicial authority in the Regional judicial system.

¹⁸ Diescho J.B., The paradigm of an independent judiciary: Its history, implications and limitations in Africa. In Horn N and Bosl (eds). *The Independence of the Judiciary in Namibia* (2008) at 19

Malherbe R., *Constitutional Law* (2009) Durban: Butterworths at 78¹⁹

²⁰ Ibid

²¹ Barber N.W., Prelude to Separation of powers (2001) 60 *The Cambridge Law Journal* 59- 60.

²² Ibid. P.39

²³ Ibid. P. 72

²⁴ See articles, 44,45 and 65 of the revised constitution of the Afar National Regional State.

6. The Rule of Law

At the philosophical level there are different schools of thought as to what the rule of law encompasses. However the rule of law is essentially a doctrine which requires that all citizens and their government be bound by the same laws and be protected by the same standards or rules; which are interpreted by the same principles at all times, and as fairly as possible.²⁵

The rule of law is cornerstone of contemporary constitutional democracy as it plays a dual role of protecting the normative values of a constitutional democracy against manipulation and it also functions as a vehicle for the enforcement of the same normative values²⁶. in terms of its content must be just and promote the normative values of democracy which include (though not limited to) democratic accountability, transparency, political pluralism and tolerance as well as fundamental human rights. Both the formal and material aspects of the rule of law are critical for purposes of protecting and enforcing the constitutional democratic system. The formalistic side of the rule of law ensures that government decisions are in conformity with the law (principle of legality) while the material side ensures that the law itself is consistent with the entrenched constitutional democratic values and principles.²⁷ The revised constitution of the Afar National Regional State under its preamble acknowledges the need to 'entrench Democracy, good, transparent and accountable governance and the rule of law'. Furthermore, the new Constitution entrenches the rule of law as a foundational value.²⁸

Articles 9(2) and 13(1) impose a duty on all organs of the regional state to uphold Fundamental Human rights and freedoms. Moreover 13(2) of the Constitution require all laws and conduct to be consistent with the provisions of the Constitution, including the values and principles enshrined.

At the same time it imposes a general duty on all individuals associations; political parties etc to uphold the constitutional values, including the rule of law. Similarly article 13(1) imposes a duty on all organs of the state to respect the rule of law by obeying the decisions of the courts.

7. Principles of Democracy and Public Sovereignty

Rousseau argues that the essence of democracy is that the people are the sovereign or highest authority in the state, and they enter into a social contract with their government

²⁵ Supra cited note 25 P.6

²⁶ Ibid

²⁷ Currie etal. *The New Constitutional and Administrative Law* (2001) at 78 and 81.

²⁸ See articles 9 and 44 of the Revised constitution of the Afar National Regional State constitution.

through which they give the government the mandate to exercise powers on their behalf.²⁹

In contemporary constitutional democracies, ideally the people exercise such sovereignty through an election whereby they give persons of their choice the mandate to govern. Thus regular, free and fair elections are an important part of democracy.

The Former President of the United States of America Abraham Lincoln's famous quote '*Government of the people by the people for the people*' best captures the aspect of democracy which demands that the people should decide whom they want as their government.³⁰ A government can only be a government by the people if in the first place that government has been chosen by the people themselves.

Elections are the means through which people are able to decide who they want as their governor. Elections are therefore a mechanism through which the idea of government by popular sovereignty is implemented.

It is important that such elections be held in between constitutionally defined intervals, and they should be conducted in a manner that is free of any fraud, violence or any other form of coercion and disenfranchisement.

The Revised constitution of Afar National Regional state, prescribes principles of Democracy and public sovereignty.³¹

Essentially, the revised Constitution of the Afar National Regional state requires that government must conduct its business in a manner that is transparent and must always account for its decisions and conduct.³²

Information that is held by State institutions are not acquired for the benefit of officials or politicians but for the public as a whole, and the public should be able to request that information whenever they need it especially for purposes of holding the government accountable. Subject to a few exceptions such as those relating to protecting state security and personal privacy, governmental powers must be exercised in a manner that is open to public scrutiny.³³

The preamble to the Constitution of Afar National Regional state recognizes the need to entrench transparent

and accountable governance in the Region.³⁴ It also provides that transparency and accountability shall be one of the principles of governance binding all State institutions at all levels of the regional government. Furthermore, it requires the Regional government to formulate and implement policies and legislation to develop accountability and transparency in all institutions of government.³⁵

The net effect of all these provisions of the Constitution is that, transparency and accountability has been entrenched as part of the fundamental principles of governance and Democracy that must be respected and adhered to by all institutions of the State. Accountability by State institutions can be horizontal or vertical.

8. Conclusion Statement

In conclusion, the Constitution of the Afar National Regional state of Ethiopia contains fairly modern and Democratic constitutional principles. And it grants long list of fundamental human rights of all categories. However, the mode of formulation of the socioeconomic rights provisions of the Constitution is, problematic. Due to this, the question of justiciability still remains being bone of contention. For instance, right to education was not clearly covered as the constitutional right to the Afar Pastoral community and children. Therefore, there is a need to amend it in the line with the International covenant on Economic Social Cultural rights.

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³⁴ Ibid supra cited note 36.

³⁵ See articles 10-13, 29,36, 40, 53 and 101 of the Revised constitution of the Afar National Regional state constitution, 2000.

²⁹ Supra cited 25. P 25.

³⁰ Keane J., *Democracy: The Rule of Nobody?* (2004) Wissenschaftszentrum Berlin für Sozialforschung at 2. Available at: http://johnkeane.net/wp-content/uploads/2011/01/rule_of_nobody.pdf (accessed on 24 October 2014).

³¹ See articles 9(1), 43, 44, 46 of the Revised constitution of the Afar National Regional state.

³² See article 12 of the Revised constitution of the Afar National Regional State.

³³ Supra cited note 31 p.236

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