Incorporation of Human Rights into Legal Frameworks of the three Successive Regimes of Ethiopia and their Treatment: A Comparative Analysis

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Abstract

This article assesses the incorporation of human rights under the legal frameworks of the three successive regimes of Ethiopia, namely the Derg, Imperial and FDRE governments. Besides, it looks into the implementation of those introduced rights. Accordingly, based on the data analyzed, the findings of the study show that human rights have been incorporated under the three successive regimes’ constitutional and other legal frameworks with a varying degree. It also identified that there have been significant differences in terms of due recognition given to human rights. The current regime is by far better in introducing as well as giving high attention to human rights. Nonetheless, violation of human rights is what the three regimes have in common, albeit the degree differs.

Keywords: Human rights, incorporation of human rights, violations of human rights, legal frameworks
1. Introduction

Human rights are entitlements given to everyone by the mere fact of being a human being. Human rights define the power of the government. It also obliges the government to take positive step which creates a fertile environment for all people to enjoy such human rights (Nowak, 2005:1). As human rights are universal by nature, they need to be applied fully at all the time across all parts of the world. Putting it differently, every government is duty bound to respect, protect and fulfill human rights (ibid). More importantly, each government has to incorporate international human rights into its domestic legal frameworks as they are implemented domestically at state level (Lord and Stein, 2008: 452). Thus, it is envisaged that, as one member of the international community, Ethiopia would play its part in this regard. The existing literature focuses on human rights in Ethiopia with separate looking of the regimes. The prevailing literature on the subject does not make sufficient comparison of human rights’ incorporation as well as implementations across the three successive regimes. Thus, this study deals with the incorporation of human rights in to the three successive regimes’ constitutional and legal frameworks, thereby contributing to the available literature on the matter under question. Moreover, the study examines changes and continuities on the status of human rights across the three successive regimes.

2. Human Rights during the Imperial Regime

In the Ethiopia’s pre-constitutional period the concept of human rights was not developed and that the practice of human rights was not one that is emanated from human nature (Tsegaye, 2009:296). In the period before the 1931 constitution peoples were considered as a mere subject to the monarchs and citizens were not assumed to have rights by the mere fact of their humanity rather their privileges and benefits emanated from the will of the emperors (Ibid:296-297). Nonetheless, this trend continued to prevail in the period of the written constitution since the 1931.

2.1. The 1931 Constitution

The 1931 constitution which is considered as the grant by the emperor and designed to strengthen the absolute power of the same has no significant relevance to human rights (Tsegaye, 2009:297; Beken, 2007:13; Adem, 2011:41; Fasil, 1997:21). The constitution lists very few rights of the subjects which are recognized by the emperor, such as the right not to be arrested, sentenced, deprived of their property, and the right to free movement and secrecy of correspondence. These rights are too restrictive and full of exceptions. If one strictly looks into the
constitution, it is only 7 articles which deal with rights of the people. Hence, the qualifications as well as number of human rights incorporated into this constitution underscore the idea that constitution has no significant relevance to the rights of citizens. Even it was due to the influence of international community that these few rights were included in the constitution (Alemayehu, 2010: 40; Babile, 1997:5). Though certain rights had been recognized in the 1931 constitution, they were hardly implemented due to lack of adequate legislations to implement them, prerogative and discretionary power given to the Emperor, and lack of strong and independent institutions (Calpham and Paul, 1967:340-341).

The emperor adopted Universal Declaration of Human Rights (UDHR), which is a very important declaration that constitutes the International Bill of Rights, while the country was internally not in order (Alemayehu, 2010: 41). It was simply to bandwagon with the civilized nations and to build his image and reputation. This and other pressures for introduction of democratic concepts compelled the monarch to revise the constitution.

2.2. The 1955 Revised Constitution

Having the reason stated above the 1931 constitution was revised in 1955. Chapter three of this revised constitution from article 37-65 deals with right and duties of the people. Accordingly, the constitution contained 27 articles about human rights which were adopted from the developed European countries and also the American Bill of Rights (Spencer, 1993: 340; Raphaeli, 1967: 427). Hence, there was incorporation of a number of human rights in the constitution, including the right to assembly, association, election, expression, etc, as compared to the 1931 constitution. Nonetheless, those rights are also constrained by the claw back clauses marked by the phrase such as “in accordance with the law”, or “as shall be determined by law” (Tsegaye, 2009:298; Adem, 2011:42; Lewis, 1956:195). Moreover, Penal Code is also introduced in 1957 to give reality and depth to the principles of human rights. It is safe to say that the revision of the constitution as well as the introduction of Penal Code show the concern of human rights problem of the time. Nevertheless, imperial rule under the revised constitution and other legal frameworks was also characterized by widespread human rights abuses despite the fact that there was incorporation of considerable number of rights. It is due to this fact that dissatisfied peoples began to show their grievances through uprisings.

To calm down uprisings brought against the monarch, the monarch come up with a Draft Constitution in 1973 having incorporation of an enormous list of human rights. The 1973 Draft Constitution under Chapter Two deals with Rights, Duties, and Responsibility of citizens. Accordingly,
it includes rights such as equality before the law, freedom of expression, demonstration, movement and religion, non extradition, presumption of innocence, to elect and to be elected, right against double jeopardy etc). When one looks into human rights provisions of this draft constitution, he/she understands the wide coverage given to rights of the people. Even it exceeds the 1995 FDRE constitution’s rights provisions. More importantly, this constitution provides provisions for the establishment of Ombudsman to appeal into in case of violation of human rights. Though fascinating, it seems ambitious as the state was not domestically in order and never fit those enlightened concepts since there was no parallel development of institutional machineries. Consequently, the changes took place were too little too late, thus, the regime demised and the constitution easily aborted.

3. Human Rights during the Derg Regime

After the fall of the imperial regime, the Provisional Military Administrative Council (PMAC) having socialist ideology seriously depreciated human rights of the citizens such as freedom of expression, free elections and freedom of religion (Tsegaye, 2009:298; Fasil, 1997: 28). Later, after 13 years of constitutional lacuna the regime came up with the third written constitution which is the 1987 constitution.

3.1. The 1987 Constitution

The 1987 PDRE constitution which opened a chance for grass-root level discussions on the provisions of the draft constitution shows the weight given to human rights in the text of constitution (Fasil, 1997:30). This has never been practiced in constitutional history of Ethiopia. The preamble of the constitution confirms sovereignty of the people, equality of nationalities, respectio of basic rights and freedoms. This constitution under Chapter Seven deals with Fundamental Freedoms, Rights and Duties of Citizens besides the non-extradition right stated under Chapter Six. Accordingly, it incorporated rights, like equality before the law, equality of men and women, free education, freedom of speech, press, association, presumption of innocence, to elect and to be elected etc). This constitution emphasizes socio-economic and cultural rights due to the socialist tendency of the regime (Tsegaye, 2009:298; Adem, 2011:42). But, there was hardly a vibrant human rights culture that specially fostered the assertion of civil and political rights (Africa Watch, 1991:10; Tsegaye, 2009:298). Additionally, Ethiopia also joined the international human right conventions such as the Convention on the Elimination of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1976 and 1981 respectively (Brems, 2007:52; Muhammad, 2011:20). Despite those conventions
and other rights and freedoms incorporated in the constitution, their implementation on the ground was poor.

Above all, the Derg regime was known by the worst human right records in the world. The regime was responsible for violations of human rights on an enormous scale including the torture, murder, and disappearance of tens of thousands of Ethiopians during the Red Terror campaign and continued to commit such violations until it’s down fall (Balsvik, 2007:77; Human Right Watch, 2003:8; The Advocates for Human Rights, 2009:7). Hence, despite its incorporation of human rights, the regime was known by brutal violations of human rights.

4. Human Rights under the Federal Democratic Republic of Ethiopia

The Transitional Charter of Ethiopia had served for three years as an interim constitutional framework providing the basic governmental structures that opened adequate space for the protection of individual and group human rights (Hashim, 2010:11). The transitional government has incorporated the UDHR into its Charter and promised that human rights and civil liberties will be respected (Allen, 1993:446). The Charter also asserts that based on the UDHR individual human rights shall be respected fully without any limitation whatsoever; and acknowledged rights under article one and two of the charter.\textsuperscript{viii} More importantly, the Charter promised rights to the extent of exercising right to self-determination of independence.\textsuperscript{ix} This represents a very welcome change from the government of Mengistu, which had an abysmal human rights record. This charter served as a foundation for the 1995 FDRE constitution.

4.1. The 1995 FDRE Constitution

The very significance of human rights is clearly recognized in the preamble of the constitution, which states the full respect of individual and people’s fundamental freedoms and rights as foundation for building a political community founded on the rule of law and capable of ensuring a lasting peace guaranteeing a democratic order.\textsuperscript{x}

Most importantly, the sanctity of human rights is stated as one of the five fundamental principles of the constitution. Article 10 (1) of the constitution states that, “human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable”. This principle establishes the idea of inherence, universality, indivisibility, and inviolability of human rights (Tsegaye, 2009:301). Hence, the idea of human right becomes more recognized, celebrated and given utmost significance in this fourth written constitution of Ethiopia. In this connection, Tsegaye (2009:302) noted that the cumulative effect of the five fundamental principles of constitution is that they create a hospitable
environment for a better protection of human rights in Ethiopia.

The constitution has 106 articles with 11 chapters and nearly one-third of the provisions of the constitution deals with fundamental rights and freedoms. This shows a major break from the past constitutional traditions. In its Chapter Three the constitution offers a long list of rights that are divided into two major categories, namely that of ‘Human Rights’ and ‘Democratic Rights’. Part One of the chapter deals with human rights which covers articles from 14-28 and part two deals with democratic rights from article 29-44. Just to mention some human rights under part one (the right to life, security of person, liberty, prohibition against inhumane treatment, right of person arrested, right of persons accused etc.) and under democratic rights (right of opinion, expression, assembly, demonstration and petition, freedom of association, freedom of movement, rights of nationality, marital, personal and family rights etc.).

Another important improvement in the area of human rights is the enactment of the criminal law, which is introduced replacing the 1957 penal code due to recognition by the Constitution and international agreements ratified by Ethiopia of, *inter alia*, human rights and democratic rights and freedoms.

4.2. Ethiopia’s Ratified / Acceded International Conventions

The 1966 two international conventions namely International Convention on Civil and Political Rights (ICCPR) and International Convention on Economic, Social, and Cultural Rights (ICESCR) were not ratified by any one of the preceding governments and it is in this current regime that both treaties acceded in 1993 (Brems, 2007:52; Muhammad, 2011:19; Brietzke, 1995 :24; Vadala, 2009:1074; Goel, 2009:143). Thus, besides its National Bill of Rights, Ethiopia is subject to those International Bill of Rights (ICCPR, ICESCR and UDHR) with the exception of the two Optional Protocols of ICCPR on an individual complaint mechanism (1996) and on the abolition of the death penalty (1989)( Brems, 2007:52). Thus, when one goes through the whole provisions of chapter three of the 1995 constitution, he/she can understand how far those rights listed in the 1966 conventions (ICCPR&ICESCR) are incorporated into the legal framework of the current regime.

Besides the above International Bill of Rights, another new development regarding the Ethiopia’s ratification of the international human right treaties is its ratification of the Convention on the Rights of the Child (CRC) in 1991, though it has not yet taken any action with respect to the 2000 Optional Protocols on the sale of children, child prostitution.

Most importantly, those rights under chapter three of the FDRE constitution required to be interpreted in line with the above mentioned international instruments. Article 13(2) states that the “fundamental rights and freedoms specified in the chapter shall be interpreted in a manner conforming to the principles of the UDHR, International Covenants on Human Rights and International instruments adopted by Ethiopia”.xiii Besides, as per article 9 (4) of the constitution all international agreements ratified by Ethiopia are an integral part of the law of the land. Thus, the abovementioned international human right treaties are part and parcel of the constitutional framework of the country. From this one can deduce the massive incorporation of human rights into the legal frameworks of the current regime.

As far as institutional structure concerned legislature, executive, and judiciary are the important bodies in charge of administering rights (Tsegaye, 2009:303). Ethiopian Human Rights Commission (EHRC), the Institution of the Ombudsman, and some similar institutions are also special bodies that guarantee human rights in Ethiopia (Tsegaye, 2009:304). The promise of the constitution for establishment of Human Rights Commissionxiv and the institution of the Ombudsmanxv, unlike the previous regimes’ constitutions, underscores the great attention given for the protection and promotion of human rights. The institution of Ombudsman is established to bring good governance through ensuring citizen’s rights.xvi In a nutshell, the constitution is a human rights friendly text.

Nonetheless, needless to say, this massive incorporation of human rights to the constitution and other legal frameworks of the country does not mean that they are fully realized. The issue of implementation of human rights is subject to different criticisms by different authorities. Some maintained that the current regime of Ethiopia has
poor human rights record and has been condemned widely for its massive violations of human rights (Alemayehu, 2008:124; Tronvoll, 2008: 50; EHAHRDP, 2008:3; Asafa, 2005:11). There have been constant arguments about rights’ violations and repression, notably the Western donors have expressed disappointment over the government forces’ killing of 190 demonstrators in 2005, and over the general repression that followed (Abbink, 2009:18-19; EHAHRDP, 2008:3). Besides, international human rights organizations, in particular Amnesty International, Human Rights Watch and Africa Watch, have consistently documented serious human rights violations in the country (Mohamud and Doornbos, 2002:74). Other regional and local monitoring groups, such as the Ogaden Human Rights Committee, the Ethiopian Human Rights Commission and the Sidama Concern, have published similar reports (Ibid:74). Furthermore, The Advocates for Human Rights (2012: 1-2) noted that ICESCR are violated by the current government of Ethiopian. Committee on the Elimination of Racial Discrimination also criticized the government for the violation of CERD (Tronvoll, 2008: 57). Thus, Ethiopia has remained to be a state known to the world for its recurrent lack of respect for human rights (Asafa, 2010:161).

5. Changes and Continuities

There are changes and continuities on the status of human rights across the three successive regimes’ legal frameworks. These are apparent in the coverage, scope, amendment and implementation of rights. These are discussed one by one as follows.

The FDRE Constitution has extensive coverage dealing with various themes of democratic and human rights from Art. 14-44. The previous legal frameworks were not as such wide in coverage. For instance, the 1931 constitution contains, if one strictly looks, only 7 articles; the 1955 constitution has 27 articles; and the 1987 constitution has 18 articles. In addition to rights incorporated in the previous constitutions, the current constitution added further elaborated rights and freedoms and thereby widens its coverage.

The principle of inviolability and inalienability of human rights can also be understood as another peculiarity in the 1995 constitution as compared with the past legal frameworks. Besides, as far as scope of application concerned fundamental rights and freedoms in the 1995 constitution shall be interpreted in a manner conforming to the principles of UDHR and International Covenants adopted by Ethiopia. This broadens their scope of application. This is major change in the status of human rights which has not been stated in the three foregoing constitutions.
Besides the interpretation requirement, the high value given to human rights is further revealed in their amendment requirement. Amendment of human rights provisions of the 1995 constitution is subject to special and stringent procedures unlike what is applied to other provisions of the constitution. This is to avoid unnecessary degeneration and to consolidate the sanctity of human rights. The 1931 constitution has no provision about amendment at all, whereas the 1955 revised constitution has no special procedure given to human rights provisions. The 1987 constitution also stipulates no special stringent criteria to human rights provisions. Thus, the 1995 constitution is unique and has this major departure.

Generally, the degree of inclusion of and emphasis given to human rights varies across the three regimes. And this by far increases in the current regime in that human rights are massively incorporated and given special attention. What still persists in all the three successive regimes, however, is the prevalence of violations of human rights, though the degree differs.

6. Conclusion

In the pre-constitutional period of Ethiopia human rights had no place to be entertained. The incorporation of human rights into the legal frameworks started since the 1931 constitution of Ethiopia, under the imperial regime. But, though this constitution incorporated few rights of subjects, they were not realized as the constitution mainly devoted to magnify the sacredness of the emperor. Later, the constitution was replaced by the 1955 revised constitution which introduced more extended progressive human rights that adopted from western countries. However, once again the constitution reaffirmed the absolute power of the king and human rights violations remain intact. At the end, the monarch introduced a Draft Constitution which by far better in massively introducing rights. Nevertheless, it could not last long and immediately averted.

Human rights continued to be incorporated in the 1987 PDRE constitution. Having the tendency to socialist ideology more emphasis was given to economic, social, and cultural rights. Nevertheless, it was in this period that very heinous and extreme violations of human rights occurred under the operation of Red Terror.

In the existing legal framework of Ethiopia incorporated a wide range of rights recognized in the International Bill of Rights to its National Bill of Rights. The reach and application, interpretation, limitations, and entrenchment of the provisions of human rights under chapter three underscore that the constitution is a very human rights friendly text. Moreover, an enormous change come since 1991 as
far as human rights discourse, institutions, advocacies, civil societies, and ratifying international human rights treaties concerned. However, it does not mean that human rights are well realized on the ground, which makes the regime similar with the past regimes.
NOTES

i The 1931 Constitution of Ethiopia, chapter III

ii The 1955 revised constitution of Ethiopia, Chapter 3, Art. 37-65.

iii The Penal Code Proclamation No. 158/1957 of Ethiopia


v Ibid, Chapter 9, Art.143-146.

vi The 1987 Constitution of People’s Democratic Republic of Ethiopia, Preamble, paragraph 12

vii Ibid, Chapter 7, Art. 35-52.


ix Ibid, Part one, Art 2 (c).

x FDRE Constitution, preamble, paragraph 2 &5.

xi Ibid, chapter 3, Art. 14-44.


xiii FDRE Constitution (see n.10), Chapter 3, Article 13(2)

xiv Ibid, Article 55(14)

xv Ibid, Article 55(15)

xvi The Institution of the Ombudsman Establishment Proclamation No. 211/2000.

xvii FDRE Constitution (see n.10), Article 105(1).

xviii The 1955 revised constitution (see n. 2), article 131.

xix The 1987 Constitution (see n. 6), article 119.

References


