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Judicial Role in Implementing International Human Rights Treaties in Ethiopia

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Abstract

Ethiopia has ratified numerous international human rights treaties. The imperatives of domestically implementing the provisions of these international human rights treaties impose essential obligations to respect, protect, and fulfill on Ethiopia. The provisions of international human rights instruments ratified by Ethiopia must be domestically implemented by all three branches of the Ethiopian government: legislative, executive and judicial. The respective role of branch of the government in the domestic implementation of human rights treaties is defined by national constitutions states. Nevertheless, in Ethiopia debate exists about Ethiopia's courts' role in enforcing international human rights treaties ratified by Ethiopia as the Federal Democratic Republic of Ethiopia [Hereinafter, FDRE] Constitution does not contain express provision on this issue. In this article the author argues that duty imposed on Ethiopian courts by articles 9(1) and 13(1) of the FDRE Constitution to respect and enforce human rights which are expressly guaranteed in the FDRE Constitution should analogically apply concerning Ethiopian courts' duty in implementing international human rights treaties ratified by Ethiopia. The reason is since international human rights treaties ratified by Ethiopia occupy a position superior to that of the FDRE constitution in the pyramid of Ethiopian domestic laws, it logically sound to analogically apply the provisions of the FDRE Constitution governing Ethiopian courts' duty to respect and enforce human rights which are expressly guaranteed in the FDRE Constitution to Ethiopian courts' duty to domestically implement international human rights treaties ratified by Ethiopia.

Keywords: Human rights, Ratification, State obligations, Role of courts, Implementation.

1. Introduction: Ethiopia has ratified numerous international human rights treaties.¹ The FDRE Constitution provides that all international agreements ratified by Ethiopia are an

¹The main ratified instruments include: International Covenant on Civil and Political Rights G.A. Res. 2200A (XXI), U.N. Doc. 2200A (XXI) (Dec. 16, 1966) [herein after ICCPR]; International
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integral part of the law of the land.² This formulation implies that the provisions of these international human rights treaties are part of the domestic law of Ethiopia.³ Consequently, the provisions of such international human rights instruments can be directly applied in Ethiopian national institutions.⁴

The provisions of international human rights instruments ratified by Ethiopia must be domestically implemented by all three branches of the Ethiopian government: legislative, executive and judicial.⁵ The respective role of each branch of the government in the domestic implementation of ratified human rights treaties is defined by national constitutions of states.⁶

Nevertheless, in Ethiopia the debate exists about Ethiopia's courts' role in enforcing international human rights treaties ratified by Ethiopia. The FDRE Constitution⁷ does not contain express provision regarding role of Ethiopian courts in domestic implementation of ratified human rights treaties ratified by Ethiopia. The FDRE Constitution only states about role of Ethiopian federal government and state government courts in implementing human

Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/RES/2200 (XXI) (Dec. 16, 1966) [hereinafter ICESCR]; Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res.34/180, U.N. doc. A/RES/34/180 (Dec. 16, 1979); Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, at 27, U.N. Doc. A/Res/61/106 (Dec. 13, 2006); Convention on the Rights of the Child (CRC), UN Doc. A/RES/44/25, 20 November 1989 [hereinafter CRC];Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res 39/46, U.N. Doc. A/RES/39/46 (Dec. 10, 1984); International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), U.N. Doc. A/RES/2106 (XX) A-B (Dec. 21, 1965); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families G.A. Res. 45/158 (18 December 1990); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (May 25, 2000)

²The Constitution of the Federal Democratic Republic of Ethiopia, 1995 [hereafter FDRE Constitution], Art. 9(4)

³ 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* 2nded (Oxford University Press Oxford 2012), p. 530-538

⁴ C. Tomuscha , National Implementation of International Standards on Human Rights, Can. Hum. Rts. Y.B. 31, 42(1985); L. Oppenheim International Law of Treaties 8th ed (Longmans London 1986), P.37

⁵J. C. Mubangizi, The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation, 2 Afr. J. Legal Stud. 1, 6(2008)

⁶ Martin Schenin, 'International Human Rights in National Law' in Raija Hanki, and Markku Suksi (ed), An Introduction to the International Protection of Human Rights (2002), p.418-419

⁷ See, generally FDRE Constitution, supra note 2

rights which are expressly guaranteed in the FDRE Constitution.⁸ And scholars work and judicial practice speak inconclusively on the issue.

The aim of this article is to contribute to the large gap in research on the role of Ethiopia courts in domestic implementation international human rights treaties ratified by Ethiopia by analyzing provisions of the FDRE Constitution which have relevance to the topic.

The article is divided in six sections. The next section discusses rank of international human rights treaties ratified by Ethiopia in the Ethiopian domestic legal system. Section 3 elaborates Ethiopia's domestic obligations imposed by international human rights treaties ratified by Ethiopia. Section 4 gauges remarks on organization and power Ethiopian courts under the FDRE Constitution. Section 5 analyzes role of Ethiopian courts in domestic implementation of human rights treaties ratified by Ethiopia. Finally, section 6 concludes the article.

2. Status of ratified human rights treaties under the Ethiopian legal system: Regarding hierarchical position of international human rights treaties ratified by Ethiopia in the in relation to other Ethiopian domestic laws there is recognition under international law of hierarchically higher status of the international human rights treaties. The idea is that because of the binding nature of ratified international human rights treaties for the state, it compels national institutions to consider them as authority.⁹

It is possible present many international law rules which show the hierarchically higher status of ratified international human rights treaties in the pyramid of laws of domestic legal system of the ratifying states. The author will present two examples of such international law rules as follows.

For example, the principle of *pacta sunt servanda* stipulates that a state cannot plead provisions of its own law or deficiencies in that law in answer to a claim against it for an alleged breach of its obligations under international law.¹⁰ Secondly, the principle of consistent interpretation which is sometimes referred to as the 'Charming Betsy' doctrine states that a national statute must be construed so as not to conflict with international law.¹¹ From it is possible to conclude human rights treaties are hierarchically above state domestic laws of states because human rights treaties serve as guidance.¹²

In sum, international human rights treaties ratified by Ethiopia occupy a position superior to that of Ethiopian constitution and other laws, which, if inconsistent with

⁸ See FDRE Constitution, *supra* note 2, Arts. 9(1) and 13(1)

⁹ Felice Morgenstern, 'Judicial Practice and the Supremacy of International Law' (1950), p. 85; Andre Nollkaemper, *National Courts and the International Rule of Law* (2011), p. 153

¹⁰ Ian Brownlie, *Principles of Public International Law* (2008), p. 34

¹¹ See *Murray v. The Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804)

¹² David Thór Björgvinsson, *The Intersection of International Law and Domestic Law*, (Edward Elgar Publishing Limited Cheltenham 2015)

international human ratified treaties ratified by Ethiopia, should give way to the domestic application of treaty-based remedies.¹³

3. Ethiopia's domestic obligations imposed by international human rights treaties ratified by Ethiopia: All human rights treaties impose obligations that fit into one of three levels of a tripartite scheme: the obligation to respect, the obligation to protect, and the obligation to fulfill.¹⁴

The obligation to respect requires states “to refrain from interfering directly or indirectly with the enjoyment of” the right in question.¹⁵ The obligation to respect a human right therefore ‘constitutes what is essentially a negative duty on the part of the state to neither impede nor restrict the exercise of these rights.’¹⁶ The obligation to respect is thus a ‘minimalist undertaking’ and an obligation of ‘primary level’ for the states.¹⁷

The obligation to protect requires the state to act positively to prevent and remedy the violations of human rights caused by interferences of non-state actors.¹⁸ The obligation to protect involves the requirement that the state must issue laws and procedures and provide legal and institutional remedial avenues to enforce the horizontal duty of non-state actors.¹⁹

Obligation to fulfill requires the State to take the measures necessary to ensure for each person within its jurisdiction opportunities to obtain satisfaction of those needs, recognized

¹³*Id*

¹⁴H.Shue Basic Rights. Subsistence, Affluence and U.S. Foreign Policy 2nd ed (Princeton University Press 1996). A similar typology was developed contemporaneously by A.Eide, ultimately adopted by the United Nations in A. Eide (UN Special Rapporteur on the Right to Food), The Right to Food (Final Report) UN. Doc. E/CN.4/Sub.2/1987/23 (1987), paras. 66–69.

¹⁴TheRighttotheHighestAttainableStandardofHealth,P33,U.N. Doc. E/C.12/2000/4 (Nov. 8, 2000), available at <http://www.ohchr.org/english/bodies/cescr/comments.htm>,P33.

¹⁵ESCR Committee, General Comment No.

¹⁶ Scott Leckie, and Anne Gallagher, 'Introduction: Why a Legal Resource Guide for Economic, Social and Cultural Rights?' in Scott Leckie, and Anne Gallagher (ed), Economic, Social, and Cultural Rights: A Legal Resource Guide (2006) xiii, xx.

¹⁷ Philip Alston, and Gerard Quinn, The Nature and Scope of States Parties' Obligations Under the International Covenant on Economic, Social and Cultural Rights 9 Human Rights Quarterly 156, 184 (1987)

¹⁸ See Daphne Barak-Erez, and Aeyal M Gross, 'Introduction: Do Us Need Social Rights? Questions in the Era of Globalisation, Privatisation, and the Diminished Welfare State' in Aeyal M Gross and Daphne Barak-Erez (ed), Exploring Social Rights: Between Theory and Practice (2007) 3, 7-8; Aeyal M Gross, 'The Right to Health in an Era of Privatisation and Globalisation: National and International Perspectives' in Daphne Barak-Erez and Aeyal M Gross (ed), Exploring Social Rights: Between Theory and Practice (2007) 289, 303

¹⁹H. Knox, *horizontal human rights law*, 102 Am. J. Int'l L. 1, 23, 23(2008)

in the human rights instruments, which cannot be secured by personal efforts.²⁰The States' obligation to fulfill arises when measures taken by States with respect to obligations to respect and protect has not been successful in ensuring enjoyment of human rights.²¹Hence, states are obliged to take appropriate legislative, administrative, budgetary, judicial and other measures that rights holders need in order to realize and enjoy their rights in full."²²

Under the International Covenant on Civil and Political Rights (ICCPR), the most important legal basis for the three kinds of state obligations entailed by human rights is Article 2(1) which requires each state party "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant."²³

Although the International Convention on Economic, Social and Cultural Rights (ICESCR) does not include the "respect and ensure" language, the Committee on Economic, Social and Cultural Rights has read it to require parties to protect rights, as well as to respect and fulfill them, and has stated that the obligation to protect requires states to ensure that private actors do not interfere with the enjoyment of rights.²⁴

The quartet layers of state obligations discussed above are analytic tools for gauging whether and to what extent a state has been implementing (or violating) a given international human right, while they also reflect the manner in which the state must behave in order to discharge its international human rights obligations.²⁵

4. Remarks on organization and power of courts under the FDRE Constitution: The Ethiopian judicial system is organized on a dual basis in which there are two parallel court systems, the federal courts and the state courts with their own independent structures and administrations.²⁶ The FDRE Constitution states that supreme federal judicial authority is vested in the federal Supreme Court and reserves for the House of Peoples' Representatives

²⁰ A. Eide , Realization of Social and Economic Rights and the Minimum Threshold Approach, 10 Human Rights Law Journal 35, 37 (1989); S.H. Cleveland , embedded international law and the constitution abroad 110 Colum. L. Rev. 225, 283 (2010)

²¹ Mesenber Assefa , defining the minimum core obligations-conundrums in international human rights law and lessons from the constitutional court of South Africa' Mekelle U. L.J. 48, 51 (xxx);

²² W. Kalin and J. Kunzli The Law of International Human Rights Protection (Oxford University Press Oxford 2009), p.112; Shuesupra note 12, at 160; The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights 20 HuM. RTS. Q 693-94, para 6 (1998)

²³ ICCPR, supra note 1, Art. 2(1). See also, Hum. Rts. Comm., General Comment No. 31, UN Doc. CCPR/C/21/Rev. 1/Add. 13, para. 8 (May 26, 2004)

²⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 12, UN Doc. E/C.12/1999/5, para.15 (May 12, 1999) (right to food); & General Comment No. 14, UN Doc. E/C.12/2000/4, para. 33 (right to health)

²⁵ Magdalena Sepulveda, The Nature of the Obligations under the International Covenant on Economic, Social, and Cultural Rights (2003) 172

²⁶ FDRE Constitution, supra note 2, Art. 50(2)

(HoPR) to decide by a two-third-majority vote to establish inferior federal courts as it deems necessary, nationwide or in some parts of the country.²⁷

Moreover, the FDRE constitution delegates to state supreme courts and state high courts the function of federal High Court and federal First Instance Court respectively.²⁸ That is, the FDRE Constitution speaks of delegation until the House of Peoples' Representatives HoPR decides to set up lower federal courts across the country, implying the revocable position of the delegated power.²⁹

As far as the organization of state courts are concerned, from the provisions of the FDRE Constitution one finds that the judicial structure consists of the state first instance courts at the lowest level, above which we have the intermediate high court and at the highest level we have the state supreme court.³⁰

The FDRE constitution states that specialized judicial bodies other than ordinary courts can be established to exercise judicial power. The FDRE Constitution states that "everyone has the right to bring a justiciable matter³¹ to and to obtain a decision or judgment by, a court of law or any other competent body with judicial power."³² Thus, according to the FDRE Constitution not all disputes are within the scope of power of ordinary courts.

Regarding the issue of jurisdiction of Ethiopian courts, the jurisdiction of courts and the powers they have to adjudicate cases is constitutionally guaranteed by the FDRE constitution. The FDRE constitution declares that judicial powers both at federal and state levels are vested in the courts.³³ As mentioned in the previous paragraph the term court refers to both regular courts and other specialized judicial organs established to exercise judicial function.³⁴

For the purpose of this article the most significant provisions of the FDRE Constitutions governing jurisdiction of Ethiopian courts are the provisions governing role of Ethiopian courts in interpreting the FDRE constitution. Regarding this issue the close scrutiny of the FDRE Constitutions reveals that the power to interpret the FDRE constitution is shared between courts and the House of Federation (HOF).

Article 9(1) of the FDRE Constitution obliges all organs of the government at federal and regional level to respect and enforce the constitution. Moreover, article 13 (1) of the Constitution reads as "All Federal and State legislative, executive and judicial organs of at

²⁷*Id.*, Art. 78(2).

²⁸*Id.*

²⁹*Id.*

³⁰*Id.*, Arts.80 and 81; Art.50(7).

³¹ Justiciable matters are issues that arise from actual cases and are capable of settlement by legal methods. See, I.E. Koch, *The Justiciability of Indivisible Rights*, 72 *Nordic J. Int'l L.* 3, 32 (2003)

³² FDRE Constitution, *supra note 2*, Art. 37 (1)

³³*Id.*, Art. 79 (1).

³⁴*Id.*, arts. 37(1) and 78(2)

all levels shall have the responsibility and the duty to respect and enforce the provisions of the constitutional bill of rights(human rights which are expressly guaranteed in the FDRE Constitution).”³⁵

From cumulative reading of articles 9(1) and 13(1) of the FDRE Constitution it follows that Ethiopian courts at federal and regional government level are constitutionally obligated to respect and enforce the FDRE Constitution in general, and human rights which are expressly in the FDRE Constitution more specifically. And, Courts can neither respect nor enforce the FDRE constitution unless they are in one way or another involved in interpreting the scope and limits of the constitutional provisions.

On the other hand, the the FDRE Constitution empowers the second house of Parliament, the HOF, to give final decision on constitutional disputes.³⁶ This means if a dispute arises on the judicial interpretation of the FDRE constitution in general, and human rights which are expressly guaranteed in the FDRE Constitution more specifically, the organ that is constitutionally empowered to give final and binding decision is the House of Federation (HOF).

5. Role of Ethiopian courts in the domestic implementation of international human rights treaties ratified by Ethiopia: As discussed in section 2 of this article, the FDRE Constitution provides that human rights treaties ratified by Ethiopia are an integral part of domestic law of Ethiopia.³⁷ Moreover, as elaborated in the same section human rights treaties ratified by Ethiopia occupy a position superior to that of Ethiopian constitution and other laws in the pyramid of hierarchy Ethiopian domestic laws.³⁸

Moreover, as discussed in section 4 of this article, by virtue of articles 9(1) and 13(1) of the FDRE Constitution, Ethiopian judicial organs at federal government and regional government levels have an obligation to respect and enforce the FDRE constitution in general, and human rights which are expressly guaranteed under chapter 3 of the FDRE Constitution more specifically.³⁹

From the discussions made in the previous paragraph and section 4 of this article we can see that the FDRE Constitution does not contain express provision regarding role of Ethiopian courts in the domestic implementation of international human rights treaties ratified by Ethiopia. The FDRE Constitution only states about role of Ethiopian federal government and state government courts in implementing the human rights which are expressly guaranteed in the FDRE Constitution.

As mentioned in section 1 of this article, the respective role of each branch of the government in the domestic implementation of obligations imposed by ratified human rights

³⁵ *Id.*, Art. 13 (1)

³⁶ *Id.*, Arts.61(1) and 83(1)

³⁷ *Id.*, art.9(4)

³⁸ See section two, *supra*

³⁹ FDRE Constitution, *supra note 2*, arts. 9(1) and 13(1)

treaties is supposed to be defined by national constitutions of states.⁴⁰ Accordingly, the FDRE Constitution should have governed role of Ethiopian courts in the domestic implementation of international human rights treaties ratified by Ethiopia in clear provision. However, as mentioned above, the FDRE the FDRE Constitution is silent regarding Ethiopian courts role in the domestic implementation of international human rights treaties ratified by Ethiopia.

In the absence of express constitutional provision on the role of Ethiopian courts concerning domestic implementation of international human rights treaties ratified by Ethiopia it is necessary to ask if we can analogically apply duty imposed on Ethiopian courts by articles 9(1) and 13(1) of the FDRE Constitution to respect and enforce human rights which are expressly guaranteed in the FDRE Constitution concerning Ethiopian courts' duty in implementing international human rights treaties ratified by Ethiopia domestically.

Regarding this this issue the view of the author is in the affirmative. The reason is since, as already discussed in section 2 of this article, international human rights treaties ratified by Ethiopia occupy a position superior to that of the FDRE constitution in the pyramid of Ethiopian domestic laws, it is logically sound to analogically apply the provisions of the FDRE Constitution governing Ethiopian courts' duty to respect and enforce human rights which are expressly guaranteed in the FDRE Constitution to Ethiopian courts' duty to respect and enforce international human rights treaties ratified by Ethiopia also.

Consequently it follows that the Ethiopian courts at federal government and state government levels have an obligation under article 9(1) and 13(1) of the FDRE Constitution to respect and protect international human rights treaties that have been ratified by Ethiopia in addition to their duty to respect and protect human rights which are expressly guaranteed in the FDRE Constitution.

In connection to the above point it is necessary to remember that, as discussed in section 3 of this article, international human rights treaties ratified by Ethiopia impose domestic obligations to respect, protect, and fulfill the rights contained in the international human rights treaties ratified by Ethiopia.⁴¹ This means that the judicial branches of the Ethiopian federal government and state government have their role in implementing all the obligations to respect, protect and fulfill which are imposed by international human rights treaties ratified by Ethiopia.⁴²

⁴⁰Schenin, *supra* note 6, at 418-419

⁴¹ See Shues*supra* note 14

⁴²Mubangizi, *supra* note 5, at 6. See also M.F. Davis , *The Spirit of Our Times: State Constitutions and International Human Rights*, 30 *N.Y.U. REV. L. & Soc. Change* 359, n. 52(2006); A. Slaughter, *Judicial Globalization*, 40*VA. J. INT'L L.* 1103, 1103(2000); J. Resnik , *Foreign as Domestic Affairs: Rethinking Horizontal Federalism and Foreign Affairs Preemption in Light of Trans local Internationalism*, 57*Emory L.J.* 31, 31 (2007)

According to the author the expressions ‘obligations to respect and enforce’ in articles 9(1) and 13(1) of the FDRE Constitution have to be interpreted as ‘obligations to respect, protect and fulfill’ so as to harmonize them with Ethiopia’s domestic obligations emerging from international human rights treaties ratified by Ethiopia.

Hence, we can say that by virtue of articles 9(1) and 13(1) of the FDRE Constitution Ethiopian courts at federal and state government levels are under legal duty to judicially implement obligations to respect, protect and fulfill that are imposed on Ethiopia by international human rights treaties ratified by Ethiopia.

In addition, the duty of Ethiopian courts to implement international human rights treaties arising from articles 9(1) and 13(1) of the FDRE Constitution treaty requires that the Ethiopian judiciary undertakes the task of judicial review of Ethiopian legislative⁴³ and executive organs actions. The idea is, as discussed in section 3 of this article, the legislative and executive branches of the Ethiopian government have a duty to play their role to domestically implement obligations to respect, protect and fulfill imposed on Ethiopia by international human rights treaties ratified by Ethiopia; how is this to be controlled if not by the judiciary?

Judicial supervision of Ethiopian legislative and executive organs actions’ harmony with obligations arising from human rights treaties ratified by Ethiopia can therefore be regarded as one aspect of duty imposed on Ethiopian federal government and state government courts by articles 9(1) and 13(1) of the FDRE Constitution.

However, as discussed in section 4 of this article, the the FDRE Constitution empowers the second house of Parliament, the House of Federation (HOF), to give final decision on constitutional disputes.⁴⁴ The logical implication of this constitutional provision for Ethiopian courts role in domestic implementing international human rights treaties ratified by Ethiopia is that the House of federation (HOF) is the organ that gives final and binding decision concerning disputes related to judicial enforcement of international human rights treaties ratified by Ethiopia.

6. Conclusion: The FDRE Constitution provides that all international agreements ratified by Ethiopia are an integral part of the law of the land.⁴⁵ This formulation implies that the provisions of these international human rights treaties are part of the domestic law of

⁴³ Laws in all legal systems are enacted by the legislature according to the policies of the government in power and the demands and needs of people. For information see, M.S. Alam , *Enforcement of International Human Rights Law By Domestic Courts: A Theoretical And Practical Study*, Netherlands International Law Review 399, 417(2006);Knox , *supra note* 19, at 23

⁴⁴ FDRE Constitution, *supra note*2, Arts.61(1) and 83(1)

⁴⁵*Id.*, Art. 9(4)

Ethiopia.⁴⁶ Consequently, the provisions of such international human rights instruments can be directly applied in Ethiopian national institutions.⁴⁷

The imperatives of domestically implementing the provisions of international human rights treaties impose essential obligations to respect, protect, and fulfill on the ratifying states.⁴⁸ The obligation to respect requires states “to refrain from interfering with the enjoyment of” the right in question.⁴⁹ The obligation to protect requires the state to act positively to prevent the violations of human rights caused by interferences of non-state actors.⁵⁰ Obligation to fulfill requires the State to take the measures necessary to ensure for each person within its jurisdiction opportunities to obtain satisfaction of those needs, recognized in the human rights instruments, which cannot be secured by personal efforts.⁵¹

In the course of domestic implementation of international human rights treaties ratified by Ethiopia all the three organs of the Ethiopian government are supposed to play their respective part in fulfilling international human rights treaty obligations.⁵² In other words all the legislative, the executive and the judicial branches of the Ethiopian federal and state government are expected to implement the obligations to respect, protect and fulfill imposed by international human rights treaties ratified by Ethiopia in their day to day activities.⁵³

The respective role of each branch of the government in the domestic implementation of ratified human rights treaties is defined by national constitutions of states.⁵⁴ However, the FDRE Constitution does not contain express provision regarding role of Ethiopian courts in the domestic implementation of international human rights treaties ratified by Ethiopia. The FDRE Constitution only states about duty of Ethiopian courts in implementing human rights which are expressly guaranteed in the FDRE Constitution.⁵⁵

In this article the author have argued that, since international human rights treaties ratified by Ethiopia occupy a position superior to that of FDRE constitution in the pyramid of Ethiopian domestic laws, the duty imposed on Ethiopian courts by articles 9(1) and 13(1)

⁴⁶ 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 *supra note 3*, at 530-538

⁴⁷ Tomuscha, *supra note 4*, at 37

⁴⁸ Shue *supra note 14*

⁴⁹ ESCR Committee, General Comment No. 14, The Right to the Highest Attainable Standard of Health, P33, U.N. Doc. E/C.12/2000/4 (Nov. 8, 2000)

⁵⁰ See Barak-Erez, and Gross, *supra note 18*, at 7-8; Gross, *supra note 16*, at 289, 303

⁵¹ Eide, *supra note 20*, at 283

⁵² Alam, *supra note 43*, at 414

⁵³ Mubangizi, *supra note 5*, at 6. See also Davis, *supra note 42*, n. 52; Slaughter, *supra note 42*, at 1103; Resnik, *supra note 42*, at 31

⁵⁴ Schenin, *supra note 6*, at 418-419

⁵⁵ FDRE Constitution, *supra note 2*, arts.9(1) & 13(1)

of the FDRE Constitution to respect and enforce human rights which are expressly guaranteed in the FDRE Constitution should analogically apply with respect to Ethiopian courts' role in implementing international human rights treaties ratified by Ethiopia domestically.

Furthermore the author have argued that the expressions ' obligations to respect and enforce' in articles 9(1) and 13(1) of the FDRE Constitution has to be interpreted as ' obligations to respect, protect and fulfill' so as to harmonize them with Ethiopia's domestic obligations emerging from international human rights treaties ratified by Ethiopia.

Consequently by virtue of articles 9(1) and 13(1) of the FDRE Constitution Ethiopian courts at federal and state government levels are under duty to respect, protect and fulfill international human rights treaties ratified by Ethiopia in the course of their judicial activities.

In addition, the author have argued that, by virtue of obligation imposed on them under articles 9(1) and 13(1) of the FDRE Constitution, Ethiopian judicial organs have an additional obligation to control that the legislative and executive branches of the Ethiopian government are fulfilling their international human rights obligations to respect, protect and fulfill in their day to day activities.

Nevertheless, as discussed in section 4 of this article, the the FDRE Constitution empowers the second house of Parliament, the House of Federation (HOF), to give final decision on constitutional disputes.⁵⁶The logical implication of this constitutional provision for Ethiopian courts role in implementing international human rights treaties ratified by Ethiopia is that the House of federation (HOF) is the organ that gives final and binding decision concerning disputes related to judicial enforcement of international human rights treaties ratified by Ethiopia.

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