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Abstract

Nowadays, different regions of the world adopted their own human rights protection instruments to protect and promote human rights of their people based on their peculiarity. As part of this move, the Organization of African Union adopted African Charter on Human and Peoples’ Rights in 1981 which came in to force in 1986. Member States of OAU ratified the document so as to domesticate in to their constitutions and other laws. Accordingly, Ethiopia had ratified the document and the provisions of the charter are incorporated in the current FDRE constitution. In fact, human rights are enshrined in the constitution in more detailed manner. Writing principles and values of human rights in the document is one thing, and effectively practicing the written provisions for the promotion and protection of people’s human rights is another thing. Evidences show that there is a gap between the constitution and daily practice of the government with regard to human rights. The civil liberties and economic rights of people are challenged in the country due to lack of commitment on the part of government in which the rights guaranteed in the constitution are violated by the government itself.

INTRODUCTION

The African Charter on Human and Peoples Rights, otherwise called the Banjul Charter, was adopted in 1981 and entered in force in 1986, and guaranteed civil rights and liberties and economic rights in the first part from articles 4 to 15. In its article 1 states that, “the Member States of the Organization of African Unity (currently changed in to African Union) parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.” Hence, the protection and promotion of rights enshrined in the charter rely on the member states commitment. In the second part, it laid down measures of safeguard through the establishment of African
Commission on Human and Peoples’ Rights.

For the purpose of implementing these rights, the Charter set up the African Commission on Human and Peoples’ Rights charged with the promotion and protection of the rights set out in the charter. It has the mandate to interpret and implement the provision of the charter. The commission has an authority to study the reports submitted by states and make observations up on them and has adopt guidelines. However, the final recommendations of the Commission are not in themselves legally binding on States.

In addition, in 1998, the thirty-fourth summit of Head of State and Government of the OAU adopted a protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (ACHPR). The Protocol came into force in 2004. The African Court of Justice was merged with the African Court of Human and People’s Rights to become what is now known as ‘The African Court of Justice and Human Rights’ in 2008 under AU. Currently African Court of Justice and Human Rights, established in 2008, is the judicial organ of the AU for protection and promotion of human rights in the continent. Unlike the Commission, the Court can be able to issue binding and enforceable decisions. Furthermore, the African Peer Review Mechanism is also another instrument that can be acceded to by members of the African Union and is designed as an African self-monitoring mechanism.

However, these consecutively established judicial bodies and the other oversight mechanism instituted by the organization hardly materialize the provisions of the charter and protect human rights of the people against violations by the governments. As such there exist gross violations of human rights in the continent including government sponsored genocide.

Ethiopia, as one of the active member state to the organization, has had adopted constitutional, legislative and institutional measures with a view to promote and protect the rights, freedoms and discharge duties enshrined in the Charter. The Constitution of the Federal Democratic Republic of Ethiopia (FDRE), which was adopted in 1995 by the current government in power, is the foundation of the country’s democratic system of governance. The Constitution, as the supreme law of the land and as the basic legal framework for the promotion and
protection of human rights in the country, sets forth the affirmative commitments of the country to the cause of human rights. Article 9 (4) of the Constitution, for example, provides that international agreements ratified by Ethiopia form an integral part of the law of the land. As such, by virtue of the Constitution, all ratified human right treaties including the African Charter on Peoples and Human Rights Ipsos facto form an integral part of the law of the land. The institutions responsible for the protection and promotion of Human Rights in the country include the judicial institutions, the Ethiopian Human Rights Commission and the Ministry of Justice.

However, it has been observed that there are violations of basic human rights against this backdrop. In this article, the discussions is limited to civil Rights and Liberties as enshrined in the Charter under articles 4 to 12 and Economic Rights on the basis articles 14 and 15 of the Charter. The analysis, though shallow, takes the Charter as a landmark and scrutinize the efforts made by the current Ethiopian government to materialize the rights enshrined and highlight the practical limitations it has had thereof.

1. CIVIL RIGHTS AND LIBERTIES

The Civil Rights and Liberties which are guaranteed by the African Charter on Human and Peoples Rights, as enshrined in articles 4-12, include the right to life and personal integrity, freedom of conscience, religion and belief, access to Information, freedom of expression and opinion, freedom of association and assembly, and freedom of movement.

1.1. Right to Life and Personal Integrity

The Right to Life and Personal Integrity, which constitute one core element of human rights, is clearly stated in article 4 of the African Charter on Human and Peoples Rights. This article states that, “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right” (OAU, 1981). Though the conditions under which this right is not clearly inducted by the charter, this right is never absolute and subject to laws.

In Ethiopia, this right is guaranteed by the constitution as well as several policy measures, legislative measures and institutional measures have been taken place by the government for effective protection and promotion.
At constitutional level, the FDRE Constitution guarantees for Right to Life and provides for the application of the death penalty for serious Criminal Offences determined by the law. Article 15 of the Constitution reads, “Every person has the right to life. No person may be deprived of his life except as a punishment for most serious criminal offences determined by law” (FDRE, 1995). In this constitution, the conditions under which this right can be deprived are identified.

Based on the principle set in the Constitution, the Criminal Code envisages the death penalty as a last resort punishment for serious offences. For instance, crimes such as genocide and war crimes or crimes against humanity and offenses against an individual such as aggravated homicide might entail the death penalty under the Code. There are circumstances in which death penalty can be changed in to Capital punishment is envisaged as one of the methods of punishment to be imposed on criminals and the FDRE Constitution saves a room for application of the death penalty (FDRE, 2014).

Despite these solid legal frameworks, the actual execution of death penalty in Ethiopia by law is noticeably low, virtually non-existent. Indeed, the rigorous procedure involved makes it difficult to implement. After 1992, almost all decisions of death penalty have been commuted by life imprisonment through pardons, which is still under life-threatening prison conditions. The Criminal Justice Policy (2011) which highlights the basic foundations of the criminal justice and accentuates the significance of pardon for those under death penalty (FDRE, 2014). This means that Ethiopian Courts continue the imposition but not execution of death sentences apart from the most exceptional circumstances. In addition to these, the Boards of Pardon have been established at Federal and Regional levels to enable all convicted persons including persons sentenced to death to submit requests for pardon.

However, against this background, some researcher found out that there are unlawful but practical violations of the right to life in the country including arbitrary killings by the government; allegations of torture, beating, abuse, and mistreatment of detainees by security forces; arbitrary arrest and detention; detention without charge and lengthy pre-trial detention; a weak, overburdened judiciary subject to political influence that ignore judges to pass fair and rational
decision (Garoma, 2014). One year ago alone, extra-judicial killings of more than 20 University Students in front of the public were observed on March 2014 due to their demonstration against the government’s land grab policy caused by irresponsible expansion of Addis Ababa city. When such cases have reported by international Human rights institutions and Medias, the Ethiopian government automatically disqualify the information.

In fact, the Ethiopian government’s denouncement of actors and institutions addressing human rights concerns in Ethiopia is a standard *modus operandi*. As such, both Human Rights Watch and Amnesty International have earlier been labelled as foreign political manipulators with hidden agendas to interfere in Ethiopian politics, and the US State Department’s annual country reports on human rights practices in Ethiopia have been denounced as “baseless”, “frivolous” and accused of being based entirely on “rumours” and “lies” (Kjetil, 2008). This seems a planned strategy Ethiopian government to escape from the compliance of Human Rights including unlawful killings.

1.2. Freedom of Conscience, Religion and Belief

The African Charter on Human and peoples’ Rights in its article 8 states that, “Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms” (OAU, 1981). This is very critical article of the Charter given the fact that Africa is well diversified in ethnicity and religion, and hence accommodating and respecting these rights are helpful for peaceful coexistence.

By the same token, these rights have been given special emphasis in Ethiopia due to diversified nature of the country. Ethiopia is a multi-religious country where a culture of respect and acceptance developed over centuries of mutual coexistence. Judaism, Christianity and Islam were accommodated in the nation. In accordance with the recent statistical data, about 43.5% of the country’s population is Orthodox Christian, 33.9% Muslim, 18.6% Protestant, and 4.6% traditional religions, 0.7% Catholic and 0.6% others (FDRE, 2014).

At constitution level, the FDRE constitution in its article 27 (1) provides that, “everyone has the right to freedom of thought, conscience and religion. These rights include the freedom to hold or to
adopt a religion or belief of his/her own choice, either individually or with others and to manifest his religion or belief in public or private, to manifest his religion or belief in worship, observance, practice and teaching” (FDRE, 1995). The Constitution further provides for the right to establish institutions of religious education and administration in order to propagate and organize a religion, and that parents and legal guardians have the right to raise their children in conformity with their religious and/or moral convictions. In addition to this, the Constitution under Article 11 guarantees the separation of State and religion by stating that “There shall be no state religion and the state shall not interfere in religious matters and religion shall not interfere in state affairs” (ibid). It means that citizens’ rights to adopt a religion or belief of his/her own choice, and the separation of state and religion are constitutionally guaranteed.

By extension, the latter also means that state shall not involve and/or attempt to put hands-on the religious matters. In reverse, religious institutions shall also not participate and/or provoke in the politics of state under any circumstances. Both institutions are different, and do differently.

At institutional level, the Ministry of Federal Affairs and the Inter-religious Council has been given the task of ensuring citizens freedom of religion and belief. The Ministry of Justice, the Civil Societies Agency and other governmental institutions provide assistance to religious institutions (FDRE, 2014).

On legal ground, and in strict conformity with the constitutional principle of separation of state and religion, all religions in Ethiopia should able to elect their leaders using their own internal regulations. However, what was observed in 2013 was that Ethiopian Muslims were obliged to conduct election of their religious leaders at election constituencies sponsored by government (Garoma 2014). It seemed that the candidates were also recruited by the government based on their political affiliation, instead of their religious confession. This strictly violates the freedom of religion and the right to worship practically. Worst of all, it also violates the principle of separation of state and religion as enshrined under article 11 of FDRE constitution and article 8 of African Charter on Human and Peoples’ Rights.

In addition, members of the security forces reportedly committed violations and interferences in religious affairs. For
instance, on 8 August 2014, security forces in Addis Ababa detained more than one thousand Muslims participating in Eid al-Fitr celebrations (Garoma, 2014).

1.3. Access to Information, Freedom of Expression and Opinion

Article 9 of the African Charter on Human and Peoples’ Rights ambiguously states that, “(1) Every individual shall have the right to receive information, and (2) Every individual shall have the right to express and disseminate his opinions within the law” (OAU, 1981). This article can vaguely be interpreted as it strictly confined the expression and opinion to the law. Here, the term “the law” refers to the law of member states of OAU. Given the fact that in most African states laws are in favour and preferences of those groups on power, it is obvious that these rights have hardly been practiced. Now, we are in the information age, and the restriction of the right to access information through whatever means is the maintenance of backwardness and isolation from the global world.

In case of Ethiopia, the FDRE Constitution in article 29 provides that “everyone has the right to hold opinions and the right to freedom of expression without any interference. The later right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in form of art, or through any media of one’s choice” (FDRE, 1995). Freedom of the press and other mass media and freedom of artistic creativity are also guaranteed in the constitution. Freedom of the press specifically includes prohibition of any form of censorship and full access to information of public interest. The FDRE Constitution further states that in the interest of the free flow of information, ideas and opinions which are essential to the functioning of the democratic public order, the press shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.

In addition, the government has issued the Freedom of Mass Media and Access to Information Proclamation (Proclamation No. 590/2008). This proclamation provides that citizens have the right to create and establish mass media services which creates enabling conditions for the nurture of a free and independent mass media. The Ethiopian Broadcast Authority and Office of Government Communication Affairs has been given the task of ensuring
citizens’ right of Access to Information and Freedom of Information. However, what has practically been observed seem to be far from what are promised in the legal instruments. Freedom of speech is obstructed in which authorities arrested and harassed persons for criticizing the government (Kjetil, 2008). The government attempted to impede criticism through various forms of intimidation, including detention of journalists and opposition activists and monitoring and interference in the activities of political opposition groups. Worst of all, the government continued to take actions to close independent newspapers. In 2014 alone six independent newspapers were banned, three magazines were closed, and nine journalists and bloggers are arrested. Private Journalists in Ethiopia are not allowed even to attend government press conferences (Garoma, 2014). As such press freedoms are also under strict pressure of the government.

Access to information is restricted in which almost all Medias are run by the government. The telecommunication and internet services are also owned by government. Some internet websites are blocked and some international satellite televisions are jammed by the government. Therefore, what is considered as the legitimate right to access to information in the country is only listening government owned radios, watching government owned television and reading newspapers sponsored by government. Peoples who follow independent Medias, especially those which invite and/or make a conversation with opposing political parties, are victims of serious measures of government.

1.4. Freedom of Association and Freedom of Assembly

The freedom of association and assembly are guaranteed by the African Charter on Human and Peoples Rights in article 10 and 11 respectively. Article 10 (1) states that “Every individual shall have the right to free association provided that he abides by the law, and (2) Subject to the obligations of solidarity provided for in Article 29 no one may be compelled to join an association.” In addition, article 11 also spelled out freedom of assembly by stating as “Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the Safety, heath, ethics and rights and freedom of others” (OAU,1981).
In confirmation with the Charter, the FDRE Constitution under article 31 provides that every person has the right to freedom of association for any cause or purpose, except in organizations formed in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote activities that are prohibited. Under article 30, it also provides that everyone has the right to assemble and to demonstrate together with others peacefully and unarmed, and to petition (FDRE, 1995). Appropriate regulations may be made in the interest of public convenience relating to the location of open-air meetings and the route of movement of demonstrators or, for the protection of democratic rights, public morality and peace during such a meeting or demonstration. In addition, these rights also recognized by policy measures and several proclamations.

Despite such affirmative measures, the country also adopted Charities and Societies Proclamation in 2009 which strictly limited the right to association, and astonishingly collapsed the activities of CSO in the country. In this regard, a report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association stated, “The enforcement of these [the CSO law] provisions has a devastating impact on individuals’ ability to form and operate associations effectively” (Garoma, 2014). In fact, the CSO law prohibits charities, societies, and associations (NGOs or CSOs) that receive more than 10 per cent of their funding from foreign sources from engaging in activities that advance human and democratic rights or promote equality of nations, nationalities, peoples, genders, and religions; the rights of children and persons with disabilities; conflict resolution or reconciliation; or the efficiency of justice and law enforcement services.

1.5. Freedom of Movement

The Charter in article 12 (1) states that, “Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law”. Under 12 (2), this right is extended by stating that, “Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.” The incorporation of this clause in the Charter seems mere ambition. Even though member states may allow freedom of movement; it doesn’t necessarily work on
African soil as compared to other regions. This is mainly due to the fact that loosely motivated integration of the continent prohibits entrance of neighbour and/or from other part nationals. Each travel to other country needs the approval visa which is not easily accessible, except some recent developments among East African Cooperation member states.

In Ethiopia, freedom of movement and the right to choose one’s residence is guaranteed under the Constitution and subsidiary legislation. The Constitution (Article 32) stipulates that any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the freedom of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to. This is a clear departure from previous laws which demanded Ethiopians to obtain an exit visa from the government when leaving the country. All Ethiopian nationals have the constitutional right to leave the country and to return back. A person may only be prevented from leaving the country by an explicit court order given in accordance with the law. In pursuance of the freedom movement, all Ethiopians can obtain ordinary passport up on request.

The Civil Code provides that every person is free to establish his residence wherever it is suitable for him and to change the place of such residence. The Criminal Code provides that whoever, not being authorized by law so to do, prevents another from moving freely within the territory of Ethiopia shall be punished with simple imprisonment or a fine. A person commits a fault where, without due legal authority, he interferes with the liberty of another person, even for a short time, and prevents him from moving about as he/she is entitled to.

The practical exercise of this right is controversial in Ethiopia. Sometimes, the government authorities influence some peoples, particularly from opposing political parties, to exile. Other times, it has been observed that some peoples were taken their passport and obliged to live only in the country. Nevertheless, the movement within the country is practically exercised with the exception of security check at the entry of every cities and towns.

2. ECONOMIC RIGHTS

The economic rights guaranteed in the Charter stated under article 14 and 15 which consists the right to property and the right to work respectively. However, trade union freedom is not clearly spelled out in the Charter.
2.1. Right to Property

Article 14 of the charter stipulates that, “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

In Ethiopia, the right to property is guaranteed in the Constitution and under other enabling laws. Article 40 of the FDRE constitution guarantees the right to property. It states clearly that every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise (FDRE, 1995).

Ethiopian peasants have right to obtain land without payment and have protection against eviction from their possession. In the same way Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The legal framework for rural land acquisition, transfer, redistribution, removal of a holding right, administration and security is set out in the 1995 Constitution and Proclamation No. 456/2005. These documents state that every citizen from 18 years of age who wants to make a living from agriculture should be accorded free access to land. The implementation of this federal proclamation rests with the regional states. In addition, various policy and legislative measures have also been taken place.

Practically, the stand of Ethiopian government towards the right to land is most controversial. It is repetitively stated that, “land is neither sold nor exchanged by other means” what so ever. This clause authorizes the government to use land at any time when the need arise. Recently, many farmers surrounding Addis Ababa, the capital, were expelled from their land as result of unresponsive expansion of the city (urbanism) and the coming of foreign investors for horticulture.

2.2. The Right to Work Under Equitable and Satisfactory Conditions

Article 15 of the Charter states that, “Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.”

The Constitution of the Federal Democratic Republic of Ethiopia under
article 41 states that: every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory; every Ethiopian has the right to choose his or her means of livelihood, occupation and profession; that the State shall pursue policies which aim to expand job opportunities for the unemployed and the poor and shall accordingly undertake programs and public works projects, and all measures necessary to increase opportunities for citizens to find gainful employment.

Article 42 of the constitution provides particularly for the right of labour of citizens. On the basis of this provision, factory and service workers, farmers, farm laborers, other rural workers and government employees whose work compatibility allows for this, and who are below a certain level of responsibility, have the right of association to improve conditions of employment and economic well-being. This right includes the right to form trade unions and other associations to bargain collectively with employers and other organizations that affect their interests.

Furthermore, the categories of persons referred to above and government employees who enjoy these rights by law, have the right to express grievances, including the right to strike. In addition, workers have the right to reasonable limitation of working hours, to rest, to leisure, to periodic leave with pay, to remuneration for public holidays as well as a healthy and safe work environment. Women workers also have the right to equal pay for equal work.

Legislation for effective implementation of these rights has been promulgated: the Labour Proclamation No. 377/2003 and its amendments, the Public Servants Pension Proclamation no. 714/2011, the Private Organization Employees’ Pension Proclamation no.715/2011, a Proclamation to Provide for Social Health Insurance No. 690/2010 and a number of other proclamations (FDRE, 2014).

Currently, the government is making unreserved effort to provide favourable working conditions and thereby to reduce unemployment rate through grouping people and providing financial support and loan as initial capital. Accordingly, many peoples engaged in the system and even some them became the owner of small scale companies.

Nevertheless, although the Charter, constitution and law provide workers with the right to strike to protect their interests,
the law contains detailed provisions prescribing excessively complex and time-consuming formalities that make legal strike actions difficult to carry out.

**Conclusion**

Civil rights and liberties and economic rights were exhaustively stated in the African Human and Peoples Rights charter. The Charter also provides a legal ground for the establishment judicial institutions such as African Court of Justice and other oversight mechanisms such as African Peer Review Mechanism so as to protect human rights of the people in the continent.

However, the practical performances of these institutions and mechanisms have been subverted by lack of necessary resources and political commitment of member states. Since the functioning OAU and its successor AU is depends on the will of member states and most governments of African states, who came to power through armed struggle, do not care about human rights, the guarantee of rights by the Charter seem paper value leaving them subject to gross violations.

In Ethiopia, human and democratic rights are clearly enshrined in the constitution of FDRE to the extent that some able to call it as ‘advanced constitution’. In addition, for the protection and promotion of these rights, the country established Human Rights Commission and Office of Omdurman, and judicial bodies from federal to local levels have been instituted.

Nevertheless, there is a wide gap in effectively materializing the promised rights in the constitution. Usually, the violators of these rights come from government and its structures. In some circumstances, the violations human rights are legitimized by the adopted laws of the country such as Anti-terrorism law and Charities and Societies law which are proclaimed basically for the purpose of state security, but also put certain limitations on citizens’ human rights.

The experience from Ethiopia shows that, talking about human rights in constitutional provisions is not a complete guarantee for the actual protection and promotion of human rights. Even though the governments of African states seem committed not to violate human rights of their respective peoples, they are daily violating human rights which also defended through adopting laws. The continental organization (AU) and its oversight bodies hardly put limitations on
member states that violate their people’s human rights.
In conclusion, since the real power of government emanates from law, not the constitution, the human rights particularly civil and economic rights and liberties enshrined in the African Charter on Human and Peoples’ Rights as well as the various constitutions of member states have been astonishingly subject to violations in Africa.

References