

HUMAN RIGHTS PROTECTION UNDER THE FDRE AND THE OROMIA CONSTITUTIONS: A COMPARATIVE STUDY

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ABSTRACT

This paper makes a comparative analysis of human rights protection as provided under the 1995 Federal Democratic Republic of Ethiopian Constitution (FDRE Constitution) and the 2001 Oromia Regional State Revised Constitution with its amendments (Oromia Constitution). Guided by the principle of a better protection of human rights under the state constitutions, it compares and contrasts the two constitutions in terms of recognized rights for the right holders, and the way the recognized rights are limited, derogated from, amended, and adjudicated. The overall comparison shows that although the two constitutions are largely similar as far as the protection of human rights is concerned, there are areas of differences resulting in less protection by restricting the rights, or better protection by expanding the rights under the Oromia Constitution than the minimum protection given under the FDRE Constitution. The departure by the Oromia Constitution to build on the minimum protection given under the FDRE Constitution is normal and acceptable. However, the departure with the effect of providing less protection for human rights cannot be justified under the existing international jurisprudence. The paper recommends revision of the Oromia Constitution to the extent it provides lesser protection of rights than the FDRE Constitution.

Key words: A better protection of human rights, FDRE Constitution, Oromia Constitution

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INTRODUCTION

Although the historical development of human rights has passed through different periods, the period after the Second World War (WWII) marks its modern development. Today, the protection of human rights has become an issue across the globe resulting in adoption of different human right instruments at national, regional, and/or international level. Constitutions, being one of the national instruments, provide for the protection of human rights. In most federal countries, the constitutionalization of human rights is not only limited to the national constitutions but also extends to the state constitutions. This is also the case in Ethiopia where the federal Constitution and all the state constitutions (including Oromia's) give significant coverage to human rights.

The purpose of this paper is to make a comparative analysis of human rights protection as provided under the FDRE and the Oromia Constitutions with a view to evaluate whether or not a better protection of human rights is maintained under the latter as it is supposed to be. To do this, the paper is organized into four sections.

Following the introduction, the first section deals with the constitutional base and purposes of having state constitutions. It briefly addresses the constitutional base of state constitutions in general and in Ethiopia; and the concept of better protection of human rights under the state constitutions based on explanations of convergence and divergence doctrines.

The second section compares and contrasts the 'types' of recognized rights and for whom they are recognized under the FDRE and the Oromia Constitutions. As such, it analyzes the three categories of human rights recognized under both constitutions and indicates areas of similarities and

differences. The implication of the differences on the better protection of rights is also deduced in the same section.

The third section compares and contrasts how the recognized rights are limited, derogated from, amended, and adjudicated under the two constitutions. Areas of similarities and differences are identified on these issues to judge the extent of the better protection of rights under the Oromia Constitution.

Finally, based on the overall discussions of the paper, the fourth section draws conclusions and recommendations.

1. STATE CONSTITUTIONS: CONSTITUTIONAL BASE AND PURPOSES

This section provides the general framework of state constitutions and their purposes. It is divided into two sub-sections. The first sub-section briefly establishes the constitutional base of the state constitutions in general and in Ethiopia in particular. The second sub-section discusses the need to have state Constitutions, mainly from the perspective of a better protection of human rights.

1.1. CONSTITUTIONAL BASE

One of the most important common features of federations is having written and supreme federal constitution¹. This federal constitution divides power between/among levels of government, establishes government structures, provides rules for resolving disputes, protects rights and provides procedures

¹Ronald L.Watts, *Comparing Federal Systems in the 1990s* (Institute of Intergovernmental Relations, Queen's University Kingston, Ontario Canada K7L3N6, 1996), P90; Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study* (3rd Revised Ed., 2010), P.107.

for its amendment². Whether the states can draft, adopt or amend their own constitutions or not is also a matter to be determined by the federal constitution³.

In Ethiopia, the FDRE Constitution provides that the federation comprises the federal government and the state members⁴. It also distributes competences between the two levels of governments (federal and the state members) via articles 51 and 52. One of the competences given to member states is to draft, adopt, and amend their own constitutions⁵. The FDRE Constitution also sets certain frameworks which the states should adhere to while exercising their competence of drafting, adopting, and amending their constitutions. Accordingly, they are required to ensure that the three branches of government (legislative, executive, and judiciary) are established, that the State Council is the highest regional organ and accountable to the people, that the state administration is the highest organ of the executive, and that the administration established by the states should best advances self-governments and democratic order based on the rule of law⁶.

Apart from adhering to these frameworks given by the FDRE Constitution, the states in Ethiopian federation are at ‘liberty’ to draft, adopt or amend

²But, the extent of the details provided in the federal constitution varies from federation to federation. Although most constitutions of the federal countries give a general framework without prescribing all constitutional arrangements of the whole system, in some others like Canada and Belgium, the federal constitution is very detail and goes to the extent of describing the political institutions and processes for the states (*see G. Alan Tarr, Explaining Sub-national Constitutional Space, Penn State Law Review (2011), Vol. 115, No.4, P1133*).

³Not all federal constitutions allow the states to have their own constitutions. For example, in India, Nigeria and Belgium federating units are not empowered to adopt their own constitutions.

⁴The FDRE Constitution, Art.50 (1).

⁵The FDRE Constitution, Arts.50 (5) cum.52 (2) (b).

⁶The FDRE Constitution, Arts.50 (2-7) cum.52 (2) (a).

their constitutions. It is based on this mandate that all of the nine states⁷ in Ethiopia today adopted and revised their constitutions. Oromia National Regional State, being one of these nine states, adopted its Constitution in 1995, substantially revised it in 2001, and amended it twice in 2005 (Proc. No. 94/2005) and 2006 (Proc. No.108/2006)⁸.

In short, the base for state constitutions in any federation, including Ethiopia, is the federal constitution.

1.2. PURPOSES OF STATE CONSTITUTIONS

Generally speaking, state constitutions do serve two basic purposes: establishing and defining powers and functions of state government structure; and limiting the state power mainly by offering a better protection of rights⁹. Let's see them separately.

1.2.1. Establishing and Defining State Government Structure

State constitutions do regulate specific state behaviour at the sub-national (at state and sub-state levels) just as the federal constitutions do regulate the entire federation of a certain country¹⁰. They do this by providing rules that establish organs of the state, define their powers and responsibilities, govern

⁷These nine states are those listed under Art.47(1) of the FDRE Constitution: The State of Tigray, The State of Afar, The State of Amhara, The State of Oromia, The State of Somali, The State of Benshangul/Gumuz, The State of the Southern Nations, Nationalities and Peoples, The State of Gambela Peoples and The State of the Harari People

⁸For the exact date of adoption and revision of all nine state constitutions, see generally Christophe Van der Beken, *Sub-national Constitutional Autonomy in Ethiopia: On the Road to Distinctive Regional Constitutions (Paper Submitted to Workshop 2:Sub-national Constitutions in Federal and Quasi-federal Constitutional States)*, P4 available at <https://www.jus.uio.no/english/.../news.../papers/.../w2-Vanderbeken.pdf> <accessed on January 20,2015>

⁹Tsegaye Regassa, *Sub-national Constitutions in Ethiopia: Towards Entrenching Constitutionalism at State Level*, Mizan Law Review (2009),Vol.3, No.1, P37; Apart from these two main ones, state constitutions are also expressions of state sovereignty and the principle of self-rule that constitutes an aspect of federal governance.

¹⁰*Ibid.*

vertical relationship within the specific state itself (*Zone, woreda, Kebele*) or parallel relationship with other state members¹¹.

1.2.2. Offering A Better Protection of Rights

Of all purposes served by having the state constitutions in federations, better protection of rights and freedoms of citizens is the most important one¹². But, how does the idea of better protection to the rights by the state constitutions come to existence? How do state constitutions do give better protections? These are some questions to be dealt with.

Justice Brennan of the US Supreme Court provides an answer to the first question. He strongly argued for the better protection of human rights by state courts through state constitutions than the protection given by the federal Constitution. He wrote as follows:

*State courts cannot rest when they have afforded their citizens the full protection of the federal Constitution. State Constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law*¹³.

The whole message here is that state courts in the US give more protection to human rights than the US Supreme Court. Justice Brennan's publication¹⁴

¹¹*Ibid.*

¹²*Ibid* (see footnote number 7).

¹³William J. Brennan, *State Constitutions and the Protection of Individual Rights*, Harvard Law Review (1977), Vol.90, No.3, P.491.

¹⁴Of course, there were proponents of Brennan's philosophy and in fact there were cases decided in this way even before 1977. *K. Gordon Murray Productions, Inc. v. Floyd* (1962) decided by Georgia Supreme Court; *State v. Moore* (1971) decided by Washington Supreme Court; *State v. Burkhart* (1976) decided by Tennessee Supreme Court are some cases decided in line with Brennan's philosophy (*for details see generally, Randall T. Shepard, The Maturing Nature of State Constitution Jurisprudence, Valparaiso University Law Review* (1996), Vol.30, No.2 Symposium on the New Judicial Federalism: A New Generation, PP.424-426).

initiated many scholars to further consider the issue that flourished arguments for or against the concept. These arguments revolve around the practicability of Brennan's better protection of rights at state level movement which ultimately end up with development of two doctrines: convergence and divergence¹⁵. Let us briefly see the difference between these doctrines.

a) **Convergence Doctrine**

This doctrine dictates that in the course of interpreting bills of rights in the state constitutions, state courts may adopt federal doctrine in whole or in part¹⁶. Proponents of the doctrine argue that since Americans are now a people who are so alike from state to state and whose identity is so focused on national institutions with no significant social variations, they deserve similar protection throughout the country¹⁷. The doctrine advocates for following federal track in applying rights although that does not *necessarily* mean verbatim copy of applying the federal interpretation. Four principal forms of doctrinal convergence can be identified:

- a) *'Unreflective adoption' - of both the meaning of a similarly worded provisions and applications.*
- b) *More 'reflective adoption', case-by –case of the meaning of the federal Constitution*
- c) *"prospective lock stepping," which involves not only adoption of the provision's federal meaning, but also a ruling that the federal test shall apply in all future cases under the relevant provision*

¹⁵Scott R. Bauries, *State Constitutions and Individual Rights: Conceptual Convergence in School Finance Litigation*, Geo. Mason Law Review, Vol.18, No.22 (University of Kentucky, College of Law, Law Faculty Publications), P302 available at http://uknowledge.uky.edu/law_facpub accessed on January 6, 2015.

¹⁶Ibid.

¹⁷Randall T. Shepard, *Supra* note 14, P.431.

- d) *"Borrowing" a test or form of reasoning from the federal courts, but not necessarily the meaning of the provision or its application; a more nuanced form of convergence*¹⁸.

In all scenarios, although the degree varies, we see the need for the state courts to make reference to the federal application indicating that convergence doctrine assumes the existence of same 'kind' of rights in both federal and state constitutions which may not be necessarily the case at least in the American context¹⁹.

b) Divergence Doctrine

Divergence doctrine provides that states may choose to craft their own doctrine while interpreting bill of rights in the state constitutions since the principle of state constitutionalism demands this way of understanding²⁰. It is all about double protection of rights. That is, state constitution is the creation of the sovereign people of the state and reflects the fundamental values, and indirectly the character of that people which actually differ both from state to state and as between the state and the country as a whole²¹.

Accordingly, in the US, state constitutions were relevant for better protection of rights in the following instances:

- a) *Where no parallel federal provision existed, the state constitution regularly provided the sole basis for a constitutional challenge.*

¹⁸ Scott R. Bauries, *Supra* note 15, P.303.

¹⁹ *Ibid.*

²⁰ Randall T. Shepard, *Supra* note 14, P.430.

²¹ *Ibid.*

- b) *The state constitution was also pertinent where a parallel federal provision had not been incorporated into the meaning of the Fourteenth Amendment*
- c) *Where a parallel federal provision had been construed in such a way that it clearly did not apply to the facts of the instant case.*
- d) *State supreme courts heard cases involving claims under parallel federal and state constitutional provisions and gave the state constitutional claim independent consideration*²².

From this, one can easily understand that where the federal constitution remained silent, or where the federal constitution had not incorporated in line with the spirit of the constitution in force, or where the federal constitution did not consider the specific reality of states, the role of state constitutions to fill the gap for better protection of rights was highly remarkable. Hence, although the role of state constitution for better protection of rights passed through these doctrines of convergence and divergence, it is clear that the idea is well settled today and more realistically by resorting to divergence approach.

Once divergence doctrine is taken as a guiding principle (which is in fact the case), there will be several avenues for better protection of rights. These avenues can be provided “by enshrining human rights that are not included in the federal constitution, by restricting the possibilities for human rights limitations and derogations or by allowing a more protective interpretation to human rights provisions”²³.

²² *Id.*, P424.

²³ Van der Beken, *Supra* note 8, P.9.

In Ethiopia, all nine state constitutions provide for protection of rights. Hence, in principle, they all are expected to manifest these features. Although it is logical to examine whether or not they actually do that, the scope of this paper is limited to examine whether the Oromia Constitution has manifested the features by making comparative analysis with that of the FDRE Constitution in the subsequent sections.

2. RECOGNIZED RIGHTS UNDER THE FDRE AND THE OROMIA CONSTITUTIONS: COMPARATIVE ANALYSIS

The texts of both the FDRE and the Oromia Constitutions give much attention to protection of rights. This can be understood from the preambles of both Constitutions that make protection of both group and individual rights as a condition precedent to achieve the very objective of the Constitutions²⁴, from chapter two of both Constitutions that sanctified human and democratic rights by considering them as one of the five fundamental principles of the Constitutions²⁵, and from chapter three of both Constitutions that make comprehensive list of rights. The rights provided under chapter three of both Constitutions are comprehensive in a sense that they encompass all three categories of rights: civil and political rights (first category), socio-economic rights (second category), and group rights (third category). Such a comprehensive recognition is implicit recognition of the interdependence, interrelatedness and indivisibility of all three generations of human rights by incorporating them on equal footing without any difference in consequence²⁶. Now, let us turn to see all categories of the rights one by one.

²⁴Compare the preambles of the FDRE Constitution, Parag. 2 with that of the Oromia Constitution, Parag. 2.

²⁵Compare the FDRE Constitution, Art 10 with the Oromia Constitution, Art.10.

²⁶Adem Kassie, *Human Rights under Ethiopian Constitution: A Descriptive Overview*, Mizan Law Review (2011), Vol. 5, No.1, P.44.

2.1. CIVIL AND POLITICAL RIGHTS

In terms of number of provisions, civil and political rights are given much coverage both under the FDRE and the Oromia Constitutions. Out of 31 total articles dealing with rights in chapter three, both the FDRE and the Oromia Constitutions devoted 24 articles to civil and political rights²⁷. This is without including the right to property which is difficult to classify exclusively as civil and political or socio-economic right as it shows both characteristics²⁸.

The content of civil and political rights enshrined in both Constitutions is almost the same. Accordingly, the right to life; the right to security of person; the right to liberty; prohibition against inhuman treatment; the right of arrested person; the right of accused person; the right of detained or imprisoned person; non-retroactivity of criminal law; prohibition of double jeopardy; right to honor and reputation; equality before the law; right to privacy; freedom of religion, belief and opinion; crimes against humanity; right of thought, opinion and expression; the right of assembly, demonstration and petition; freedom of association; freedom of movement; marital, personal, and family rights; right of women; right of children; right of access to justice; the right to elect and to be elected are all civil and political rights included in both the FDRE and the Oromia Constitutions²⁹.

²⁷See Arts. 14-38 of both the FDRE and the Oromia Constitutions; Art. 13 is not counted here because it applies to all rights in both Constitutions. It is not specific to civil and political rights alone.

²⁸ Rakeb Messele, Enforcement of Human Rights in Ethiopia, Research Subcontracted by Action Professionals' Association for the People (APAP), August 2002 (*Ethiopian Civil Service University, Documentation Centre*), P.34, Footnote 67.

²⁹ Compare Arts.14-38 of the FDRE Constitution with Arts.14-31; 33-38 of the Oromia Constitution.

The subjects of these rights can be every person, or limited to a specific group of individuals as the case may be. They are phrased as ‘everyone’, ‘every person’ or at times in negative form ‘no one’. Accordingly, some rights like the right to life, to security of person or to liberty are enjoyed by every person. On the other hand, rights like the right to procedural due process guarantees (like the right of arrested person, the right of accused person, the right of convicted person), right of women or right of children are enjoyed only by the respective specific title groups. The rights are limited to a certain group and this is done either by explicitly mentioning that the specific group enjoy them, or by setting certain limits as criteria for exercising the rights³⁰.

In relation to the subjects, i.e., the right holders of civil and political rights, one may ask as to who is ‘everyone’ or ‘every person’ to exercise the rights? Is it limited to a natural person only or does it also include artificial person? Neither the FDRE Constitution nor the Oromia Constitution explicitly addresses the issue. But, based on the nature of civil and political rights themselves, *Rakeb* rightly concludes that the rights can be exercised either by a natural or artificial person as the case may be³¹. Accordingly, if we take the right to life, only a natural person is given it. Nature did not provide a life for artificial persons and hence there is no reason to extend it to artificial persons. On the other hand, if we take, article 29(4) of both Constitutions, the press as an institution, enjoy legal protection to ensure its operational autonomy and its capacity to entertain diverse opinions. In this case, the right to opinion is given to artificial person, not to a natural person.

³⁰For example, rights of children are enjoyed by children (*see Art.36 of the FDRE and the Oromia Constitutions*). Likewise, only Ethiopian nationals who attain 18 years of age can vote (*Compare Art.38 (1) (b) of the FDRE with that of the Oromia Constitutions*).

³¹ *Rakeb*, *Supra* note 28, P.28.

From the above discussions, one can easily conclude that civil and political rights included both under the FDRE and the Oromia Constitutions are basically the same. However, this does not mean that there are no areas of divergences at all. There are areas of differences because of addition or omission of rights in any one of the two Constitutions.

Firstly, there is a difference between the content of the right to movement provided under the FDRE and the Oromia Constitutions. The FDRE Constitution guarantees only the right to come into the country for Ethiopian nations or to go out of the country for every one or to choose place of residence within different parts of the country³². The Oromia Constitution also gives similar protection. However, it goes beyond this by guaranteeing the freedom to work, acquire or own property for any resident or any one lawfully residing in the region in addition to the protection provided under the FDRE Constitution³³.

A point worthy considering here is the implication of the disparity between the two Constitutions on the protection of rights mainly from the perspective of ethnic federalism. As indicated in the first section of this paper, a state constitution may make difference with a federal constitution so long as it is

³² FDRE Constitution, Art.32 (1-2)

³³ The full Art. 32 of the Oromia Constitution reads as follows: *Without prejudice to Article 32 of the Federal Constitution, any resident or person who lawfully stays in the region has the right to freedom of movement and freedom to choose his residence, **work, acquire or own property** as well as the freedom to leave the region at any time he wishes to.* At this juncture, one may ask that since the right to work or acquire property is also guaranteed by the other provisions of the FDRE Constitution (Arts. 41(1-2) & 40(1)), how can one say that the Oromia Constitution goes beyond the FDRE Constitution? It is true that the FDRE Constitution provides for both the rights to work and own property but in a different context since the subject of the rights is 'every Ethiopia'. The Oromia constitution also guaranteed similar rights under similar provision for every resident of the region. But, the right guaranteed under Art.32 of the Oromia Constitution specifically addresses the concern of freedom of movement in addition to other residents of the region. This means that the Oromia Constitution more expanded the right to movement than the FDRE Constitution .

for a better protection. It is an important protection against possible aberrations of an ethnic federal system³⁴. It protects people who do not originate in a specific ethnic-based regional state against residence restrictions imposed upon them by the concerned regional state³⁵.

Here, we see that the Oromia Constitution gives a better protection by expanding the right to movement provided under the FDRE Constitution. To this extent, Oromia Constitution is in line with the main purpose of having state constitutions, i.e., better protection of rights. Indeed, this not only gives a better protection to human rights but also serves as a step toward creating *one economic community* as promised in the preamble of the FDRE Constitution.

Secondly, the right of nationality provided under Art.33 of the FDRE Constitution does not exist in the Oromia Constitution. However, this should not be construed as if the Oromia Constitution erroneously limited the right guaranteed under the FDRE Constitution. The absence of the right to nationality under the Oromia Constitution is justified based on division of power between the federal and state governments. One of the powers conferred to the federal government is to determine matters relating to nationality³⁶. This means that state governments, including Oromia cannot regulate nationality issues by their constitutions as it falls outside of their jurisdiction. Hence, there is no ground for the Oromia Constitution to recognize it.

³⁴Christophe Van der Beken, Constitutional Diversity in Ethiopia: A comparative Analysis of Ethiopia's Regional Constitution, P.26 (*available on the Institute of Federalism and Legal Studies intranet of the Ethiopian Civil Service University*).

³⁵ *Ibid.*

³⁶ The FDRE Constitution, Art.51 (17).

Finally, there is a difference in the content of prohibition of double jeopardy provided under Art.23 of the FDRE and the Oromia Constitutions. The FDRE Constitution prohibits second trial or punishment of a person in case s/he has already been finally convicted or acquitted *in accordance with the criminal law and procedure*. Here, the conviction or acquittal procedure is in accordance with the criminal law and procedure. The Oromia Constitution, however, did not limit the conviction or acquittal procedure to the criminal law and its procedure. The procedure, by which conviction or acquittal is made, according to the Oromia Constitution, is *in accordance with criminal law and its procedure or any other relevant law*³⁷.

A good point to consider here is whether this difference has any implication on the protection of human rights. The phrase “... *any other relevant law*” added in the Oromia Constitution is larger in scope and it can even include conviction or acquittal made in accordance with customary law procedures. Hence, one can see that the Oromia Constitution deviated from the FDRE Constitution as far as prohibition of double jeopardy is concerned thereby building the existing protection under the FDRE Constitution for a better protection³⁸.

³⁷To make the comparison easier, Art.23 of both Constitutions reads as follows:

FDRE Constitution:

No persons shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the criminal law and procedure (emphasis added)

Oromia Constitution:

No one shall be tried or punished twice for an offense for which he has been finally convicted or acquitted in accordance with criminal law and its procedure or any other law (emphasis added).

³⁸ In fact, this is without going into examining the very content of customary law procedures as to what extent they protect human rights. Whether customary law procedures expand or restrict human rights by their nature needs further study. What is analysed here is simply the available options of procedures from conviction or acquittal under the Oromia Constitution are larger in number when compared to the FDRE Constitution. This creates fertile ground for better protection of human rights under the Oromia Constitution.

To conclude, although the civil and political rights included in the FDRE and the Oromia Constitutions are largely similar, there are also areas where the latter differs from the former with an effect of expanding or at times neither expanding nor restricting rights.

2.2. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Economic, social, and cultural rights include the right to engage freely in economic activity; the right to employment; the right to choose means of livelihood, occupation and profession; the right to marriage and protection of the family, the right to resource allocation for health, education, and other public service, etc³⁹. In addition to this, chapters of both Constitutions dealing with policy principles and objectives⁴⁰ to a larger extent reflect economic, social, and cultural right aspects. These rights, as provided under the FDRE Constitution, are fewer in number, broad and very vague to apply, and poorly drafted⁴¹. The same applies to the same rights enshrined under the Oromia Constitution as one does not see a difference in their content and manner of drafting except that the former talks in the national context and the latter talks in the sub-national context.

The right holders are mostly individual citizens although in some cases they are limited to specific groups such as the physically and mentally disabled⁴²,

³⁹ Compare Art.41, 42, and 34 of the FDRE Constitution with that of the Oromia Constitution.

⁴⁰Chapter 10 (Arts. 89-91) of the FDRE Constitution and chapter 11 (Arts.104-106) of the Oromia Constitution respectively deal with National Policy, Principles and Objectives, and Policy Directives of the Region. In both chapters of the FDRE and the Oromia Constitutions, economic objectives, social objectives, and cultural objectives of the country as a whole and the Oromia region in particular are respectively dealt with.

⁴¹Amsalu Darge, *Derivation of Rights: Affording Protection to Latent Socio-economic Rights in the FDRE Constitution*, Oromia Law Journal (2013), Vol.2, No.2, PP.34-35.

⁴² Compare Art.41 (5) of the FDRE Constitution with the same provision of the Oromia Constitution.

the aged and the children who are left without parents or guardian⁴³, and Ethiopian farmers and pastoralists⁴⁴. The objectives and principles under Arts.89-91 are also formulated for the benefits of all Ethiopians though some are for the benefit of a defined group of the right holders such as least advantaged nations, nationalities and peoples, victims of disaster, and women⁴⁵. Similar trend is followed in the Oromia Constitution except that the scope of the right holders of the rights is limited to residents of the Oromia region.

From this, one can safely conclude that unlike civil and political rights, none of economic, social and cultural rights are explicitly formulated for the benefit of “everyone” under both Constitutions. The International Convention on Economic, Social and Cultural rights seems that it has already contemplated the probability of such scenario by allowing developing countries to guarantee economic rights provided in the Covenant *to non-nationals to the extent of their national economy*⁴⁶. Hence, the reason why both the FDRE and the Oromia Constitutions did not extend the right holders of economic, social and cultural rights to everyone seems to be justified on the ground of economic development of the country or the sub-national.

The other related point to be considered here is whether allowing only certain groups (women, pastoralists, farmers, etc) as the right holders of economic, social and cultural rights goes in line with the right to equality. Approaching such type of issue needs to interpret the models of the right to equality. Equality can be *formal* where everyone treated equally without

⁴³ *Ibid.*

⁴⁴ Compare Art.41 (8) of the FDRE Constitution with the same provision of the Oromia Constitution.

⁴⁵ The FDRE Constitution, Arts.89 (4), 89(3), and 89(7).

⁴⁶ See the 1966 International Convention on Economic, Social and Cultural Rights, Art.3 (2).

taking into account the social and economic disparities between people and individuals, or *substantive* where equality of result is achieved by taking into account different disparities⁴⁷. So, when certain groups are given preferences under both Constitutions, the Constitutions are envisaging substantive equality; equality of result. This shows that not all differentiations will lead to discrimination. In line with this understanding, one may argue that a similar concern for achieving true equality lies behind the constitutional authorization for special assistance to the most backward ethnic groups⁴⁸.

In short, as far as the protection of economic, social, and cultural rights is concerned, what is provided under the FDRE and the Oromia Constitutions is similar.

2.3.GROUP/SOLIDARITY RIGHTS

The other protected rights under the FDRE and the Oromia Constitutions are group rights. Both Constitutions recognize three types of group rights: the right to self-determination up to secession, the right to development, and the right to environment⁴⁹. Of the three group rights, significant disparity between the FDRE and the Oromia Constitutions is observed in case of the right to self-determination. Under both Constitutions, the contents of the other two rights, i.e., the right to development and the right to environment are similar although there is a difference on the subjects of the rights. For example, while the subjects of the right to development under the FDRE Constitution are the peoples of Ethiopia in general and each Nation,

⁴⁷Johan de waal Lain Currie and Gerhard Erasmus, *The Bill of Rights: Handbook* (3rd ed.) in association with Lawyers for Human Rights and Law Society of South Africa (2000), P.184 cited in Rakeb, *supra* note 28.

⁴⁸Van der Beken, *supra* note 34, P.26.

⁴⁹ Compare Arts.39, 43, and 44 of the FDRE Constitution with the same provisions of the Oromia Constitution.

Nationality and People in Ethiopia in particular, under the Oromia Constitution this right is given to the peoples of the region⁵⁰. Again, the subjects of the right to clean and healthy environment under the FDRE Constitution are all persons, but under the Oromia Constitution, they are all residents of the region⁵¹. Apart from this, the content of the right to development and environment under both Constitutions are basically similar.

However, the secession aspect of the right to self-determination under the Oromia Constitution is different from what is provided under the FDRE Constitution not only in terms of the subjects of the right but also in terms of its content. The FDRE Constitution clearly stipulates that the right to secession is the right to be exercised by every Nation, Nationality and People of Ethiopia *unconditionally*⁵². Here, the subjects of the right are every Nation, Nationality and People of Ethiopia. The right is also unconditional as its subjects are not required to provide any justification if they want to secede. What is expected from the group is simply adhering to the procedures prescribed under Art.39 (4) (a-e) of the FDRE Constitution.

Under the Oromia Constitution, however, the subjects of the right are the Oromo Nation. This, of course, has logical flow as the Constitution empowers only one ethnic group- the Oromo Nation as far as group right is concerned⁵³. Again, under the Oromia Constitution, the right to secession is conditional since the Oromo Nation exercises it *'where they are convinced that the internal aspects of self-determination have been violated, suspended*

⁵⁰Compare Art.43 of the FDRE Constitution with Art.43 of the Oromia Constitution.

⁵¹Compare Art.44 of the FDRE Constitution with Art.44 of the Oromia Constitution.

⁵² The FDRE Constitution, Art.39 (1).

⁵³This is clear from the preamble of the Constitution which begins with, We the Oromo People, and Art.8 of the same Constitution that declares sovereign power in the region resides in the People of the Oromo Nation.

*or encroached and when such cannot be remedied under the auspices of a union with other peoples*⁵⁴.

So, the Oromia Constitution made exercising the right to secession the last resort to be exercised after exhausting available remedies within the existing federal arrangement⁵⁵. By doing so, the Oromia Constitution gave less protection to the right guaranteed by the FDRE Constitution failing to meet the better protection standard normally expected of the state constitution. Although some scholars argue that this is a violation of the FDRE Constitution and to that extent null and void via Art. 9(1) of the same Constitution⁵⁶, another argument is recently emerging as far as state constitutions which are empowering only a single ethnic group such as Oromia's are concerned⁵⁷. Since the Oromia Constitution empowered only the Oromo Nation who is assumed as a homogeneous in the regional territory, deciding to exercise the right to secession conditionally or

⁵⁴The Oromia Constitution, Art.39 (4).

⁵⁵With this scenario, *Tsegaye* remembers Transitional Period of Ethiopia as follows:[T]he state Constitutions excluding Somali and SNNPR reintroduced *the conditions for the exercise of the right to secession by bringing in the provisions of the Transitional Charter which said that secession can be exercised only if massive violation or denial of the rights to language, culture, history, autonomy, self-rule and democracy and this cannot be corrected within the union* (see *Tsegaye, supra note 9, P54, Foot note 97*).

⁵⁶ *Tsegaye, supra note 9, P.55*.

⁵⁷ In Ethiopia, the way state constitutions empowered ethnic groups is not similar across all constitutions. While some constitutions empowered a single ethnic group, some others empowered more than one ethnic groups. For example, the Oromia Constitution by empowering only the Oromo Nation (see the preamble and Art.8), and the Somali Constitution by empowering only the Somali people (see the preamble and Art.8) belong to the first category. On the other hand, the Benishangulgumuz Constitution by empowering five ethnic groups-*Berta, Gumuz, Shinasha, Mao, and Komo* (see the preamble and Art.2), the Gambella Constitution by empowering five ethnic groups-*Nuer, Anywar, Majanger, Upo, and Komo* (see the preamble and Art.46(1)), the Amhara Constitution by empowering three ethnic groups-*Himra, Awi and Oromo* in addition to Amhara (see the preamble which says, we the Peoples of Amhara National State with Art. 45(2)), the Afar Constitution by empowering *Afar and Argoba* (see Art.43(2)), the Tigray Constitution by empowering three ethnic groups-*Tigray, Kunama and Irob* by residing sovereignty on the People of Tigray (See the preamble and Art. 8) belong to the second category.

unconditionally is nothing more than expressing sovereign will of the Nation, and thus not a violation of the FDRE Constitution⁵⁸.

The argument seems logical as there is no ‘division’ of sovereignty in the Oromia state as is the case in other states like Benishangul Gumuz and Gambella where heterogeneous ethnic groups are empowered. Here, we see a kind of ‘division’ of sovereignty. Sovereignty is ‘divided’ among the empowered ethnic groups. This implies that making the right to secession conditional in these two regions falls short of reflecting expression of sovereignty thereby restricting the right guaranteed under the FDRE Constitution which is obviously violation of the supremacy clause. However, when the Oromo Nation decides to make the right to secession conditional that amounts to exercise of sovereignty since there is/are no other empowered ethnic group/s to exercise group rights. The Oromo people may prefer to exercise the right to secession as the last resort considering that this will better protect the interest of the people which cannot be violation of the FDE Constitution.

In short, although both the FDRE and the Oromia Constitutions are largely similar on the solidarity rights, there is a significant difference at least on the right to secession. However, the difference is simply a difference without violating the FDRE Constitution.

3. LIMITATION AND DEROGATION, AMENDMENT, AND ADJUDICATION OF RIGHTS UNDER THE FDRE AND THE OROMIA CONSTITUTIONS: COMPARATIVE ANALYSIS

⁵⁸This kind of argument was, foreexample, propagated by Dr. Christophe Van der Beken while lecturing on State Constitution, Local Government and Good Governance module for LLM in Comparative Public Law and Good Governance, and MA in Federalism program students at Ethiopian Civil Service University, January 2015.

In section two, we have noted that protected rights and the right holders under the FDRE and the Oromia Constitutions are largely similar with some notable differences. However, mere recognition of the rights alone does not mean that they are automatically protected. Effective protection goes more than recognition and depends upon different factors like limitation, derogation, amendment procedure, and adjudication of the recognized rights. Hence, comparing the FDRE Constitution with the Oromia Constitution on these issues is also an imperative task at least to judge the degree of a better protection offered by the latter Constitution. This is, of course, the core task of this section.

3.1. LIMITATION AND DEROGATION

Although rights are constitutionally entrenched, that does not mean that their entrenchment is absolute. Exceptionally, they can be infringed. Limitation and derogation are the two mechanisms of infringing the protected rights although they are conceptually different and applicable in different contexts⁵⁹. For a better understanding, let us see them separately.

3.1.1. Limitation

Limitation of rights refers to justifiable infringement of fundamental rights and freedoms⁶⁰. It does not mean a total deprivation of rights whether that deprivation is temporary or permanent⁶¹. Limitation refers to a situation where guaranteed rights are encroached under narrowly contoured permissible circumstances⁶². This can be done by following general

⁵⁹Abdi Jibril, *Distinguishing Limitation on Constitutional Rights from their Suspension: A Comment on the CUD Case (2012)*, Haramaya Law Review, Vol.1, No.2, P.1.

⁶⁰Iain Currie & Johan de Waal, *The Bill of Rights Handbook* (2005), P165 in Abdi Jibril, *Id.*, P5.

⁶¹Abdi Jibril, *supra* note 59, P5.

⁶²Adem Kassie, *supra* note 26, P85.

limitation clause, specific limitation clause, or hybrid approaches⁶³. Of these three options, both the FDRE and the Oromia Constitutions followed the specific limitation approach. Accordingly, under both Constitutions, while some of the internal limitations simply refer to those limitations determined or established by law⁶⁴, some others are more detailed and require specific laws to safeguard public security, peace, public morality, the rights and freedoms of others⁶⁵. Hence, although both Constitutions follow specific approach of limitation, the degree of specificity varies from provision to provision.

A much relevant issue to the present paper is to examine the implication of following such limitation approach on the protection of rights⁶⁶. The present writer does not believe that resorting to any one of limitation approaches is sufficient by itself for judging the degree of protection of rights. The existing experiences also show differences⁶⁷. Whatever approach is followed, what

⁶³ General limitation clause is a way of limiting rights by using a separate provision (section or article) that applies to all rights in a constitution or in a particular instrument; specific limitation clause is the way of limiting rights following specific provisions that guarantees the same right; and the hybrid one is the situation where specific limitation clause is used together with a general limitation clause (*for details on these issues, see generally, Abdi Jibril, supra note 59, P5; see also Adem Kassie, supra note 26, P58*).

⁶⁴For instance, limitations of the right to life, liberty, and bail (*compare Arts.15, 17 and 19 of the FDRE Constitution with that of the Oromia Constitution*).

⁶⁵The rights to privacy, freedom of religion, belief and opinion, freedom of expression and assembly and association are examples (*Compare Arts. 26, 27, 29, 30, 31 of the FDRE Constitution with that of the Oromia Constitution*).

⁶⁶Regarding this, authorities vary in opinions. For example, for *Tsegaye*, it restricts the protection of rights since in the absence of the general limitation clause, we hardly know how to rule on the (im) propriety of a limitative legislation, decision or any other measure (*Tsegaye, supra note 9, P.48, Foot note 71*). For *Adem*, however, the situation is both advantageous and disadvantageous (*Adem Kassie, supra note 26, P.58*). To the extent that it makes uncertainty to decide the propriety or otherwise of a decision or other measures taken to limit the rights, *Adem* shares *Tsegaye's* argument. But, he also rightly remarks that following specific limitation approach is advantageous as it leaves some rights, which do not have internal limitations, beyond limitations-hence better protection.

⁶⁷For example, Constitution of the Republic of South Africa (1996) follows a hybrid approach; some international human rights instruments also contain general limitation clauses (e.g. UDHR, Art.29).

matter is *to clearly prescribe limitation grounds in the law*. For example, as indicated above, limitation of certain rights like the right to life, liberty, and bail under both Constitutions needs only the enactment of laws (regardless of the content of the laws) and hence highly susceptible to abuse. However, there are specific grounds for limiting some rights like the right to privacy, assembly, etc and hence one expects relatively a better protection. In short, *prescribing the grounds of limitation and government's commitment to protection of human rights* are more important than simply resorting to a type of available options of limitation approaches.

Another related but important point is to emphasise the similarity of limitation approach followed by both Constitutions. The limitation clauses in the Oromia Constitution are the same as the limitation clauses prescribed in the FDRE Constitution. The implication of this on the better protection of human rights at the state level is not good. It is not only the Oromia Constitution but also all other regional constitutions that have not used the opportunity to limit the limitations⁶⁸ thereby missing the opportunity of offering better protection of rights.

3.1.2. Derogation

Derogation is the situation where application of guaranteed rights are temporarily suspended in response to incidences of emergency that threaten the life of a nation or a region as the case may be⁶⁹. Derogation, unlike limitation, can suspend the whole right. The FDRE Constitution provides substantive and procedural requirements for declaring state of emergency⁷⁰. The substantive requirements are the grounds for declaring state of

⁶⁸Christophe Van der Beken, *supra* note 8, P.11.

⁶⁹Adem Kassie, *supra* note 26, P.71; Abdi Jibril, *supra* note 59, P.12.

⁷⁰ The FDRE Constitution, Art.93.

emergency both for the federal and regional governments. Accordingly, while there are four grounds for declaring state of emergency at the federal level; there are only two grounds that necessitate the state governments to declare a state of emergency⁷¹. The Oromia Constitution also repeated these two grounds under its Art.108 (1).

The procedural requirements for declaring state of emergency are also prescribed in both Constitutions. Accordingly, the requirement of legislative approval, the establishment of a State of Emergency Inquiry Board, and the renewal of a state of emergency are important procedures prescribed under both Constitutions⁷². These procedures are strict to be observed by both levels of governments so as to avoid unnecessary encroachment on human rights.

The most striking event at the time of the state of emergency is suspension of guaranteed rights which is, of course, envisaged by both Constitutions⁷³. But, this does not mean that all guaranteed rights are subject to suspension. In this regard, both the FDRE and the Oromia Constitutions specifically make lists of rights which cannot be derogated during a state of emergency.

⁷¹To be more specific, external invasion, break down of law and order which endangers the Constitutional order and cannot be controlled by the regular law enforcement agencies, a natural disaster, or occurrence of an epidemic disease are the four grounds that necessitate the federal government to declare state of emergency. Out of these four grounds, only natural disaster and epidemic disease are grounds of declaring state of emergency at state level (*See the FDRE Constitution, Art.93 (1) (a) (b)*).

⁷²Compare the FDRE Constitution, Arts.93 (2) (3) (5) with the Oromia Constitution, Arts.108 (2) (3) and 109.

⁷³Compare the FDRE Constitution, Art. 93(4)(b) which authorises the Council of Minister to suspend the rights provided in the Constitution *to the extent necessary to avert the conditions that required the declaration of a state of emergency* with Art.108(4) of the Oromia Constitution which impliedly talks the power of Regional Administrative Council and “*Caffee*” to do the same.

Accordingly, under the FDRE Constitution, rights under three provisions⁷⁴, viz., prohibition against inhuman treatment(Art.18),the right to equality (Art.25) and the right to self-determination of Nations, Nationalities and Peoples of Ethiopia (art.39(1 and 2)) cannot be derogated in a state of emergency.

Under the Oromia Constitution, however, the number of non-derogable rights is not limited to what are mentioned under the FDRE Constitution. Eight provisions are considered as non-derogable ones. Accordingly, the right to life (Art.15), the right to security of person (Art.16), prohibition against inhuman treatment (Art.18(1 and 2)),the right of detained or imprisoned person to treatments respecting his human dignity (Art.21(1)),the right to recognition everywhere of his status as a person (Art.24(1)), the right to equality before the law (Art.25), freedom of thought, conscience and religion (Art.27(1)),and the right to self-determination of the Oromo Nation (Art.39) are recognized as non-derogable rights and can neither be suspended nor limited⁷⁵.

Here, two issues are worth considering. The first is as to what explains the disparity between the two Constitutions. The second is as to what implication the disparity has on the protection of human rights. To begin from the first, increasing the number of protected rights in case of the Oromia Constitution has logical connection to the grounds for declaring state of emergency by the state governments. As explained above, states declare state of emergency only on two grounds and this expands the extent of protection of rights when compared to the federal government which declares on four grounds. The

⁷⁴Art.93 (4) (c) of the FDRE Constitution mentions four articles: Arts.1, 18, 25, and 39(1 and 2). But, the author deliberately preferred to say three as Art.1 does not belong to any of the category of rights.

⁷⁵ The Oromia Constitution, Art.108 (4).

implication of the disparity is utilising constitutional space by the Oromia Constitution for a better protection of rights.

3.2. AMENDMENT

Amendment is a mechanism by which constitutions adapt to changing circumstances through “perfecting imperfections”⁷⁶. With this consideration, both the FDRE and the Oromia Constitutions provide for amendment procedure that includes two steps of initiation and approval⁷⁷. Both Constitutions provide for a separate amendment procedure for human right provisions which is more stringent when compared to amendment procedure for other provisions⁷⁸. Accordingly, under the FDRE Constitution, human rights provisions are amended when:

- a) *All State Councils, by majority vote, approve the proposed amendment;*
- b) *HoPR, by two-thirds majority vote, approves the proposed amendment; and*
- c) *The HoF, by two-thirds majority vote, approves the proposed amendment*⁷⁹.

It is stringent enough to discourage retrogressive amendment and to constitutionalize new rights as well as to raise the level of protection of

⁷⁶Johan Hatchard, “Perfecting Imperfections”: *Developing Procedures for Amending Constitutions in Common wealth Africa*”, The Journal of Modern African Studies (1998), Vol.36, No.3, P.381; cited in Adem Kassie, *supra* note 26, P.63.

⁷⁷ Compare the FDRE Constitution, Arts.104 and 105 with the Oromia Constitution, Arts.111 and 112.

⁷⁸It is good to note that the amendment procedure for amending amendment provisions is also stringent. Under the FDRE Constitution it is equally stringent with the amendment procedure of human rights; under the Oromia Constitution, too it is relatively stringent as it requires approval of all District Council and “Caffee” by a majority vote of three fourth (*Compare the FDRE Constitution, Arts.105(1) with the Oromia Constitution, Art.112(3)*).

⁷⁹The FDRE Constitution, Art.105 (1) (a-c).

recognized rights⁸⁰. The Oromia Constitution also made cross-reference to the FDRE Constitution regarding the amendment procedure of human rights provisions. In full it reads: “*Provisions of chapter two and three of this Constitution may not be amended contrary to the conditions specified under Art.105 of the Federal Constitution*”⁸¹. This means, provisions of fundamental principles and human rights under the Oromia Constitution are amended only if the provisions in the FDRE Constitution are amended.

This, in effect, not only undermines the autonomy of the Oromia region for it cannot revise its own Constitution without cooperation of other states⁸² but also blocks the opportunity of adding new human right provisions or expanding the protection of the same through amendment depending upon the demanding circumstances⁸³. Hence, it is unnecessary self-imposed restriction.

3.3. ADJUDICATION

Recognized rights under both Constitutions do not make sense unless they are properly enforced for the subjects they are recognized for. Accordingly, under the FDRE Constitution, “*all federal and state legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of fundamental rights and freedoms listed in chapter three*”⁸⁴ (*emphasis added*). The Oromia Constitution dictates the same duties on the three branches of regional government⁸⁵.

⁸⁰ Adem Kassie, *supra* note 26, P.63.

⁸¹ The Oromia Constitution, Art.112 (1).

⁸² Tsegaye Regassa, *The Constitution of Oromia: A Brief Account*, P.2 in Tsegaye Regassa, *State Constitutions and Local Government: A Reader (Vol. II: Texts, Cases, and Thoughts, available at ECSU Library)*, August 2008.

⁸³ Christophe Van der Beken, *supra* note 8, P.12.

⁸⁴ The FDRE Constitution, Art.13 (1).

⁸⁵ The Oromia Constitution, Art.13 (1).

Although it is less clear when compared to Art.13 (1) of the FDRE and the Oromia Constitutions, the duty to enforce human rights is not limited to government alone. This is because “*all citizens, organs of the state, political organizations, other associations as well as their officials have the duty to ensure the observance of the Constitution*”⁸⁶. This in effect means, all listed groups are duty bound to enforce human rights provisions which are parts of the whole constitution. As such, non-state actors including citizens are also obliged to enforce human rights.

The question is what if duty bearers (states and/or non-state actors) fail to carry out their constitutional obligation? Here comes the issue of constitutional adjudication. Both the FDRE and the Oromia Constitutions established political bodies that interpret the respective Constitutions. These bodies are known as the HoF (whose members are composed of all Nations, Nationalities and Peoples of Ethiopia) under the FDRE Constitution; and the Constitutional Interpretation Commission (whose members are a representative nominated from each District Council) under the Oromia Constitution⁸⁷. In both cases, the Constitutional Interpretation Council, a body playing an advisory role to the body interpreting the Constitution is established⁸⁸. Hence, one can easily see that the Constitutional interpretation system in Oromia is basically modelled after the federal one. *Tsegaye* wrote as follows:

*The Constitutional interpretation system (of Oromia)
imitates the FDRE Constitution without a compelling*

⁸⁶ Compare the FDRE Constitution, Art.9 (2) with the same provision of the Oromia Constitution.

⁸⁷ Compare the FDRE Constitution, Arts.83 (1) and 61(1) with the Oromia Constitution, Art.67 (1).

⁸⁸ Compare the FDRE Constitution, Arts.82 and 84 with the Oromia Constitution, Arts.68 and 69.

*reason for such imitation. One wonders why the ordinary court or a Constitutional court is not considered the ultimate interpreters of the Constitution. One also wonders why the Woredas of Oromia, without them being the makers, are considered the guardians of the Constitution*⁸⁹.

It is very difficult to establish the logic of replicating the power to interpret the FDRE Constitution by the HoF at the federal level for the homogeneous state of Oromia by giving similar power to the Constitutional Interpretation Commission. The makers and owners of the FDRE Constitution are Nations, Nationalities and Peoples, entities represented in the HoF. So, the logic here is let the makers and owners of the Constitution be the guardians of the same which is achieved by empowering the HoF. In Oromia, we cannot find a similar logic. The Oromia Constitution is the expression of all Oromo Nation (Art.8), not the expression of the sovereignty of *Woredas* in Oromia state. Even if one can establish the HoF logic, there is no ground to trust Constitutional Interpretation Commission than the HoF when it comes to protection of human rights as both of them are political bodies⁹⁰.

In addition to this, the probability of expanding protection of human rights through interpretation is also already blocked by Art.19(3) of the Constitutional Interpretation Commission establishment proclamation as the commission is required to interpret in a manner conforming to decisions of the HoF on similar human right matters⁹¹. On the one hand, this is advantageous as it prohibits the Constitutional Interpretation Commission

⁸⁹ Tsegaye, *supra* note 82, P.5.

⁹⁰ Adjudication by its nature needs neutral body with no conflict of interest. But, the HoF and the Constitutional Interpretation Commission are both political organs and their impartiality is not beyond doubt.

⁹¹ A Proclamation Enacted to Establish Oromia Constitutional Interpretation Commission and Determine Its Powers and Duties”, Proclamation No. 167/2011, *Megeleta Oromia*, July 2011.

not to go below the minimum protection given by the HoF through interpretation. On the other hand, it is disadvantageous since the probability of exercising '*judicial federalism*' within the existing framework for a better protection of human rights is rare or none because of uniformity of interpretation.

In short, it is very difficult to say constitutional adjudication system both in Ethiopia and Oromia is conducive for protection of human rights as the bodies assigned to do the task are politicians.

4. CONCLUSIONS AND RECOMMENDATIONS

State constitutions whose bases are the federal constitutions in federations do play many roles in regulating state behaviours. One of the justifications for the need to have state constitutions in a federal arrangement is their capacity to give a better protection to human rights than the federal constitution. It is well settled that state constitutions can do that by adding human rights that are not included in the federal constitution, by limiting limitation and derogation clauses, by providing relatively flexible amendment procedure, and by giving a more liberal (protective) interpretation.

The comparison of the FDRE and the Oromia Constitutions shows that although the two Constitutions are largely similar as far as protection of human rights is concerned, there are areas of differences that create mixed opportunities. By restricting rights, the Oromia Constitution provides lesser protection than the FDRE Constitution. At times, it also provides for better protection by expanding rights provided under the FDRE Constitution.

- 1) With regard to limitation clause, both Constitutions are similar in that they follow specific limitation approach. To avoid the possible abuse

of limitation, it is commendable if the Oromia Constitution utilizes its opportunity of limiting limitation clause for a better protection.

- 2) With regard to derogations at the time of emergency, although both Constitutions prescribe both substantive and procedural requirements for suspending rights, the number of protected rights in the Oromia Constitution is by far greater than that of the FDRE Constitution. This indicates well utilization of constitutional space by the Oromia Constitution for a better protection of rights as it is expected to be.
- 3) The amendment procedure of human rights in the Oromia Constitution is difficult to add new rights or provide better protection for the rights. Hence, the procedure (Art.112 (1)) should be repealed and replaced by a more flexible one.
- 4) Both FDRE and Oromia Constitutions establish political bodies to adjudicate constitutional rights. These bodies are not neutral and less trusted. Hence, it is commendable if both Constitutions opt for other constitutional adjudicatory body perceived to be politically 'neutral'.