



NGO Report to the UN Human Right Committee on the List of Issues for the State of Ethiopia in light of the Obligation Ethiopia has under Articles 2,6, 7 and 12 of the Covenant on Civil and Political Rights

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For the Review of the fourth State Report of Ethiopia

(CCPR/C/ETH/2)

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Acronyms

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| CCPR | Covenant on Civil and Political Rights |
| FDRE | Federal Democratic Republic of Ethiopia |
| HRC | Human Rights Committee |
| LHR | Lawyers for Human Rights |
| NGO | Non-governmental Organization |
| NNP | Nations, Nationalities and Peoples |

REPORTING ORGANIZATION

*This report is prepared by **Lawyers for Human Rights (LHR)**-, an Ethiopian civil society organization, established on September 19, 2019, With the objectives of among other things, increasing the participation and contribution of lawyers in the protection and promotion of human rights through strategic litigations. LHR conduct capacity-building trainings, research and serve as a platform form for providing technical support to lawyers across the nation, and helping exchange ideas and experience about strategic human rights litigation in courts and quasi-judicial organs.*

LHR is also keen in creating awareness for justice organs on core international human rights instruments, providing free or low-cost legal aid services for victims of human rights violation particularly for the indigents, evidence based advocacy and lobbying the government to enact new laws or amend existing ones to give full protection for human rights, familiarizing the idea of human rights defenders (HRD) among the lawyers, etc.

Pursuing remedies for human rights violations through strategic litigation is one of the flagship programs of LHR. ensuring accountability and it has so far developed and filed four cases of gross violations of the CCPR including freedom from torture cruel and in human treatment, the right to fair trial, the right to presumption of innocence, the right to redress, the right to life, equality and non-discrimination, etc. to courts of law and constitutional adjudicatory bodies requesting relief for the violations.

1. INTRODUCTION AND ISSUE SUMMARY

This report portrays the HRC consider violations of the fundamental rights recognized under the CCPR by the State of Ethiopia based on the List of Issues the HRC identified concerning during the second periodic report of Ethiopia on the CCPR.¹

¹ The List of Issues on Ethiopia Report are available on <http://ccprcentre.org/country/ethiopia>

The report addresses violation of prohibition of torture and inhuman treatment, the right to life, right to equality, freedom of movement and freedom to choose his/her residence, political participation.

Even if the Ethiopian Government has obligations under article 7 of the ICCPR and article 18 of the FDRE Constitution to protect individuals from torture and from cruel, inhuman or degrading treatment or punishment, violations were and are occurring to date. This is mainly due to the fact that no evidence or public announcements as to the accountability of perpetrators who were involved in the torturous activities were made. No redress was awarded to the victims of torture.

Another important issue that LHR seeks the attention of the HRC relates to the exclusionary provisions of the constitutions of regional states. Due to the fact that Regional states constitutions empowered a certain ethnic groups as the “owner of the states-homeland”, it left out persons not belonging to the group to be discriminated against equal political participation, access to justice and basic public services in their preferred language. Such discriminatory provisions in the state constitutions are in violations of multiple provisions of the ICCPR, of which LHR submits this for the Committee’s consideration.

2. Major Issues of the Submission

2.1. Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

In 2018, the Prime Minister of Ethiopia acknowledged the widespread nature of torture, enforced disappearance, and detention in private or unknown places. To this end, his government took positive steps including legal and institutional reform of the security sectors. Nevertheless, the state failed to take concrete steps to ensure accountability for violations and redress for the victims. However, the State of Ethiopia failed to uphold its obligations under article 7 of the ICCPR and article 18 of the FDRE Constitution by leaving the victims of torture without redress of any kind. Even if the Government pledged to investigate and prosecute perpetrators, no information was provided to the public that those officers were held accountable.

The victims of past tortures were also left without any redress. No compensation or any other rehabilitative measures were taken by the State. In this regard, LHR sought remedy to one of the victims by a court of law. However, absence of legislative framework that clearly impose obligation on the State to compensate victims of torture has hampered the measures despite the use of tort law for the cases.

2.2. Violation of Minority Rights by Regional Constitutions

The second case LHR wishes take the Committee's attention is concerning discriminations against minorities in the sub-national constitutions, including the right to political participation take part in public affairs, violation of equality and rights to access to public affairs, the right to work, access to justice, etc.

Ethiopia's federation is conceptualized as a 'federation of ethnic groups in which the various ethnic communities are 'joined together in a federal union.'² Under the federal dispensation, Ethiopia is seen as a state 'founded by and belongs to all ethnic groups.'³ The right to self-determination of all ethnic groups of the country is the foundational principle of the federal

² Herther-Spiro N B (2007) 'Can ethnic federalism prevent "recourse to rebellion?" – A comparative analysis of Ethiopian and Iraqi constitutional structures' 21 *Emory International Law Review*, 321–371.

³ Alemante Gebre- Sellasie (Gebre-Sellasie A) (2003) 'Ethnic federalism: Its promise and pitfalls for Africa' (2003) 28 *Yale Journal of International Law*, 55.

system.⁴ Under the federal system, each ethnic community of the country has the right to exercise self-rule within the territory it inhabits.⁵

The *de facto* ethnic federalism that was established during the transitional period, between 1991 and 1995, was formalized by the Constitution. Given that Ethiopia's federation is a 'federation of ethnic groups are demarcated along ethnic lines.'⁶ While none of these states is ethnically homogenous; seven regional states are named after a predominant ethnic group, i.e. Oromia, Amhara, Tigray, Somali, Afar, Harari, and recently Sidama.

The regional states have their constitutions, as the FDRE Constitution itself authorizes the states to have a sub-national constitution adopted by their respective state councils. While state constitutions generally are justified as harnessing self-determination, favorable to protecting the rights of individuals by diffusing powers to the local levels and fostering deliberative democracy⁷, questions arise about how state constitutions are functioning along with their impacts on fundamental rights in the context of Ethiopia.

The State Constitutions, in their preambles, are exclusionary in allocating ownership of the state to a specific ethnic group. Representations in the regional and as lower level councils are also discriminatory towards those who are identified as 'others' or in other words, Individuals who do not belong to the ethnic group to which the state constitution grants self-administration. Even if article 50(2) of the FDRE Constitution demands that state constitutions be consistent with the provisions of the Federal Constitution, the rights of minorities in the regions are being violated.

There are provisions in the regional constitutions which are against the rights of minorities⁸ recognized under the FDRE Constitution and international instruments ratified by Ethiopia. This report mainly focuses on the violations of the rights recognized under article 2, 6 and 12 of the CCPR.

⁴ Preamble & Art 39, FDRE Constitution (1996).

⁵ Art 39 (3) of the FDRE Constitution (1996)..

⁶ Herther-Spiro (2007).

⁷ See Marshfield, Jonathan L., Models of Subnational Constitutionalism (2011). Penn State Law Review, Vol. 115, No. 4, 2011, University of Arkansas Research Paper No. 14-02, Available at SSRN: <https://ssrn.com/abstract=2380357>

⁸ 'Minority' for the purpose of this report identified as numerically inferior and non-dominant ethnic groups found in the regional states.

2.2.1. Political Participation and Representation of Minorities under Regional Constitutions

Political participation and representation is an important right which has ramifications on the enjoyment of all other rights of minorities in cases where it is violated. The FDRE Constitution guarantees the right to everyone- individually and in group (nation, nationality and people) to participate in the public affairs.⁹ ‘Nation, Nationalities and Peoples’ are the authors and the ultimate holders of state powers under the FDRE Constitution.¹⁰ However, despite these guarantees for the right to political participation to groups and individuals under the FDRE Constitution, state constitutions disregard the rights by discriminating against individuals that do not belong to the ‘mother ethnic groups to which the statehood is granted. These state constitutions violate the rights of minorities, including the Bensihangul-Gumuz, Gambella, Oromia, Harari, Afar, and Sidama Regional State Constitutions. These state constitutions are more or less similar in their content and formulation.

The Preambles of the state constitutions of Bensihangul-Gumuz, Gambella, Oromia, Harari, Afar, and Sidama exclude residents of their respective regions that do not belong to the ‘mother ethnic groups’ the constitutions mention. For instance, Paragraph 4 of the Preamble of the Constitution of Bensihangul-Gumuz Regional State provides that “We the Berta, Gumuz, Shinasha, Mao and Komo...” and authorizes these ethnic groups as owners of the Constitution. This is a trend followed by the other constitutions.¹¹ Individuals who do not belong to the specified ethnic groups are excluded from the regional political community by the preambles of the state constitutions. The state constitutions listed above grant the specified ethnic group authorship to the constitutions and as ownership of the states, denying the existence of others in the regions, which in turn is exclusionary and discriminatory. Based on the states’ constitutions, subsidiary laws were enacted following the same exclusionary and discriminatory stands. The minorities seldom participate in regional and local elections, particularly their right to be elected.

⁹ Articles 29, 30, 31, 38 and 39(3) of the FDRE Constitution.

¹⁰ See the preamble of the Constitution. Also See article 8 (1) & (2) of the FDRE Constitution.

¹¹ Preambles of the Gambella, Oromia, Harari, Afar, and Sidama State Constitutions similarly specify the ethnic groups entitled as authors in their respective regions.

Violent attacks have also been observed in these regional states against what they consider ‘others’ with the sentiment that victims do not belong there.¹² In the reports published by the Ethiopian Human Rights Commission (EHRC), “in the 40 localities where the EHRC investigation was carried out, the security crisis that lasted from June 29th to July 2nd, 2020, led to the death of 123 people, physical injuries of at least 500 people, the displacement of thousands, and looting and destruction of private and public property.”¹³ The report also indicated that in some cases, the attack targeted victims based on their ethnic and religious identity. Such attacks are motivated partly by the rhetoric some people belong to the state and others does not- a typical approach followed in designing the state constitutions.

In doing so, the state constitutions contradict the right to political participation, equality, freedom of movement and property of minorities living in the regional states. The FDRE Constitution, under article 25, recognizes that ‘all persons are equal before the law and are entitled without any discrimination to the equal protection of the law [and....] the law shall guarantee to all persons equal and effective protection without discrimination on any grounds.’ Against this basic right, the state constitutions discriminate citizens based on their ethnic origin and demean them as ‘non-political beings’. The consequences of such discriminatory approach are reflected in the routine interaction of individuals with local government entities and expose them to mob violence, massacres, rape, displacement, destruction of their properties, and more generally to human rights crisis. These are evidenced in the recent occurrences such as violence following the assassination of Hachalu Hundessa, violence following Jawar Mohammad’s call for the youth to defend him due to the lifting of security services by the government.¹⁴ Violence also occurred in the Sidama Region by the same rhetoric of some ethnic groups do not belong there.

¹² Violence erupted following the death of Artist Hachalu Hundesa in many towns in Oromia could be a good example. For further information, see <https://www.bbc.com/news/world-africa-53238206>

¹³ Investigation Report of the Ethiopian Human Rights Commission, “IT DID NOT FEEL LIKE WE HAD A GOVERNMENT: Violence & Human Rights Violations following Musician Hachalu Hundessa’s Assassination”, published on <https://ehrc.org/violence-human-rights-violations-following-musician-hachalu-hundessas-assassination/>

¹⁴ The news was reported by Addis Standard, local digital news outlet. For further information, see <https://addisstandard.com/news-members-of-federal-police-assigned-as-jawar-mohammeds-security-resign-following-recall-by-federal-police/>

2.2.2. Popular Sovereignty

While modern democracies grants sovereignty to the entire people living in a polity, the state constitutions bestow popular sovereignty to the predominant ethnic groups. Popular sovereignty is a core principle in a democratic society that signifies that the ultimate source of political power resides in the people. Taking this principle and observing how the state constitutions recognize it, it may be concluded that state constitutions empower ethnic groups they consider owners of the state as the ultimate source of political power.

To be specific, according to the Constitution of Somali Regional State, the Somali's are the owners of the state power.¹⁵ Nevertheless, the supremacy of the FDRE Constitution, the ultimate state power resides up on the people of Afar.¹⁶ The same goes for the Oromia, Harari, Gambella, Benishangul-gumuz and Sidama Regional Constitutions.¹⁷ The ultimate political powers of the regional state reside up on the ethnic groups identified as 'owners'.

Even if the state constitutions recognize the right to elect and be elected to all, the exclusionary approach in bestowing popular sovereignty makes the status of persons that do not belong to mother ethnic groups as 'others' putting them at the periphery of local politics. The Government of Ethiopia has not so far taken positive measures to ensure the rights of minorities to political participation as no legislative reforms were conducted in the area, both at the federal and regional level.

SUGGESTED RECOMMENDATIONS

Accordingly, we call on the UN Human Rights Committee to:

- Recommend the Government of Ethiopia to strengthen legislative frameworks redressing victims of torture;

¹⁵ See article 9 of the Somali regional Constitution

¹⁶ Article 8(1) of the Constitution of Afar regional state

¹⁷ The ultimate state power resides up on the Oromo people (Article 8(1) of the Constitution of the Oromo regional state). The people of the Harari are the ultimate holder of state power (Article 8 of the Constitution of the Harari regional state). The Gambela peoples are the ultimate holder of state power (Article 9(1) of the Constitution of Gambela regional state).Notwithstanding the existence of other nations and nationalities only the Komos, the omos, the Gumuz, the Shinasha and Berta are the owners of the state and the state power (Article 2 of the Constitution of the Benishangul-gumuz regional state).

- Urge the Government of Ethiopia to amend the state constitutions of Oromia, Southern Nations Nationalities, Benishangul-Gumuz, Somali, Afar, Harari and Sidama and make them accommodative of other ethnic groups;
- To recommend the Ethiopian government strengthen national mechanisms in order to ensure that the regional constitutions align with the National Constitution and the CCPR.