The Place of International Human Rights Conventions in the 1994 Federal Democratic Republic of Ethiopia (FDRE) Constitution

By Ibrahim Idris*

I. Introduction

Article 9(4) of the FDRE Constitution states that 'international agreements ratified by Ethiopia are an integral part of the law of the land.' International human rights conventions are special kinds of 'international agreements.'[1] To date, Ethiopia has ratified or acceded to the major international human rights instruments, including the two 1966 UN Human Rights Covenants and numerous other human rights instruments advanced by the United Nations subsidiary organizations such as ILO, UNHCR and UNESCO. In June 1998, Ethiopia ratified the African Charter of Human and Peoples' Rights.

Ethiopia's ratification of international human rights instruments might goad one into raising several questions of constitutional significance. These, *inter alia*, pertain to two specific issues: Is a ratified international human rights convention internally applicable as part of Ethiopian law without being published in the *Negarit Gazeta*, Ethiopian law gazette? If such a convention becomes part of Ethiopia's internal law, what is its position in the hierarchy of the country's domestic legal order?

In international jurisprudence, these and other related issues are treated in the context of the relationship of international law to national law based on two widely accepted doctrinal approaches: monism and dualism. [2] However, as these doctrines are theoretical in nature and

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[1] In international law, there is anarchy in the use of such terminologies as treaty, convention, pact, agreement, arrangement, and protocol. All these refer to an instrument resulting from negotiations of states and agreeing to be bound by it in accordance with international law and their respective by constitutional law. Because the choice of terminologies is governed by arbitrary considerations of states concerned, there is no uniform standard of nomenclature. Of these terminologies, the terms "convention" and "treaty" are commonly and interchangeably employed. In this paper, the author has also found it appropriate to use these two terms interchangeabley.

[2] Mark W. Janis, Richard S. Kay and Anthony W. Bradly, *European Human Rights Law*, 1995, p. 448.

draw legal scholars into an endless controversy, the author has not found it essential to dwell on them in this paper. Instead, an attempt will be made to look into practical matters.

As things stand now, any attempt to find straight answers to questions concerning the internal application and the position of ratified international human rights conventions in the hierarchy of Ethiopia's laws in the light of the FDRE Constitution is a challenging task. This could be for at least three reasons. *Firstly*, the Constitution's provisions are too vague to assist in finding direct answers to the questions. *Secondly*, Federal Ethiopia has as yet not enacted legislation on treaty making procedures capable of elaborating the Constitution's provisions on matters relating to international conventions. And *thirdly*, the House of Federation, the second house of the Ethiopian Parliament whose powers include the adjudication of constitutional issues, has not yet come up with pertinent decisions providing guidance on the interpretation of the provisions of the Constitution.

In writing this short article, it is, therefore, the aim of the author to discuss the process under which international human rights conventions would become internally applicable, and also the position these conventions hold in the hierarchy of the Ethiopian legal order. To this end, relevant provisions of the Constitution and other pertinent laws of Ethiopia are closely examined. Moreover, in the desire to throw light on the issues under consideration, an attempt has been made to refer to the pertinent laws and experiences of other countries. Where appropriate, rules and principles of international law are also invoked. The whole exercise, the author is convinced, would initiate serious debate within the academic circle whose concerted effort could no doubt be essential in the enhancement of the understanding and application of ratified international human rights conventions in Ethiopia.

II. International Human Rights Conventions in Ethiopia in Historical Perspective

Ethiopia has been a party to bilateral treaties since a very long time. In the early days, regional kingdoms concluded many of such treaties. The following were some of those bilateral treaties concluded by regional kingdoms in the 19th century: The Anglo-Shoan Treaty of 1841, the

Franco-Shoan Treaty of 1843, the Roland-Wibe Treaty of 1849, the Plowden-Ali Treaty of 1849 and the Russel-Neguisie Treaty of 1859.[3]

However, Ethiopia's history of participation in the sphere of international human rights and humanitarian conventions could only be traced as far back as the time when it joined the League of Nations. Ethiopia was admitted to the League on September 23, 1923.[4] As a member of the League, it endorsed several international human rights and humanitarian conventions. It endorsed the Convention Prohibiting the Practice of Slavery, on September 25, 1926; the 1907 Hague Conventions on the Laws of War, on October 4, 1935; and the Geneva Convention on the Amelioration of the Conditions of the Wounded and Sick in the Field, on January 15, 1936. Ethiopia also ratified or acceded to the various conventions of the International Labour Organization. Ethiopia joined the Organization in 1923.

Ethiopia's role in the development of international human rights conventions began to take a new chapter with the adoption of the United Nations Charter on October 24, 1945. Ethiopia was the founder of the United Nations Organization. It was one of those 46 countries that were invited by the United States to attend the discussions on the draft constitution which has come to be known as the *Dumbarton Oaks* proposals. Ethiopia participated in the San Francisco Conference that led to the establishment of the Organization on October 24, 1945.

Ethiopia was also one of those countries that played an important role in the adoption of the Universal Declaration of Human Rights of December 10, 1948. The Universal Declaration of Human Rights is regarded as the foundation of modern international human rights law. Although the Declaration was not intended to be a legally binding document, its preamble proclaims that it is ' a common standard of achievement for all peoples and nations.' The Declaration has, therefore, played a decisive role in influencing Ethiopia's laws right from the early days. The 1955 Revised Constitution of Ethiopia was one of those laws in which the impact of the Declaration was highly felt. Although the Declaration was then not part of Ethiopian law, the

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[3] Bekure Herouy, An Introduction to the Law of Treaties: The Ethiopian Experience from 1841-1908, Senior Thesis, Faculty of Law, Addis Ababa University, 1982, pp. 62-114 (Unpublished).

[4] Ethiopia signed the Covenant of the League of Nations on December 16, 1923 and ratified it on September 27, 1923.

draftsmen of the Constitution had heavily relied on it as a major source for drafting the human rights and freedoms provisions of the Constitution.[5] In the time of the codification that roughly took place from mid-1950's to mid-1960's, the development of Ethiopian laws, and in particular, the 1957 Penal Code, the 1961 Criminal Procedure Code and the 1960 Civil Code, were enormously influenced by the Declaration. Further, for instance, the 1957 Penal Code of Ethiopia has, *inter alia*, included Articles 281 and 282 from the Genocide Convention and the Four Geneva Conventions of August 12, 1949 respectively. Ethiopia has been a party to the Genocide Convention and the Four Geneva Conventions right from the early days. Interestingly, Ethiopia openly endorsed the Universal Declaration of Human Rights as an integral part of the country's domestic law in June 1991. This was done through the adoption of the Transitional Period Charter of Ethiopia.[6]

In examining the earlier three Ethiopian constitutions (i.e. the 1931 Constitution, the 1955 Revised Constitution and the People's Democratic Republic of Ethiopia Constitution of 1987), one could easily observe that all three consisted of provisions dealing with treaties. Of these constitutions, the 1931 Constitution had a single article relating to treaty, i.e. Article 14. The Article vested the power to negotiate and sign all kinds of treaties on Emperor Haile Selassie. By order No.1, 1943, which continued to be enforced even after the introduction of the Revised Constitution, the Emperor delegated to the Foreign Minister the power to negotiate treaties and agreements on his behalf. An important piece of legislation that had a bearing on the status of international conventions during this period was the Federal Incorporation and Inclusion of the Territory of Eritrea within the Empire Order.[7] According to Article 8 of this Order, 'international conventions, treaties and obligations' together with the Federal Act and the 1931 Constitution were accorded the status of supreme law throughout the territories of the then federated Empire.

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[5] James C. N. Paul and Christopher Clapham, *Ethiopian Constitutional Development*, 1971, pp. 912-913.

[6] The Transitional Period Charter of Ethiopia, 1991, Article 1.

[7] The Federal Incorporation and Inclusion of the Territory of Eritrea within the Empire Order No, 6/1952, *Neg. Gaz.* Year 12, No. 1.

In contrast to the 1931 Constitution, the Revised Constitution consisted of a number of articles dealing with treaties. In its Article 30, the Constitution recognised three different types of treaties. These were treaties that needed no ratification; treaties that needed ratification; and treaties that needed parliamentary approval before ratification. The Article also provided that the Emperor had the power to determine as to which kinds of the treaties and international agreements concluded by the various ministries and departments would require no ratification.

Further, Article 30 enumerated the types of treaties that required parliamentary approval. These were treaties concluded relating to peace; a modification of the territory of the Empire, or of sovereignty or jurisdiction over any part of such territory; laying a burden on Ethiopian subjects personally; modifying legislation in existence; requiring expenditures of state funds; or involving loans or monopolies. Articles 88 to 90 of the Constitution empowered the two Houses of Parliament to approve these treaties before the Emperor would ratify them. Also, as implied in Article 88 of the Revised Constitution, in the event that a treaty obtained the approval of the two Houses of Parliament, and the signature of the Emperor was affixed, the Minister of Pen had the duty to publish the treaty in the *Negarit Gazeta*.

According to Article 122 of the Revised Constitution, 'international treaties, conventions and obligations to which Ethiopia was a party were, together with the Constitution, regarded as the supreme law of the land.' However, the discrepancy that existed between the Amharic and the English versions of this Article was noted to have then drawn Ethiopian lawyers into series of controversies. These, *inter alia*, related to the status of treaties promulgated prior to the coming into force of the Revised constitution and also the relation of the treaties to the Constitution in case of conflict.[8]

The 1987 Constitution of the People's Democratic Republic of Ethiopia also contained a provision on international conventions.[9] As stipulated in Article 82 (1) (d) of the Constitution,

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[8] Aberra Jembere, *Treaties as the Supreme Law of the Empire*, Senior Thesis, Faculty of Law, Addis Ababa University, 1967, pp. 13-23 (Unpublished).

[9] During the time of the Military Government, i.e. between 1974 and the adoption of the 1987 Constitution, the power to ratify treaties was vested in the Provisional Military Administrative Council. See Article 4 of the Definition of Powers of the Provisional Military Administrative Council and its Chairman Proclamation No. 2 of 1974 and Article 5 of the Redefinition of Powers and Responsibilities of the Provisional Military Administrative Council and the Council of Ministers Proclamation.

the Council of the State, an organ of the state power functioning as a standing body of the national Parliament called *National Shengo*, was empowered to ratify and denounce international conventions. The Treaty-Making Procedures Proclamation No. 25 issued in 1988 was also instrumental in the elaboration of the treaty making process under the 1987 Constitution. According to Article 3 of the Proclamation, the President of the Republic had the power to negotiate and conclude any treaty on behalf of People's Democratic Republic of Ethiopia, and to delegate the Prime Minster and the Minister of Foreign Affairs to negotiate and conclude treaties.

Moreover, according to Article 6 of the Proclamation, certain treaties were made to be operational only after authorization is given by the Council of Ministers. These refer to the following types of treaties: *one*, treaties concluded by ministers and other government officials with their counterparts involving mutual co-operation on matters of technical nature falling within the competence of the government offices; and *two,* treaties whose sole purpose was to implement prior basic matters. However, as stated in Article 7, basic political and economic treaties and treaties containing provisions on ratification for entry into force required ratification by the Council of State.[10]

In connection with the above three constitutions, there is a cardinal point worth mentioning. This relates to the Negarit Gazeta Establishment Proclamation No.1/1942. The Proclamation was in force under the above three constitutions. According to this Proclamation, the courts were authorised to take judicial notice of only those laws published in the Negarit Gazeta. Hence, publication was regarded as a precondition for any law of the country to have internal effect within Ethiopia. [11] Indeed, as the term 'law' being a generic term, the publication requirement was also relevant for treaties. However, as the practices during these periods would evidence, the requirement of publishing treaties adopted by Ethiopia was not always met.[12] Many

[10] Shiferaw Wolde Micahael, Ratification of treaties in Ethiopia, *Journal of Ethiopian Law*, Vol. 13, pp. 157-167.

[11] The Establishment of Negarit Gazeta Proclamation No.1/ 1942, *Neg. Gaz.* Year 1, No 1. Art. 5 (a).

[12] Shemelis Metaferia, Treaty–Making Power in Ethiopia, 1967, Senior Thesis, Faculty of Law , Addis Ababa University, 1967, p.20 (Unpublished).

of those treaties adopted were not published. As regards those treaties that were published, their full texts did not appear in the *Negarit Gazeta.* The practice was rather to issue ratification decrees in proclamations. The Charter of the Organisation of African Unity was the only exception. The Charter's full text was published in the *Negarit Gazeta.*[13]

III. Treaty-Making Procedure under the FDRE Constitution

The FDRE Constitution has entrusted the power to ratify all kinds of international treaties, including international human rights conventions, to the House of Peoples' Representatives. Article 55(12) of the FDRE Constitution expressly provides to this effect. The House of Peoples' Representatives is the body to which the power of enacting legislation in all matters within the Federal jurisdiction is assigned.[14]

Under the Constitution, the Executive is solely empowered to negotiate and sign an international convention. As stipulated in Article 25 (2) of the Definition and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, Proclamation No. 4/1995, the Ministry of Foreign Affairs is authorized, on behalf of the Executive and in consultation with the concerned organs, to negotiate and sign an international convention Ethiopia enters into with other states.[15] The Executive would then submit the convention signed by it to the House for approval. Having received the convention, the House of Peoples' Representatives would deliberate upon it and ratify the same in the same way as it passes ordinary legislation. And then the Speaker of the House would, together with the statement that the House has approved the treaty, pass it to the President of the Republic within two working days for signature. This is effected in accordance with Articles 21 (4) of the House of Peoples' Representatives Legislative Procedure Proclamation[17] and Article 57 of the Constitution. The ratified convention will come

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[13] *The Charter of the Organization of African Unity Approval Proclamation* No. 202, *Neg. Gaz.*, Year, 22, No. 16.

[14] *The FDRE Constitution*, Article 55 (1)

[15] The Definition and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 4/1995, *Fed. Neg. Gaz.*, Year 1, No. 2, Article 25(2).

[17] The House of Peoples' Representatives Legislative Procedure Proclamation No. 14/ 1995, *Fed. Neg.* Gaz., Year 2, No. 2.

into force upon being signed by the President, or in case otherwise, fifteen days after it has been received by him.[18] This is done through the enactment of a proclamation.[19]

Where the House of Peoples' Representatives ratifies a convention, the Ministry of Foreign Affairs is responsible for effecting all formalities of ratification of the convention. It prepares a letter or an instrument of ratification, in the English and Amharic languages, attesting Ethiopia's agreement to be bound by the convention and sends it to the depository of the instrument of the ratification.

In international law, a convention the instrument of the ratification of which has been deposited entails international obligations.[20] Hence, as of the time of the deposit of the ratification of the instrument, Ethiopia will be required to take all appropriate legal measures in order to bring about the convention into effect within its jurisdiction.[21] Certainly, these measures, *inter alia,* include the creation of conditions under which international human rights conventions could be applied.[22] This process is examined in the subsequent sections under two major headings: Internal application and Hierarchy of International Human Rights Conventions.

IV. Internal Application of International Human Rights Conventions

A discussion of the internal application of ratified international human rights conventions in Ethiopia requires a look into two different legal situations. On the one hand, Article 9(4) of the Constitution expressly states that 'all international treaties ratified by Ethiopia are an integral part of the law of the land.'

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[18] Ibid, Article 8(2).

[19] The FDRE Constitution, Article 71(2).

[20] The United Nations Charter, Article 102.

[21] International human rights law requires states to undertake all appropriate measures, including legislative, administrative, judicial, economic, social and educational measures, with a view to giving effect to human rights and freedoms guaranteed in the instruments they ratify. For instance, see Article 2 of the Covenant on Civil and Political Rights of 1966.

[22] Karl Josef Partsch, *International Law As Part of National Law, National Implementation of International Humanitarian Law,* 1990, pp. 1-2.

On the other hand, the Constitution authorizes the Federal President to publish international conventions when ratified by the House of Peoples' Representatives. Article 71(2) of the Constitution states:

> "He [the President] shall proclaim in the *Negarit Gazeta* laws and international agreements approved by the Houses of Peoples' Representatives in accordance with the Constitution."

In this connection, it is necessary to mention the Federal *Negarit Gazeta* Establishment Proclamation No. 3/ 1995. This Proclamation has replaced the *Negarit Gazeta* Establishment Proclamation No.1/1942. In its Article 2(3), the Federal *Negarit Gazeta* Establishment Proclamation states:

> "All Federal or Regional legislative, executive and judicial organs as well as any national or juridical person shall take judicial notice of laws published in the Federal Negarit Gazeta"

Here, it is legitimate to raise the following questions. Are international human rights conventions deemed to be applicable in Ethiopia as soon as they are ratified within the meaning of Article 9(4) of the Constitution? In other words, is publication a precondition for ratified international human rights conventions to become part of the law of Ethiopia? Does the fact that international human rights conventions ratified by the Council of Peoples' Representatives should be proclaimed by the President of the Republic in the *Federal Negarit Gazeta* imply that such conventions would not come into effect internally without the fulfilment of this requirement?

In this section, two sub-sections are included. The first aims at treating the questions raised above. The second dwells on the methods of publication to be employed in internalising ratified international human rights conventions within the Ethiopian legal order.

A. Publication of Ratified International Human Rights Conventions

In connection with the discussion of publication of international human rights conventions in a state, there are two principles of international significance to be noted. On the one hand,

ratification,[23] when made by a constitutionally competent organ, is the attestation that conventions acquire force of law, both on the international and internal planes. [24] On the other hand, international law recognizes a state to determine the conditions under which international conventions could have effect within its jurisdiction. In other words, a state applies conventions within its jurisdiction in accordance with the prescriptions of its constitution. To this effect, for instance, Article 2(2), of the International Civil and Political Covenant provides that a state party to the Covenant is required to implement the rights and freedoms guaranteed in the Covenant in accordance with its 'constitutional process and the Covenant itself'. Consequently, this state of affairs has caused states to take different approaches in respect to the issue of publication as precondition for international convention to acquire legal effect within their respective territorie

On this issue, states could be grouped into two. The first group comprises of those states whose constitutions require for ratified international conventions to be published in their respective official law gazettes. For instance, in France, ratified international conventions are made a legal requirement through publication.[25] In Germany, the view that has gained acceptance is that international conventions are required to be transformed into the domestic legal order by the legislature's law of an expropriation with the view that both officials and the general public will take note of them.[26] In Switzerland, while, on the one hand, organs of state are obliged to apply international conventions even without publication, on the other hand, such conventions would be binding upon individuals only where they are published.[27] In the laws of Portugal[28] and Turkey,[29] publication is expressly prescribed as a method of transforming ratified

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[23] Ratification means an expression of a state on the international plane to be bound by a treaty. See the Vienna Convention of Treaties, Article 1(b).

[24] Article 2 of the Resolution Project No. 1 on Fundamental Basis of International Law reads: " Positive international law forms part of the law of every state, and such shall be applied in cases appertaining thereto by the national constitutions in accordance with the prescriptions of the respective political constitutions." The full text of the Resolution is included in *the American Journal of International law,* Vol. 22, 1928, pp. 238-239.

[25] *The French Constitution of 1958*, Article 55.

[26] Andrew Z. Drzeinczewski, *European Human Rights Convention in Domestic Law: A Comparative Study*, 1985, p.108.

[27] Ibid, p.119.

[28] *The Portuguese Constitution* of 25 April 1976, Article 8 (2).

[29] *The Turkish Constitution of 1961*, Article 65(1).

conventions into domestic law. In Belgian law, conventions are binding on individuals if only they are brought to their attention through publication.[30]

In English law, the general practice is that ratified conventions can only be part of the law of the land as long as they are made law by act of the English Parliament which must be published.[31] In Argentine law, ratified conventions become federal law if they are published in accordance with Article 31 of the Constitution.[32] Many states of Eastern Europe, including the state of Croatia,[33] provide for the publication of ratified conventions to be regarded as part of domestic law .[34]

The second group of states does not provide for publication as a requirement for ratified conventions to come into operation. The United States may be cited as an example. In the United States, it is not a requirement for a convention which is ratified by the President with the consent of a two-thirds majority of the Senate to be published in an official proclamation.[35] American courts are under obligation to give effect to a ratified convention, pure and simple. However, such a convention must be one that has come into effect internationally.

When a state ratifies a convention pursuant to forms prescribed by international law and its constitutional law, the commitment it undertakes is that it would take all appropriate measures leading to the full realization of the convention within its territory.[36] One of these commitments relates to bringing the convention to the knowledge of the public. Obviously, this could only be realized through publication.

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[30] David R. Deener, Some Post World War II Trends in the Relationships of Municipal law to Treaty law, *The Indian Journal of International Law*, Vol. 5, No. 3, July1965, p. 271. See also Andrew Z. Drzinczewski, p.64.

[31] *R. v. Chief Immigration Offices, Expente Salamat Bibi* [1976] 1 W.L.R. 979.

[32] *The Article 19 Freedom of Expression Manual: International and Comparative Law, Standards and Procedure,* 1993, p. 44.

[33] *The Croatian Constitution of December 22,1999*, Article 134.

[34] Eric Stein, International Law in Internal Law; Towards Internationalisation of Central-Eastern European Constitutions, *American Journal of International Law*, Vol. 88, No. 3. 1994 p. 444.

[35] Erades and Gould, *The Relation between International Law and Municipal Law in the Netherlands and in the United States*, 1961, pp 305-307.

[36] Under international law, when a state ratifies or accedes to a convention, it implies that it commits itself to respect and to ensure respect of the rights and freedoms of the convention. See, for instance, Article 2(1) of the U.N Covenant of Civil and Political Rights.

The FDRE Constitution is vague as to whether or not publication is a requirement for ratified international human rights conventions to have legal effect within Ethiopia. . On this issue, there are two conflicting views in Ethiopia. These views were in particular reflected during the discussions at the International Conference on the Establishment of the Ethiopian Human Rights Commission and the Institution of Ombudsman, from May 18-22, 1998, and the Symposium on 'The Role of Courts in Enforcement of the Constitution' organized by the Ethiopian Civil Service College, from May 19-20, 2000. Both the Conference and the Symposium were in held in Addis Ababa, Ethiopia.

The first view insists that ratification by the House of Peoples' Representatives suffices for conventions to have effect internally. In defense of their position, proponents of this view cite Article 9(4) of the FDRE Constitution. In the argument of these lawyers, an international convention becomes part of Ethiopian law as soon as it is ratified. They insist that publication of the convention adds no validity to the conventions, which are already valid through ratification.[37] According to this view, ratified international human rights convention could, therefore, be applied without the requirement of publication in the *Negarit Gazeta*.

The other view takes an apposite stand. This view argues that publication of a ratified international conventions is a requirement for such conventions to be applicable within Ethiopia.[38] According to this view, publication is a requirement for conventions as much as it is for all other laws enacted by the House of Peoples' Representatives. The author of this Article chooses to follow the second view for the following two reasons.

The first pertains to Article 71(2) of the FDRE Constitution which requires the President of the Republic to proclaim in the *Negarit Gazeta* laws and international conventions ratified by

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[37] Girma Amare, ' The Ethiopian Human Rights Regime, Federal Democratic Republic of Ethiopia's Constitution and International Human Rights Conventions Ethiopia has Ratified.' This paper was presented to the International Conference on the Establishment of the Ethiopian Human Rights Commission and the Institution of Ombudsman, from May 18-22, 1998, Addis Ababa, Ethiopia.

[38] Ibrahim Idris, What Should be the Missions of the Future Human Rights Commission of Ethiopia, 1998, pp. 21-23. This paper was presented to the International Conference on the Establishment of the Ethiopian Human Rights Commission and the Institution of Ombudsman, from May 18-22, 1998, Addis Ababa, Ethiopia.

ıe Houses of Peoples' Representatives in accordance with the Constitution. As a close look into ıis provision would evidence, it is expressed in a mandatory way. Ratified international conventions, like all other laws, are no doubt the outcome of deliberations of the House of the Peoples' Representatives. Hence, they need to be brought to the attention of the general public through publication.[39]

This argument takes us to the second reason. This concerns the 1995 Federal Negarit Gazeta Establishment Proclamation. According to Article 2(3) of this Proclamation, publication of federal laws in the *Federal Negarit Gazeta* is an absolute requirement for obtaining judicial notice and, therefore, enforcement. Article 2(1) of the House of Peoples' Representatives Legislative Procedure Proclamation also underscores the requirement of publication for all acts to acquire the force of law. Article 2(1) states:

> " 'Law' means proclamations, regulations or directives that come into force upon approval by the House of Peoples' Representatives and subsequent publication in the Federal Negarit Gazeta , under the Signature of the President, in accordance with the procedure laid down here."

Hence, in Ethiopian law, an international human rights convention ratified by the House of Peoples' Representatives, pursuant to Article 9(4) of the Constitution, becomes internally applicable, provided it is internalised or transformed into the Ethiopian legal order through a proclamation to be published in the *Federal Negarit Gazeta*. Indeed, it is the act of publication that brings any ratified international convention into effect within Ethiopia.

B. Methods of Publications of International Human Rights Conventions

An issue worthy of inquiry in this sub-section pertains to the method of publication of ratified international human rights conventions within the meaning of the *Federal Negarit Gazeta*

[39] The enforcement of international human rights conventions not signed by the President of the Republic within the required period of 15 days is of an exceptional nature. Even if such a thing occurs, it is unlikely that the proclamation would be enforced without it being communicated to the general public through publication, in the *Federal Negarit Gazeta*. In fact, as expressly stipulated in Article 8 (2) of the House of peoples' Representatives Procedure Proclamation, the House is authorized to publish laws, including ratified international conventions, if such laws are not signed by the President within fifteen days.

Establishment Proclamation. Concerning this issue, there are at least three different methods by which publication may be realized. These are: a) by enacting the whole text of the ratified international human rights convention in a proclamation; b) by enacting a proclamation which makes reference to the convention but without expressly enacting its provisions, either with or without annexing the text of the convention; and c) by incorporating into the law the convention or the relevant provisions of the convention.[40]

As far as Ethiopia is concerned, the Federal Negarit Gazeta Establishment Proclamation is not express as to which of these three methods of publication Ethiopia would favour. As the country's legislative practice could evidence, neither one nor the other of the three methods has consistently been followed. In fact, there have been instances in which ratified international conventions were legislated in domestic legislation through the help of one or the other method. As regards the first method, the OAU (the Organization of African Unity) Charter could be cited as an example. The OAU Charter, though not a human rights document, is, to the knowledge of this author, the only treaty the full English text of which together with its Amharic translation was published in the Negarit Gazeta.[41] The implementation legislation of both the Child Convention[42] and the Chemical Weapons Conventions[43] are two examples of the second method. In effecting this method, ratification proclamations would only make reference to ratified conventions and without expressly enacting or annexing the texts.[44] The ratification decrees published in the *Federal Negarit Gazetas* following loan agreements concluded with foreign governments or international financial institutions can as well be cited as instances of this method. Such proclamations do simply provide that the said convention is ratified. As regards the third method, the Genocide Convention and the Four Geneva Conventions of 1949 are

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[40] Anne F. Bayefsky, *International Human Rights Law; Use in Canadian Charter of Rights and Freedoms Litigation*, 1992, pp. 32-33.

[41] *The Charter of the Organization of African Unity Approval Proclamation* No. 202/ 1963, *Neg. Gaz.*, Year, 22, No. 16.

[42] *The Convention of the Rights of the Child Ratification Proclamation* No. 10/ 1992, *Neg. Gaz.*, Year 51, No. 5.

[43] *The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction Proclamation* No. 30/1996, *Neg. Gaz*, Year, 51, No. 18.

[44] These, for instance, include all loan agreements concluded between the Ethiopian government and foreign lending governments.

conspicuous examples. In addition to their ratification, the conventions' important provisions were incorporated into the relevant law of Ethiopia, i.e. the Ethiopian Penal Code of 1957.[45]

In the opinion of this author, it is indeed a matter of international compliance on the part of Ethiopia to consider publishing the texts of all ratified human rights.[46] International human rights conventions are treaties of a special nature. In contrast to those other types of treaties which solely affect the administration, international human rights conventions represent distinct types of treaties the implementation of which is dependent on the public awareness of their existence. International human rights conventions affect the rights, freedoms and duties of individual human beings. Individuals and groups could invoke norms and principles of ratified international human rights conventions to their defence before the courts and other organs of the state if they are knowledgeable of their existence. In connection with the internal effect of conventions in France, Lawrence Peruses wrote:

> " Publication brings it to the knowledge of private citizens, fixes the point of time at which arises their obligation to conform to its provisions, and their right to invoke it before the courts and other organs of the state."[47]

Like all other laws of the country, it is essential that ratified international human rights conventions be known to the public in the language they understand as well as the official language of the court entertaining the cases. In Ethiopia, Federal courts as well as those courts in few members of the federation, namely the states of Benishangul, Gambela and Southern Nations, Nationalities and Peoples, adjudicate cases in Amharic, the working language of the Federal Government.[48] This state of affairs underlines the requirement of publishing the official Amharic translation of the whole texts of ratified international human rights conventions in the

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[45] *The Penal Code of Ethiopia of 1949* includes, among many other things, two Articles, i.e., 281 and 282 on genocide and crimes against humanity respectively.

[46] *The FDRE Constitution*, Article 71(2).

[47] Lawrence Peruses, The Relationship of International Law to Internal Law in the French Constitutional System, *American Journal of International Law*, Vol. 44, 1950, pp. 650-651.

[48] Article 5(2) of the *FDRE Constitution* reads: "Amahric shall be the working language of the Federal Government."

Federal Negarit Gazeta.[49] The legal maxim that ignorance of law is no excuse strengthens the importance of bringing the whole texts of ratified international human rights conventions to the attention of the general public. It is indeed in light of this view that the Committee on the Rights of the Child at its 371st meeting suggested that Ethiopia should publish the full text of the Child Convention.[50]

The Human Rights Committee of the United Nations has also stressed the requirement of publication. However, this was made in reference to the UN Covenant on Civil and Political Rights. In its 311th meeting (thirteenth session), the Committee held that the Covenant should be publicized in all languages of a state party to it.[51] The Committee believed that such act would enable individuals to know about their rights under the Covenant and that all administrative and judicial authorities would also be aware of the obligations, which the state party has assumed under the Covenant.

Indeed, the enforcement of fundamental rights and freedoms guaranteed under international human rights conventions in Ethiopia could be enhanced if the general public is made to be aware of such rights and freedoms. And, in a situation where the conventions are not published, it is unlikely that the public would know of its rights and freedoms. This would no doubt create the conditions under which fundamental rights and freedoms could be violated. Since recently, it appears that the Federal Government has become aware of the need to make international human rights conventions accessible to the public. In fact, the duty to undertake this task has been entrusted to the Ethiopian Human Rights Commission which, however, has still not yet become operational. According to the Human Rights Commission Establishment Proclamation, one of the tasks of the Commission will be to ' translate into local vernaculars, international human rights instruments adopted by Ethiopia and disperse the same.'[52] And

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[49] Article 4 of t*he Federal Negarit Gazeta Establishment Proclamation* reads: " The Federal Negarit Gazeta shall be published in both the Amharic and English languages. In case of discrepancy between the two versions the Amahric shall prevail".

[50] The Concluding Observations adopted by the Committee on the Rights of the Child at its 371st meeting (Fourteenth Session), held on January 24, 1997, p. 7.

[51] General Comment No. 3 (13) adopted by the Human Rights Committee on 28 July, 1981.

[52] The Ethiopian Human Rights Commission Establishment Proclamation No. 210/ 2000, Neg. Gaz., Year 6, No. 40, Article 6(8).

surely, for such conventions to be employed by the courts, the official translations need to be published in the Federal and Regional *Negarit Gazetas*.

Needless to mention, such treaties as relating to loan agreements, alliances, the settlement of international disputes, armaments or mutual assistance solely affect the administration. As far as these and other related treaties are concerned, it may suffice to provide only ratification decrees, i.e. without the texts of the treaties being published. Because, in such a case, the non-publication of the full texts of such treaties in the *Federal Negarit Gazeta* does not infer that the administration will have no knowledge of the contents of the treaties. The administration, as part of the Government which is a party to such treaties ratified by the House of Peoples' Representatives, is assumed to have knowledge of them.

V. Hierarchy of International Human Rights Conventions under the FDRE Constitution

In international jurisprudence, the relation of international law to national law can be looked at from two different dimensions: international and national.[53] Internationally, i.e., regarding the position of national law within international sphere, the accepted view is that international law is binding upon states and failure to observe international law within their respective domestic jurisdictions entails legal responsibility. States are in no way excused to rely on constitutional or domestic laws to extricate themselves from their international obligations. The supremacy of international law over national law is emphatically maintained by the *Vienna Convention of Treaties of 1969* which in its Article 27 provides that a state party may not invoke its national law so as not to carry out an international convention.

International legal scholars and international tribunals are in support of this position. The legal scholars stress the supremacy of international law and reject any idea on the part of states to invoke national laws as an excuse for a breach of international obligations. [54] As regards this issue, the contributions made by the Permanent Court of International Justice were indeed enormous. In several cases that came before it, the Court held that a national law, which is in

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[53] Malcolm N. Shaw, *International Law*, 2nd Edition, 1986, pp. 100-103.

[54] Rosalie P. Schaffer, The Inter-Relationship Between Public International Law and the Law of South Africa: An overview, The *International and Comparative Law Quarterly*, Vol., 32, Part 2, 1983, p. 279.

conflict with international law, could not be effected.[55] For instance, in the case of Polish Nationals in Danzing (1931), the Court held that a state can not rely on its own Constitution "with a view to evading obligations incumbent upon it under international law as conventions in force."[56]

When viewed internally, however, it is now a common practice of states to define the position of ratified international conventions in the hierarchy of their respective national legal orders. This practice has no doubt resulted in conflicts between the ratified international human rights conventions and the national laws. A ratified international human rights convention may come into conflict with a state's constitution; prior or subsequent national legislation of equal status; and other statutes.

A. International Human Rights Conventions versus the Constitution

A ratified international human rights convention may come into conflict with a state's constitution. Where there exists a conflict between the two, the convention may, depending on the position taken by the constitution or law of the state concerned, be accorded superior position to the constitution, viewed on equal footing with the constitution, or obtain subordinate position to the constitution. On this issue, two states may not follow a similar practice.

For instance, in The Netherlands, a ratified treaty occupies superior position to the Constitution.[57] Similarly, in Swiss law, according to the view commanding stronger support, a ratified international human rights convention would be applied even where it is in conflict with the Swiss Constitution.[58] Also according to Articles 54 and 55 of the French Constitution of

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[55] See P.C.I.J. Series A/B, No 44, p.24; See also P.C. I. J., Series A, No 24, p. 12.

[56] In Polish Nationals in Danzing (1931), P. C.I.J., Series A, No 1, p.307.

[57] Jonkheer H.F. Van Parprys, The Netherlands Constitution and International Law, *American Journal of International Law*, Vol. 47, 1953 pp. 549-550. See also *The Netherlands Constitution of 1953*, Articles 65 and 66.

[58] Arthur Haefliger, Hierarchy of Constitutional Norms: Its Functions in Protecting Human Rights: Swiss Report, *Human Right Journal* Vol. 13, No. 3, 1992, p. 87.

October 4, 1958, a convention may, on the order of the French Constitutional Council, be ratified after an amendment of the Constitution is made.[59]

There are also states in which treaties may be accorded equal status with constitutions. For instance, in the United States, ratified international human rights conventions are placed on an equal footing with the U.S. Constitution. Article VI. Par. 2 of the US Constitution provides that all conventions made, or which shall be made under the authority of the United States, shall together with the Constitution itself and laws made in pursuance thereof, be the supreme law of the land. Similarly, in Article 122 of the 1955 Revised Constitution of Ethiopia, ratified international conventions were accorded equal status with the Constitution.

Few other states accord international human rights conventions subordinate position to their respective constitutions. In these countries, international conventions are rendered inapplicable owing to their inconsistency with constitutional laws. For instance, in Portuguese, Spanish[60] and Greek laws,[61] international human rights conventions have status inferior to the Spanish, Portuguese and Greek Constitutions respectively.

Under Article 9(4) of the FDRE Constitution, ratified international human rights conventions are an integral part of the law of the country. As stated earlier, the term 'law' also denotes those ratified international human rights conventions published in the *Negarit Gazeta*. And since the FDRE Constitution is proclaimed as the supreme law of the land, any law, including a ratified international human rights convention, contravening the Constitution is deemed to be invalid. In ratifying an international human rights convention, the House of Peoples' Representatives is, under the Constitution, also required to take every precaution that such convention does not contravene the principles enshrined in the FDRE Constitution.[62] Thus,

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[59] For instance, in France, the fact that ratification of the *Maastricht Treaty* was submitted to the *Conseil Constitutionel*, France's Constitutional Court, in order to check whether the ratification necessitates a revision of the Constitution is a case in point.

[60] Eliette Cavagna and Evelyne Monteno, Iberian Peninsula: Spain and Portugal, *The European Convention for the Protection of Human Rights*, 1992, P.175.

[61] Georgia Bechlivanou, Greece: *The European Convention for the Protection of Human Rights*, 1992, p. 175.

[62] *The FDRE Constitution*, Article 86 (3).

in Ethiopian law, all ratified international human rights conventions are subordinate to the Constitution.[63]

B. International Human Rights Conventions versus National Legislation

As stated earlier, under the FDRE Constitution, a convention negotiated and signed by the Executive is submitted in the form of a bill to the House of Peoples' Representatives for its consideration. Where the House finds the bill consistent with the Constitution, it may ratify and enact it in the form of proclamation. As indeed it is true, in Ethiopian law, a proclamation, i. e. statute issued by the House, ranks next to the Constitution, and higher than regulations which the executive branch of the government legislates.[64] In view of this fact, it is sensible to maintain that, in Ethiopia, a country in which the Constitution is given a standing superior to a proclamation, a ratified international human rights convention is given the standing of a proclamation enacted by the House of the Peoples' Representatives.

The FDRE Constitution is silent as to whether or not an international human rights convention would prevail over a proclamation, in case of conflict. Indubitably, a conflict between an international human rights convention and a proclamation may emerge in two situations: where the convention is ratified and published before and after the proclamation is enacted. Prior to suggesting as to what the Ethiopian constitutional position should be, it might first be advisable to turn our attention to the different positions employed by states to address the conflict between conventions and national laws of equal status.

In addressing a conflict between a ratified international human rights convention and a proclamation, three widely accepted positions may be identified. The first pertains to that position of states conferring superior status to a convention over a national law. France, Italy,

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[63] As stipulated in Article 13(2) of the FDRE Constitution, where, however, international human rights and principles are used as guidance for interpretation, they are accorded a status higher or, at least equivalent with the Constitution. In such a situation, it may be tenable to argue that Ethiopian domestic laws and the international human rights norms and principles may be regarded as being two parts of a single legal system. And, in the event of a conflict between these two sets of legal regimes, the international law prevails because it serves as guidance.

[64] The Council of Peoples' Representatives enacts laws which should be legislated in proclamations. The laws must not contradict the Constitution on the basis of which they would be legislated.

The Netherlands, Luxembourg and Portugal are few of those states adhering to this position. The French Constitution of 1946 was the first Constitution to take a step in this direction. The tradition continued in the Constitution of 1958 [65] and was followed by the constitutions of former French colonies.[66] Accordingly, the national laws are set aside irrespective of the kind of the convention and whether the law is *anterior* or *posterior* to the convention.

Under Article 10 of the 1948 Italian Constitution, Italian legal order is required to be brought into accordance with the universally recognized rules of international law. In The Netherlands, according to Article 94 of the Dutch Constitution, 'statutory regulations,' meaning laws, regulations and decrees, that conflict with an international convention are inapplicable. In Luxembourg, in case of conflict between the provisions of a national law and an international convention, the latter prevails over the former.[67] In Portuguese law, a convention has a status superior to a national law.[68]

The second position insists that a ratified international human rights convention which is in conflict with a national law be accorded subordinate position. This position is adhered to by several states. For instance, in Swedish legal system, the practice seems to support the view that an international human rights convention conflicting with Swedish law is not operational. The laws of Norway,[69] Canada and Belgium[70] also accord subordinate position to international human rights conventions.

The third position accords ratified international human rights conventions equal position with national laws of equal status. Accordingly, in case of conflict between these two laws, the principle *lex posterior derogate priori* governs the situation, i.e. repeal of a legislation by later legislation of equal status. As regards all other laws of subordinate position, the international human rights convention is deemed to prevail.

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[65] *The French Constitution of 1958*, Article 55.
[66] David R. Deener, p. 284.
[67] Andrew Z. Drzenczewiski, p, 83.
[68] *The Article 19 Freedom of Expression Manual*, p. 40.
[69] Andrew Z. Drzemczewski, p. 132.
[70] Ibid: p. 64.

In referring to the Ethiopian situation, as discussed earlier, a ratified international human rights convention obtains the standing of a proclamation enacted by the Council of Peoples' Representatives. Thus, a conflict arising between an international human rights convention and a proclamation is regarded as a conflict existing between two sets of domestic laws of equal status. In case of a conflict between a convention and a proclamation, however, the FDRE Constitution does not provide an express solution as to whether the international human rights convention would prevail over the proclamation.

In such a situation, one may be persuaded to resolve the conflict in the light of either of the following two alternatives. *Firstly,* a conflict between an international human rights convention and a proclamation could be resolved by relying on whether the former would violate national interests. *Secondly*, the conflict between an international human rights convention and a proclamation may be resolved in light of the legal maxim *lex posterior derogate priori.*[71] This maxim lays down that an international human rights convention made part of the law of the land would prevail over an earlier proclamation, and conversely, a proclamation that came later would prevail over an earlier international human rights convention.

As regards the first alternative, to determine the conflicts existing between an international human rights convention and a proclamation, it is indeed appropriate to evaluate as to whether the very convention in question would violate Ethiopia's interests. Certainly, this may require case by case investigation into the conventions assumed to be posing a threat to Ethiopia's interests. As provided in Article 86(2) of the FDRE Constitution, an international convention concluded by Ethiopia must be one promoting its interests. Article 86(3) of the Constitution has also imposed a duty on the Federal Government to ensure that an international convention would advance the interests of the peoples of Ethiopia. In other words, Ethiopia would not sign and ratify any international convention that undermines its national interests. If a convention signed and ratified were ascertained at a later time to be inconsistent with a proclamation considered to be promoting Ethiopia's interests, the proclamation would override the international convention. Article 86(4) of the Constitution requires Ethiopia to observe only

[71] William G. Rice, The Position of International Treaties in Swiss Law, *The American Journal of International Law*, Vol. 46, 1952, p. 647.

those international conventions respecting its sovereignty and promoting its national interests. Hence, any ratified international convention that poses a threat to Ethiopia's interests could be subject to repeal. It can thus be maintained that a national law prevails over an international convention in case the latter runs contrary to Ethiopia's interests.

In applying the second alternative, a ratified international convention may be repealed only on ground of conflict with a proclamation subsequently enacted. Adhering to this position would no doubt bring Ethiopia into the category of those third world countries which seem to be wary to accord primacy to 'a highly generalized and hence undefined international law.' To adherents of this alternative, international conventions are seen as collections of norms that are fluid and incapable of genuinely representing their interests in as much as they represent those of the stronger nations. States may adhere to this alternative because they want to accord a secondary position to international conventions. Hence, they may resort to the principle of *lex posterior derogate priori* as a justification to repeal the international convention by a law of equal status enacted subsequently.

However, any strict application of the above two alternatives, in the case where a proclamation overrides a prior international human rights convention, would no doubt undermine Ethiopia's international commitment. Unquestionably, such move would contradict the fundamental principles of the *Vienna Conventions of Treaties*, which oblige states such as Ethiopia to comply with their international obligations. Under the Vienna Convention, a state should enter into a convention only on its own free will. But once a state ratifies the convention, it is required to fulfil its obligations in good faith.[72] It may not invoke its domestic provisions to justify its failure to perform its obligations under the treaty, except under very exceptional circumstances.[73]

According to this author, to define the position of ratified international human rights convention vis-à-vis proclamations in Ethiopia, the above two alternatives may together be applied. However, the second alternative need not be applied in a way that contracts the first

[72] The 1969 *Vienna Convention on the Law of Treaties*, Article 26.
[73] Ibid, Articles 46 and 47.

alternative. As indeed it is true, ratified international human rights conventions are special types of treaties. They are backed by customary international human rights law which no doubt represent the common values and interests of the international community of which Ethiopia is a part. Many of the norms and principles embodied in the Universal Declaration of Human Rights and several international human rights conventions "are *jus cogens* in nature from which no derogation is allowed by states except by a subsequent norm of general international law having the some character."[74]

International law requires states such as Ethiopia to observe these human right norms and principles at all times. Invoking Article 13(2) of the FDRE Constitution could strengthen this argument. The provision expressly states that the fundamental rights and freedoms guaranteed in the Constitution should be interpreted in the light of the Universal Declaration of Human Rights, international human rights and humanitarian treaties and principles adopted by Ethiopia. Indeed, this is a confirmation of the high position the principles of international human rights conventions occupy in Ethiopia law.

Hence, all international human rights conventions ratified by the House of Peoples' Representatives may be deemed as collections of norms and principles promoting the Ethiopian public's-interests as well. Therefore, the fact that such conventions may appear to be in conflict with subsequent proclamations does not imply that they pose a threat to Ethiopia's interests that the FDRE Constitution is committed to protect. If that is the case, it is both against Ethiopia's interests and also contrary to international law to rely on the principle of *lex posterior derogate priori* as justification to abrogate, modify or suspend ratified international human rights conventions by subsequent proclamations.

Conclusion

International Human rights conventions are special types of treaties. Under international law, and also as expressly stipulated in Article 9(4) of the FDRE Constitution, international human rights

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[74] Dieter Fleck, Implementing International Humanitarian Law: Problems and Priorities, *International Red Cross Review*, No. 281, March-April 1991, p. 141.

conventions, once ratified by Ethiopia in accordance with its constitutional requirement, are binding on the country on the international plane. However, for such conventions to have an internal binding force, the requirement of publication should be met.

Indeed, Ethiopia ratifies international human rights conventions for the benefit of its nationals. Hence, the Ethiopian public has the right to know the existence of such conventions. And certainly, this could only be made possible through the act of publication. In view of this fact, pursuant to Article 71(2) of the FDRE Constitution and Article 5(a) of the Federal Negarit Gazeta Establishment Proclamation, publication should be regarded as a precondition for ratified international human rights conventions to be internally applicable. Moreover, individuals and groups in the country need to know the contents of all international human rights conventions ratified for their benefit. This, *inter alia*, would enable them to defend their rights and freedoms and also to respect those of others. For this reason, it is essential to publish the whole texts of the ratified international human rights conventions in the *Federal Negarit Gazeta.*

In international law, ratifying an international human rights convention by a state implies that the state has committed itself before an international community to implement the convention. The maxim *pacta sunt servanda,* also enunciated by Article 26 of the Vienna Convention of Treaties, requires a state party to a convention to perform obligations imposed on it by the convention in good faith. This principle requires states as Ethiopia to accord ratified international human rights conventions a high position in their respective legal systems.

As it stands, Article 9(4) unequivocally affirms that the Constitution is the supreme law of the land. Accordingly, ratified international human rights conventions, like all other laws of the land, are subordinate to the Constitution. This, however, does not lead to the conclusion that, in case of conflict between ratified international human rights conventions and the Constitution's provisions on fundamental rights and freedoms, the latter would prevail over the former.

In practical cases, Article 13(2) of the FDRE Constitution could be applied to address this controversial issue. As stipulated in the provision, the fundamental rights and freedoms of the

FDRE Constitution should be interpreted in light of the Universal Declaration of Human Rights and norms and principles of international human rights conventions adopted by Ethiopia. This confirms the fact that international human rights conventions ratified by Ethiopia occupy higher, or at least equal position, to the FDRE Constitution. As regards those laws of equal status with ratified international human rights conventions, no proclamation, even one enacted subsequently, should be invoked to abrogate, modify or suspend earlier ratified international human rights conventions.