

# ETHIOPIAN JOURNAL OF FEDERAL STUDIES (EJFS)

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# The Legal and Practical Challenges of Constitutional Adjudication in Ethiopia: The Case of the Council of Constitutional Inquiry

Yadeta Gizaw\*

## Abstract

*The Constitution of the Federal Democratic Republic of Ethiopia (FDRE) adopts a unique constitutional interpretation or adjudication mechanism whereby the House of Federation (HoF), a political organ, is entrusted with adjudicating constitutional disputes. It also establishes a Council of Constitutional Inquiry (CCI) to investigate constitutional disputes and, if the latter finds there is a need for constitutional interpretation, to submit recommendations to the HoF. This article examines the constitutional interpretation jurisdiction of the CCI and the legal and practical challenges attached to its task. To explore these issues, cases decided and submitted to the HoF have been analysed. The author is a team leader in the research and study directorate of the secretariat of the CCI, and makes both professional and personal observations. The article posits that the CCI has played a major role in constitutional interpretation. The constitutional interpretation power and jurisdiction of the CCI, which have been the subject of debate, have been placed beyond controversy by the decisions and recommendations of the CCI. According to these decisions, the CCI has the power and jurisdiction to entertain any constitutional issues submitted to it. It also has the power and jurisdiction to determine whether the issue submitted to it for constitutional interpretation is a constitutional issue or not. Despite the importance of the CCI's role, though, it faces key challenges that hinder it from being efficient and effective. These challenges relate to the part-time working condition of the council. The council proclamation provides that council members undertake constitutional adjudication tasks on a part-time basis. Practice shows likewise that council members have been appointed and nominated as part-time workers and that their tasks have been undertaken entirely as part-time work. This has affected both the quality of the council's work and the number of constitutional cases it has decided and recommended.*

**Key Words:** Adjudication, Federation, Constitutional Inquiry, Courts, Jurisdiction, Ethiopia

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## 1. Introduction

Constitutional adjudication or interpretation in principle raises such questions as: Who should have the power to interpret the constitution? How and by whom should the jurisdiction of constitutional interpretation organs be determined? Who should have the standing to initiate constitutional adjudication questions or complaints?

Constitutional review, the power to determine the constitutionality and therefore the validity of the acts of the legislature, takes various forms. Irrespective of these differences, however, most countries in the world practise some form of constitutional review (Fessha, 2006, p. 55). For instance, in the decentralised (diffuse or American) model of judicial review of constitutionality, control of the constitutionality of legislative acts and executive conduct is exercised by all regular courts of all tiers. In the more centralised European system of judicial review, the power to pass judgments on the constitutionality of a law or conduct is vested exclusively in a separate body whose sole duty is to act as a constitutional judge (Bulto, 2011). Based on the constitutional review model adopted by states, the scope and type of constitutional matters decided upon is different. Likewise, the parties that are allowed to initiate constitutional questions and complaints differ. For instance, in a centralised system, the constitutional question of unconstitutionality of law could be referred to the court in the absence of any concrete case. In Germany, which follows the centralised constitutional court model, a large selection of institutions and individuals have the right to invoke, “by way of action”, constitutional complaint in the absence of a concrete litigation (Cappelletti, 1971, p. 81). In the decentralised American system, courts have no power to review the constitutionality of law unless it violates the constitutional rights of individuals. In this system of constitutional review, courts have no power to check and declare the conformity of legislative acts with the constitution in the abstract.

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE) adopts a unique model of constitutional adjudication. The House of Federation (HoF) and Council of Constitutional Inquiry (CCI) are constitutionally established organs endowed with the power to investigate and settle constitutional disputes



and safeguard the supremacy of the constitution.<sup>1</sup> Yet the institutional structure and procedure of constitutional interpretation and adjudication are far from clear and are a subject of debate.

The FDRE Constitution establishes the CCI as comprising 11 members (Article 82). The CCI has the power and function to investigate constitutional disputes (Article 84). The investigation may result in a *prima facie* case calling for interpreting the Constitution, in which case the CCI is required to “submit its recommendations” to the HoF or remand the case and render a “decision” if it finds there is no need for constitutional interpretation. In the latter case, the party dissatisfied with the decision of the CCI may appeal to the HoF (Fisseha, 2007, p. 12).

The power and jurisdiction of the CCI in this respect is provided in the Constitution in a very general manner rather than being laid down in detail. To provide for more detail, the power and jurisdiction of the council are stipulated by a proclamation enacted by the federal House of Peoples’ Representatives (HoPR). This first proclamation (CCI Proclamation, Proclamation Number 250/2001, Federal Negarit Gazeta, Year 7, No. 40) by the council was re-enacted for strengthening and specifying the powers and duties of the council (CCI Proclamation, Proclamation Number 798/2013, Federal Negarit Gazeta, Year 19, No. 65). The recently adopted directive of the council has also provided detailed procedural matter (CCI Directive, Directive No. 1/2012 E.C.).

The constitutional adjudication system and the role of the CCI have undergone no major constitutional, legal and structural reforms. There are many controversial issues which are related primarily with the jurisdiction and institutional efficiency of the council. Lawyers and the general public also accuse the council of not being efficient and politically independent. However, ordinary citizens often submit constitutional complaints to the council. As a result, the council registrar record shows that, at the time of writing, there are more than 3,000 cases pending in the council.<sup>2</sup>

<sup>1</sup> Articles 62, 82 and 84 of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Negarit Gazeta, 1st Year, No. 1. (hereafter FDRE Constitution).

<sup>2</sup> According to data kept by the Secretariat of the Council, since the CCI’s establishment 5,721 cases have been submitted to it for constitutional interpretation, out of which 2,895 cases were disposed of – of these, 99 have been submitted to the HoF as recommendations (constitutional matters that need constitutional interpretation) and 2,796 were decided as not meriting constitutional review and thus not requiring constitutional interpretation (data with the author).

In order for these complaints to be responded to, the CCI constitutional adjudication, jurisdiction and procedure have to be made clear for the citizen. So, the objective of this article lies in analysing important points underlying the CCI jurisdiction and its institutional efficiency and effectiveness. As such the study contains six sections. The first section is this introduction. The second section briefly describes the constitutional jurisdiction of the CCI. It looks at the CCI proclamation which determined major jurisdictional issues, particularly with respect to justiciable matters of courts, non-justiciable matters, and constitutional complaints. The same section also deals with issues related to standing, that is, questions as to who has the right to initiate constitutional questions and complaints. The third section dwells on constitutional matters and its types as provided by the CCI proclamation and directives. The fourth section not only describes the council's internal procedure based on the newly adopted directive, but also identifies the role of the sub-inquiry committee and the secretariat in the adjudication process. This is followed by the fifth section that discusses the main challenges of the CCI, both legal and practical challenges. The final section provides concluding remarks.

## **2. Jurisdiction of CCI**

### **2.1. Constitutional jurisdiction**

The centralised constitutional review system was introduced in Austria and later duplicated in other jurisdictions such as Italy and Germany. The FDRE Constitution has created an organ of constitutional review, the HoF, and the CCI, which is modelled after the centralised model of constitutional courts. Therefore, constitutional review jurisdictions of constitutional courts in these countries have been selected for their relevance. The competency or jurisdiction of constitutional courts in these countries is governed by constitutions and laws or rules of procedure. For instance, in Germany the scope of the Federal Constitutional Court's jurisdiction is wider than that of similar courts in Italy and Austria (Cole, 1959, p. 970). The German, Italian and Austrian constitutional courts have the power to review the constitutionality of federal, state, provincial and regional legislation. They settle disputes involving conflicts of competence between the central governments and the states, provinces, or regions,

as well as between these latter political units. They also can decide jurisdictional disputes between organs of government at the national level in Germany and Italy, and between the courts, or courts and administrative authorities, in Austria (Cole, 1959, p. 970).

The Austrian Constitutional Court can entertain “abstract review”, state governments may contest federal laws, and in addition, federal laws may be contested by one-third of the members of the National Council. Moreover, state laws may be contested by one-third of the members of a state parliament if the state constitution provides for that (Bezemek, 2012). In Germany, too, one-third of the lower house can challenge the constitutionality of legislation under abstract review. In Austria, concrete review of statute or part of statute may be initiated by the Supreme Court, Appellate Court, Asylum Court, Administrative Court, or the Federal Procurement Authority. Private individuals may challenge a statutory provision directly infringing their constitutional rights, when it directly affects their rights without judicial or administrative decisions being issued (Bezemek, 2012). So too in Germany, constitutional complaint allows any person, including legal entities, to file a complaint against an alleged violation of his or her basic rights by state authorities (Vanberg, 2005, p. 87).

The FDRE Constitution has provided the constitutional jurisdiction of the CCI and HoF in a very general manner, subjecting or exposing the constitutional provision for arguments and controversies. The proclamation enacted by the House of Peoples’ Representatives (HoPR) for the strengthening and specifying the powers and duties of the council (CCI Proclamation, Proclamation No. 798/2013) did not address the issue of jurisdiction of the council in a clear and detailed way. In general, the controversies and arguments related to the constitutional jurisdiction of the council are tied up with Article 84 of the Constitution. Therefore, it is important to acknowledge these major arguments and controversies and how the council tried to deal with those issues in resolving real constitutional disputes submitted to it.

Article 84(1) of the Constitution reads as follows: “The Council of Constitutional Inquiry shall have powers to investigate constitutional dispute. Should the council, upon consideration of the matter, find it necessary to interpret the constitution, it shall submit

its recommendation thereon to the house of federation.”According to this provision, the council has two mandates and tasks. First, it has the mandate to screen the cases submitted to it as to whether the issue involves constitutional matters or not. Secondly, once it believes and admits that the cases involve constitutional matters or disputes, it will further involve itself in the merit of the cases to investigate whether the constitutional matter, so admitted, requires constitutional interpretation or not. It is now important to raise the critical question of constitutional matters or disputes on which the council can assume jurisdiction.

The problems and controversies with respect to determining constitutional matters or disputes emanate from Article 84(2) of the Constitution, which reads as follows:

Where any Federal or State law is contested as being unconstitutional and such a dispute is submitted to it by any court or interested party, the Council shall consider the matter and submit it to the House of the Federation for a final decision.

It is critically important to question in particular whether Article 84(2) of the Constitution is an exception or not to Article 84(1). Logically, one would suppose that constitutional disputes are any disputes that involve controversy on constitutional provisions and the supremacy of the Constitution. However, most scholars argue that the mandate of the CCI/HoF is limited to constitutional matters that emanate from Article 84(2) of the Constitution. The scope of Article 84(1) of the Constitution has never been critically analysed and explored, at least equally with Article 84(2).

The argument and the controversies start with the terminology used under Articles 62, 83 and 84 of the Constitution, which refer to “constitutional interpretation” and “constitutional dispute”. Whether these terms refer to the same matter or not is important. Some argue that they refer to the same matters. For instance, Fiseha strongly argues that the power of the CCI/HoF is exclusively reserved for determining the constitutionality of primary legislation. He bases his argument on Article 84(2) of the Constitution and argues that if the power to check the unconstitutionality of subordinate regulations issued by the executive and decisions of governmental bodies other than laws enacted by federal or state legislative bodies is left to the courts, the CCI/HoF has no

power to declare the unconstitutionality of decision of administrative organs (Fisseha, 2007, pp. 1 and 16).

Yonatan and Getachew strongly argue the other way. For Yonatan, a constitutional dispute, in the context of the Ethiopian Constitution, has two aspects: the general task of interpreting the Constitution with a view to ascertaining the meaning, content and scope of a constitutional provision (Article 84(1)) and the more specific task of determining the constitutionality of “federal or state law” (Article 84(2)). Thus, the power to interpret the Constitution is exclusively vested with the HoF, and hence courts have no power and are excluded from constitutional interpretation (Yonatan, 2008, p. 143).

Similarly, Getachew also argues that Article 84 is referring to the power of the CCI: according to this provision, the power to investigate in relation to all matters involving constitutional dispute requiring constitutional interpretation without any exception or limitation is vested with the CCI. According to the constitutional assembly, as used in the Constitution, the terms “constitutional interpretation” and “constitutional disputes” have one and the same meaning (Getachew, 2010, p. 162).

In the past the CCI was not sufficiently engaged in interpreting the constitutional provision of its jurisdiction and standing to avoid controversies tied to these matters. However, in the recently decided prominent election case<sup>3</sup> and many other related cases,<sup>4</sup> it has critically analysed Article 84 of the Constitution and ruled on its constitutional interpretive jurisdiction and standing issues.

In the election case, for instance, the CCI clearly stated at the outset that before examining the main issue submitted to it by the HoPR, it had examined whether it had the constitutional power to do so and whether the HoPR had the right to submit such a request or matter to it. The CCI stated that the power and jurisdiction of the council is provided under Article 84(1) of the Constitution. According to this provision, the council has the power to investigate

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<sup>3</sup> Council of Constitutional Inquiry, Recommendation on the request of the FDRE House of Peoples' Representatives for constitutional interpretation submitted to the Council regarding the impact of the COVID-19 Pandemic on the 6th General National Election, File No. 5216/2012 E.C. (29 May 2020) (hereafter Election Case).

<sup>4</sup> Council of Constitutional Inquiry, Tigray Democratic Party v Tigray Regional State, Judgement 28 August 2012 E.C. File No. 5260/2012. In this case, the Council, before examining the main issue, decided on jurisdiction and standing issues.

any constitutional matter. However, the English version of Article 84(1) of the Constitution, which states that “[t]he Council of Constitutional Inquiry shall have power to investigate constitutional disputes”, seems to have a discrepancy with the Amharic version. In the English version of Article 84(1), the council seems to have the power to investigate constitutional issues only when there is “constitutional dispute”.<sup>5</sup> The Amharic version of the same article provides a different interpretation, where the council’s jurisdiction is broadly provided as having jurisdiction to entertain any constitutional issue or matter. There is no word referring to “dispute” in the Amharic version. The council stated in the recommendation that when there is such discrepancy between the two versions of the Constitution, according to Article 106 of the Constitution the Amharic version prevails over the English. So it is possible to understand from Article 84(1) that the power of the council to investigate constitutional issues is not limited to a concrete dispute.

The council stated that the matter submitted to the council by the HoPR is related to the sixth national election and constitutional term of office of the government. This issue necessitates the textual interpretation of the provision of the Constitution by analysing the fundamental principles therein. Therefore, the constitutional interpretation power and jurisdiction of the council is not necessarily based on existence of dispute and limited to federal or regional state legislative control, as provided under Article 84(2) of the Constitution.

It is very clear from the recommendation of the CCI that the question of whether the CCI has jurisdiction depends on the nature of the matter or the relief claimed therein, if the issue involves any constitutional issue the CCI will assume jurisdiction. This is all the more important in as much the CCI recommendation clearly shows that the mandate to interpret the Constitution, including the constitutional provision providing its jurisdiction and standing, is vested with the council itself. It clearly tried to determine its power and mandate of investigating constitutional matters; it may be the first of its kind in determining its jurisdiction in such a clear manner by interpreting the provisions of the Constitution. By this the main jurisdictional debate, underlying Articles 84(1)

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<sup>5</sup> Council of Constitutional Inquiry, *Tigray Democratic Party v Tigray Regional State*, Judgement 28 August 2012 E.C File No. 5260/2012, pp. 12–13.

and 84(2) of the Constitution has been placed beyond controversy by this recommendation.

## 2.2. The legal framework defining the jurisdiction of the CCI

The Constitution has not elaborated on the constitutional adjudication process, the scope of the CCI's power or the procedure to be employed by it, but the CCI's Proclamation 798/2013 has defined, although not in a sufficient manner, some of the jurisdiction of the council and its procedural matters (CCI Proclamation No. 798/2013, Articles 3-5).

Before getting into the heart of the proclamation dealing with the CCI jurisdiction, it is worthwhile to see who has the power to define the power and responsibilities of the council by law. By what right does the HoPR define the CCI's jurisdiction and other procedural matters? This raises the problem of the control of the CCI. If the CCI rules of procedure are regulated by another organ of government, does that mean the CCI is under the direct influence and control of the other organ of government? Does the HoPR have constitutional competency to define and enact rules of procedure which primarily define the jurisdiction of the council? Would not such power lead to the conclusion that the HoPR may in the process limit, extend or even take away, the competence of the HoF/CCI?<sup>6</sup> These are interesting questions that need critical analysis. Fiseha, one of the prominent scholars on Ethiopia's constitutional law, has posed the same questions while dealing with the power and jurisdiction of the HoF (Fiseha, 2007).

The Constitution has empowered the council with the power to draft its rules of procedure and submit them to the HoF and implement them upon approval (FDRE Constitution, Article 84(4)). While the Constitution is clear in this regard, the CCI proclamation enacted by the HoPR has defined some procedural matters by which the CCI has to be guided, including its jurisdiction.

The mandate to approve the draft rule of procedure of the council is also clearly vested with the HoF by the Constitution. However, the CCI proclamation has taken away this power of the HoF vested to it by the Constitution and vested the CCI with the power

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<sup>6</sup> Fiseha (2007) posed these questions while discussing the power and responsibilities of the HoF. The CCI and HoF both have their own respective roles and functions in the constitutional adjudication process, and both need their own independence and impartiality for these purposes.

to determine potential procedural matters through the directive that it would enact.<sup>7</sup>

Due to this and other issues incorporated in the CCI proclamation, such as the constitutional jurisdiction of CCI, the proclamation also has many controversial provisions that could raise arguments and challenges with respect to the power and jurisdiction of the council.

### **2.3. Legal framework and type of constitutional matters**

The council has been guided by the Constitution, the proclamation and by the recently approved directive to entertain constitutional matters submitted to it. Accordingly, any interested party and courts can submit cases to the council on all constitutional matters except non-justiciable matters, which can only be submitted to the council by one-third or more members of the federal or state councils or by federal or state executive organs (CCI Proclamation No. 798/201, Articles 3 and 5).

Though the Constitution does not define what comprises constitutional disputes or matters, the CCI's establishment proclamation tries to stipulate that, in principle, the unconstitutionality of any law or customary practice or decision of a government organ or government official can be subject to constitutional review and can be submitted to the council for constitutional interpretation.

On the one hand, the proclamation classifies the types of constitutional issues into three categories and procedures of submitting it to the council. These are justiciable matters of courts, justiciable matters of administrative organs, and unjusticiable matters (CCI Proclamation No. 250/2001, Federal Negarit Gazeta Year 7, No. 40, Article 3). On the other hand, the directive classifies the matter into two: constitutional interpretation questions and constitutional complaints (CCI Directive, Article 15).

What are those constitutional matters, and who has the standing to submit these issues? How the CCI has dealt with these issues are some of the critical issues discussed in this section.

<sup>7</sup> Articles 11(4), 12(3), 15(6) and 33 of CCI Proclamation No. 798/2013 provide that the Council has the power to adopt different directives, such as directives with respect to the application procedure for constitutional interpretation; the procedures for deliberation and submission of recommendations to the House; and the time limit within which the Council notifies the applicant of its decision. They also empower the Council to issue directives necessary for the implementation of the proclamation.



### 3. Constitutional Matters

#### 3.1. Court referral or justiciable matter of courts

Justiciable matter of courts, which is defined as one type of constitutional interpretation question, is one avenue of submitting constitutional matters to the council either by courts or interested parties (CCI Proclamation, Article 4). In other jurisdictions, constitutional questions may arise during court proceedings when an ordinary judge finds that certain applicable legislation is unconstitutional and refers the case to the constitutional court. This is related to court referral. For instance, in Germany there is a type of proceeding called “specific judicial review of statutes”. This proceeding constitutes referral from a court when a regular court considers a law, the validity of which is material to its decision, to be unconstitutional and it suspends the proceeding and refers the matter to the Federal Constitutional Court for decision (Tadesse, 2020, p. 37).

In the Ethiopian case, this is the matter referred by the CCI proclamation as justiciable matter of courts submitted to the council during court proceedings. The process of constitutional review for constitutional issues that can arise during judicial (court) proceedings (justiciable matter of courts) is explicitly addressed by the Constitution under Article 84(2), while all other constitutional issues that can arise outside courts fall under Article 84(1) of the Constitution.

Issue of justiciable matter of courts has to be first brought to courts and heard by the court having jurisdiction before it is submitted to the council (CCI Proclamation, Articles 4(3) and (4)). From this it is clear that constitutional matters on justiciable matters of courts cannot be submitted directly to the council before it is brought to the court having jurisdiction. Bringing the issue to courts is not sufficient: it has to be at least heard by the court having jurisdiction. This will help the court referring the issue to the council to identify the constitutional matter and determine whether the issue requires constitutional interpretation or not as provided in the law (CCI Proclamation, Articles 4(3) and (4)).

##### *3.1.1. The subject matter of court referral*

What constitutional matters may be a ground for interpretation and then submitted to the council during court proceedings?

Whether it is limited to legal matters or not is a controversial issue.

The CCI Proclamation under Article 5 provides two different, and controversial, matters: there is a discrepancy between the title of the provision and its Article 5(3). The latter provides that “where any law issued by federal government or state legislative organ is contested as being unconstitutional, the concerned court or interested party may submit the case”.

This provision is self-contradictory: the title of the provision is referring to how constitutional interpretation cases outside court of law are referred to the council, while this sub-article is referring to the instance where the court having heard the case submits constitutional interpretation to the council. According to this provision, it is only the unconstitutionality of law or legal matter that could be submitted to the council during court proceedings.

Contrary to what has been provided under this article, Article 4 of the same proclamation provides that when constitutional interpretation on issues before court of law arises, the court seeing the case “shall limit with the issue necessary for constitutional interpretation” while referring the case to the council. According to this provision, the power to limit the issue necessary for constitutional interpretation is left for the courts. This provision gives discretionary power to courts to decide and limit the issues or cases necessary for constitutional interpretation. Therefore, cases referred by courts to the council for constitutional interpretation are not necessarily legal issues that may emanate from federal or regional state laws. Rather, they may include any constitutional matter that falls under Article 84 of the Constitution.

Some scholars argue that constitutional disputes that can arise during judicial proceedings are limited only to laws enacted by federal and state governments. Bulto, takes the position that constitutional interpretation during judicial proceedings can arise, first, from concrete cases when a court comes to conclusion that there is a major doubt as to the unconstitutionality of a law upon which its decision would eventually be based. Secondly, a party litigant before the court may appeal to the CCI from a ruling of the court in favour of applying or disapplying legislation that the party contends to be unconstitutional (Bulto, 2011, p. 114). Ac-

According to him, it is only the unconstitutionality of a law that can be referred by the court to the council or submitted by an interested party to the council. The argument suggests that all other matters that can arise from other constitutional matters during court proceedings, for instance textual interpretation of the Constitution during judicial proceedings, cannot be a ground and referred by the court to the council or submitted by an interested party to the council.

However, I argue that courts, while enforcing the provision of the Constitution,<sup>8</sup> may come to the conclusion that the specific provision of the Constitution of which a direct application is required may be found to be general, vague and require interpretation; in such a case, the court can refer the case to the council. Practice reveals that there has been a case where the interested party (the litigant party) requested the court to refer the cases to the CCI for constitutional interpretation objecting to the application of Article 42(2) of the Constitution. The court, having heard the case, rejected the application and refused to refer the cases to the CCI, and finally the case was submitted directly by the applicant to the CCI.<sup>9</sup>

The other important point is: Who has the standing to submit such an issue to the council if the court rejected it? The answer is not clear from Article 84(2) of the Constitution. However, the proclamation has tried to clarify and limit the interested party to only referring parties at dispute. This has been provided under Article 4(2) of the proclamation. It is provided that when constitutional interpretation on issues before court of law arises, the interested party requiring submitting the issue to the council shall first require the court to refer the issue to the council.

One can easily understand from the provision that the interested party is restricted to parties at dispute, because an interested party requiring the court to submit the issue is obviously the party at dispute at the court of law. But it should be understood that this is only referring to when the constitutional interpretation is raised during court proceedings. The same interested party

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<sup>8</sup> Article 13(2) of the FDRE Constitution imposes the duty and responsibility to respect and enforce the provisions of chapter three of the Constitution on all federal and state legislative, executive and judicial organs.

<sup>9</sup> *Almi Enedo Construction PLC v Lijalem Gedefawu*, Recommendation 6 February 2011 E.C, File No. 2089/2009. Author's translation.

may differ when constitutional interpretation is raised outside of court proceedings. This is something to which I will give consideration later when dealing with non-justiciable matters.

### ***3.1.2. Which court can refer constitutional matters?***

The other important issue under this section that needs clarity is the definition of courts and whether other quasi-judicial tribunals can refer constitutional matters to the council during proceedings. The proclamation is not clear on this issue, and it failed to provide a definition of courts. However, the CCI directive clearly provided and defined courts as federal and regional state courts or any city administration courts. City administrations are defined by the directive as Addis Ababa and Dire Dawa city administrations. The directive further provided that, for the purpose of its implementation, “courts” includes any other competent body with judicial power of federal, state or city administration (CCI Directive, Directive No. 1/2012 E.C, Article 2(6)). Practice also reveals that different competent bodies having judicial power have been submitting constitutional issues to the council during proceedings.

The case Ministry of Civil Service Administration Court v Ethiopian Income and Custom Authority is a good example here (CCI Directive, Directive No. 1/2012 E.C, Article 2(6)). The Civil Service Administration Court, having heard the case, referred the matter to the council, requesting constitutional interpretation of Council of Ministers Regulation No. 155/2008, which entitles the director-general to dismiss employees suspected of corruption without following formal disciplinary procedures.

## **3.2. Constitutional complaint**

The other category of constitutional issues or matters referred to by the CCI proclamation are those related to constitutional complaints. The proclamation, as in other constitutional courts, does not refer to the issue directly as a constitutional complaint but prescribes how the subject matter may be submitted to the council, whereas the directive (CCI Directive, Directive No. 1/2012 E.C) has clearly defined what constitutional complaints are.

Constitutional complaint proceedings allow individuals to file their cases before the constitutional court when they believe their constitutional right is violated. These are recognised under different jurisdictions, such as Germany, Italy and Austria. In Germany, where there is a more liberal access to the court than in either Austria or Italy, constitutional complaint is used more widely. Under this arrangement, any person can question before the court a law an act having the force of law, or an administrative decision and order, which violates his or her constitutional guarantees, including equal protection before the law (Cole, 1959, pp. 963-984).

Similarly, the CCI proclamation and directive adopted by the CCI defined constitutional complaints which can be submitted to the council for adjudication. Article 3(1) of the proclamations (CCI Proclamation No. 798/2013) and Article 2(9) of the directive (CCI Directive, Directive No. 1/2012 E.C) provided that “[a]ny person who alleges that his fundamental rights and freedoms provided in the Constitution have been violated due to the final decision rendered by government organ or official may submit his case to the council”.

Accordingly, any person whose fundamental right and freedom is violated due to a government organ or official decision can submit the issue to the council. The proclamation further defined government organs as the legislative, executive and judiciary organs of the federal government or states. Any federal or state government organs or officials’ decision can be subject for constitutional review, provided that the party bringing the issue has exhausted all local remedies (CCI Proclamation 798/2005, Article 3(2) (b)). According to the matters classified by the proclamation, this could be justiciable matter of courts exhausting court proceedings, justiciable matter of administrative organs exhausting the local remedy provided by the law, or other government’s organs or officials decision, particularly that of the executive decision.<sup>10</sup>

It is crucial to ask whether a decision of the HoF could be subject to constitutional review and if the CCI can assume jurisdiction on the matter. For instance, arguably the HoF is a legislative body

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<sup>10</sup> CCI Proclamation 798/2005, Article 4. Executive decisions are different from the justiciable matter of administrative organs. It is submitted that the justiciable matter of administrative organs refers to quasi-judicial or administrative tribunals with judicial power, rather than to executive decisions in the ordinary sense.

which has many powers and functions on which it can render a decision – a question can thus be raised as to what if the decision of the House violates fundamental rights and freedoms provided in the Constitution.

Practice reveals that some of the HoF's decisions were contested as being unconstitutional and submitted to the council for constitutional review. In *Kontoma Community v the SSNNRS*, the request for recognition and determination of ethnic identity was rejected by the HoF and the applicants submitted the case to the CCI for constitutional review. The council decided against the applicants, arguing that the decision of the HoF is final and cannot be subject to constitutional review and hence the CCI has no power to investigate the matter.<sup>11</sup>

In all other cases, the majority of constitutional complaint cases submitted to the council are court cases on which the final decision is rendered by the Federal Supreme Court cassation division.

### **3.3. Constitutional interpretation on non-justiciable matters**

In the previous section I discussed that the proclamation has classified constitutional matters into three categories that may be a ground for constitutional interpretation. These are justiciable matters of courts, justiciable matters of administrative organs, and non-justiciable matters. The first two issues were discussed in the previous section. This section deals with constitutional interpretation of non-justiciable matters. Before directly getting into the matter, it is necessary to raise some important background issues.

The global debate about the constitutional review power of courts seems to be balanced between the proponents of both. Advocates of extrajudicial constitutional interpretation (that is, those who want to take the power of constitutional review away from the courts) argue that judicial review is undemocratic (Feseha, 2006, p. 59). It is so because it permits unelected judges, who are accountable to nobody, to nullify the acts of democratically elected legislatures that are accountable to the public. In the event of constitutional review of non-justiciable matters, particularly those raising the “political question”, this line of argumentation

<sup>11</sup> CCI, *Kontoma Community v The SSNNRS*, File No. 1459/07, Judgment, 15 June 2017.

becomes more convincing and justifiable (Feseha, 2006, p. 59).

In the United States, the issue of justifiability is dealt with primarily within the context of the “political question” which focuses on the limitations upon adjudication by the courts of matters generally within the area of responsibility of other governmental authorities. The political question doctrine then becomes: the political branches must determine policy and decide political questions, but the judiciary, not being a political branch, must not decide political questions (Rutledge, 1947, p. 394). As a result, it is argued, the political branches, rather than the Supreme Court, are more legitimate to address the resolution of disputes among the branches of the federal government (Fiseha, 2007, p. 19).

In Ethiopia, the power to interpret the Constitution is vested in the second chamber, the HoF and not in the regular judiciary. As such, the HoF would be the most suitable candidate to settle constitutional issues and disputes on non-justiciable matters (Fiseha, 2007, p. 19). Unlike many democratic countries rejecting constitutional review on non-justiciable matters, in Ethiopia it is not only justiciable matters that can be submitted to the CCI for constitutional interpretation but also non-justiciable matters.

Fiseha argues that the issue of horizontal separation of power is relevant to political question doctrine and often falls within the grey areas of law and politics: the settlement of such disputes truly involves political matters, which the regular judiciary may lack the competence to deal with. In Ethiopia this issue may be interpreted to cover two crucial aspects: horizontal separation of powers both at federal and state levels, as well as vertical division of powers between the federal and state governments (Fiseha, 2007, p. 19).

At least for the purpose of the CCI proclamation, one can suppose that constitutional issues that do not fall within the jurisdiction of either courts or administrative organs are non-justiciable matters.

There are many constitutionally guaranteed non-justiciable matters that may be a ground for constitutional review. One good example of such matters is the question of socio-economic and cultural rights. In the Ethiopian context, the non-justiciability or non-judicial enforcement of socio-economic rights is debatable

– that is, it debatable whether such rights can be enforceable by court of laws or not. For instance, Yeshanew (2008, p. 5) argues that the duty of the judiciary to enforce rights, as per Article 13(1) of the FDRE Constitution, is an expression of the justiciability of fundamental rights and freedoms provided by the Constitution, including socio-economic rights.

The constitutional review power of the CCI in this respect is not debatable. The council has constitutional review power on any constitutional matters including socio-economic rights, whether such rights are justiciable matters of courts or not. Practice also reveals that the CCI has assumed jurisdiction on such matters submitted to it.

For instance, in the *Biratu Terga v SNNPRS* case,<sup>12</sup> the applicant, who was a Derg regime national military member who participated in the Ethio-Somalia war, lost his right leg during military training. The applicant filed his case at the CCI stating that, according to Article 41(5) of the Constitution, the government, considering the existing economic capacity of the country, was duty bound to provide him with rehabilitation and economic support. The council decided against the applicant. The decision was based on two matters. The first related to the procedural aspect: it is stated in the decision that the applicant has to file his case first to the government organ tasked with the duty, and must only submit the case to the council if the decision of such organs violated his constitutional right. The second reasoning of the council with regard to the merit of the case was that, in regard to the existing economic capacity of the country, there is no factor that justifies the violation of the constitutional right of the applicant.

The decision of the council in the first place did not sufficiently address the issue requested. It is not clear whether there exists a government organ tasked with the responsibility of providing economic support for the physically disabled person. To which organ of the government was the applicant expected to submit his case? Whether there is any forum which accepts such matters, including regular courts, is a critical issue. With respect to the merit of the case, the council did not consider and investigate any material evidence justifying the economic capacity of the country.

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<sup>12</sup> CCI, Judgement date 1 January 2009, E.C, File No. 1896/08. Author's translation.



### ***3.3.1. Who has the standing to submit non-justiciable matter to the CCI?***

Once what justiciable matters refer to under the proclamation are identified, the next question is about who has the right to submit non-justiciable matters to the council. This procedural matter provided under the proclamation is also controversial. The proclamation provided two different procedural aspects. Article 3(2) (c) of the proclamation provided that “constitutional interpretation on any non-justiciable matter may be submitted to the council by one-third or more members of the federal or state councils or by federal or state executive organs”. Article 5 of the proclamation provided under Article 5(3) that “(w)here any law issued by federal government or state legislative organs is contested as being unconstitutional, the concerned court or interested party may submit the case to the council”. It is crucially important to raise the question of what the difference is between the two provisions. Is Article 5(3) referring to the unconstitutionality of law in the abstract? If so, does the interested party stand to submit the unconstitutionality of laws in the abstract?

It could be argued that when non-justiciable matters related to the unconstitutionality of law arise outside the court of law, an interested party can bring the issue to the CCI. By contrast, in all other cases, or in the case of non-justiciable matters referred under Article 3(2)(c) of the proclamation, the interested party has no standing to submit the case to the council except by one-third or more members of the federal or state councils, or by federal or state executive organs. For instance, when the issue of textual interpretation or constitutional interpretation with respect to the provision of the Constitution arises, the issue can only be submitted to the council by one-third or more members of the federal or state councils or by federal or state executive organs, and not by an interested party, if any.

When such non-justiciable matters related to the unconstitutionality of law arises outside court proceedings, the case can be submitted to the council by both, one-third or more members of the federal or state council or federal or state executive organs and by an interested party.

For instance, the Administrative Boundary and Identity Issues Commission establishment proclamation case is a good example here.<sup>13</sup> In this case, the Tigray Regional State Attorney-General submitted the case to the council, requesting declaration of unconstitutionality of the proclamation. The case was also submitted to the council by Members of the Federal HoPR Tigray Regional State Representatives. The council accepted both constitutional questions from both organs. The case is clearly a constitutional question on the unconstitutionality of law.

Likewise, in the Tigray Democratic Party v Tigray Regional State case, the council in its decision clearly provided that interested parties can bring constitutional questions to the council on the unconstitutionality of laws.<sup>14</sup> The CCI defined “interested party” by making reference to Article 37(2) of the Constitution. Accordingly, the “interested party” referred to under Article 82(2) of the FDRE Constitution and Article 5(3) of the CCI proclamation includes any association representing the collective or individual interests of its members, or any group or person who is a member of, or represents, a group with similar interest. From this, one can easily understand that when the issue of the unconstitutionality of law arises outside court proceedings as a non-justiciable matter, the “interested party” can submit such an issue to the council. But for all other unjustifiable matters, the right to submit the issue is limited to those government organs provided in the law.

#### 4. Examination of the constitutional adjudication procedure

Initiation of cases for constitutional adjudication is an important aspect of the constitutional adjudication process. As this is an important aspect of empowering citizens, it holds a key place in the whole process of adjudication (Kasa, 2007, pp. 75-104, 85). Due to the nature of the Constitution, constitutional adjudication, more so than adjudication in ordinary law, requires a clearly set

<sup>13</sup> Council of Constitutional Inquiry, የትግራይ ብሄራዊ ክልላዊ መንግስት ፍትህ ቢሮ እና በኢ.ፌ.ዴ.ሪ የሕዝብ ተወካዮች ምክር ቤት የትግራይ ክልል ተወካይ አባላት (38 ሰዎች), የሕገመንግስት ጉዳዮች አጣሪ ጉባዔ፣ መዝገብ ቁጥር 4086/2011፣ ሐምሌ 2011. The case was decided against the applicants. The applicants claimed that the proclamation violated the Constitution by taking away the power of the HoF and vesting the same with the Commission, and that it also violated the constitutional mandate of the regional states to decide on any matter related to self-determination and boundaries.

<sup>14</sup> CCI, Recommendation 28 August 2012 E.C, File No. 5260/2012 E.C.

interpretive methodology and rules of procedure. Rules of procedure determine the entire process of litigation, as they guide the mode of application, procedure of deliberation; making decisions and submitting recommendations and other related matters.

The council had been guided by the Constitution and the proclamation until a new directive was recently adopted (CCI Directive, Directive No. 1/2012 E.C). As discussed above, the proclamation has vested the power to determine many procedural matters with the council. Accordingly, the council has the mandate to determine the mode of presentation of application, procedure of deliberation and decision-making or submission of the recommendation to the House and manner of public or transparent hearing (CCI Proclamation, Articles 11(4), 12(3) and 15(6)). Based on this proclamation, the council has recently adopted a directive to be employed by the council – some of the procedural aspects governed by this directive are discussed in the next section.

#### **4.1. The role of the sub inquiry committee and the secretariat**

According to the proclamation and directive, three structures of the council have direct involvement in the constitutional adjudication process: the council (main council); sub inquiry committee (CCI Proclamation, Articles 11(4), 12(3), 15(6)); and the secretariat. The sub inquiry committee is accountable to the council and comprises at least three members including its chairperson; they are expected to serve permanently in the council. The secretariat has two main structures handling the cases, the registrar in the Case Flow Management Directorate and the study and research directorate. When any constitutional matter or dispute is submitted to the council, the registrar of the secretariat accepts and screens the case at its first stage (CCI Directive, Article 14).

The registrar has the mandate to screen whether the constitutional question or complaint petition fulfils the technical sufficiency requirements provided under Article 13 and 14 of the directive (CCI Directive, Article 15). The directive has provided different technical procedural requirements for both constitutional complaints and constitutional questions petitions. For instance, if the petition concerns a constitutional complaint, the interested party should exhaust all local remedies provided by the law before submitting the case to the council registrar (CCI Directive, Article 13(2)).

Once the case is admitted and filed at the council secretariat, it will be distributed to the concerned sections. The mandate to distribute files belongs to the chairperson of the council (CCI Proclamation, Article 8). The chairperson distributes the files either to the legal researchers of the secretariat, or directly to the sub inquiry committee members. This mandate could be delegated by the chairperson to the secretariat (CCI Directive, Article 15(4)). Practice reveals that almost all cases (files) that have been opened at the council secretariat have been distributed to the secretariat legal researchers.

Once files are distributed, they will be studied by the legal researchers, each legal researcher preparing a draft opinion and presenting it for group discussion within and among other legal researchers (CCI Directive, Article 12(6)). At this early stage, the draft opinion has to contain and identify at least whether the matter involves constitutional issue (dispute) or not, whether it has fulfilled all procedural requirements provided in the proclamation and directive, and, finally, whether it requires constitutional interpretation or not. After such discussion has been exhausted among the legal researchers, the opinion will be submitted and presented to the sub inquiry committee for deliberation. For flexible implementation of this, the secretariat has to designate the legal researchers for each sub inquiry committee member (CCI Directive, Article 12(4)). However, this has not been implemented practically due to the small number of the legal researchers in the secretariat.

#### **4.2. Procedure of deliberation, decision and recommendations**

In principle, any constitutional interpretation questions or complaints have to be decided or recommended to the HoF by the council (main council). However, on all such matters the procedure to deliver a decision and recommendation has some variance based on the subject matter of the case. In principle, all cases submitted to the council should pass through the sub inquiry committee deliberations. If the sub inquiry committee unanimously agrees with the draft opinion on constitutional matters that do not require constitutional interpretation, the case will be submitted to the main council in the form of recommendation for approval (CCI Directive, Article 16(4)). If the main council for its part unanimously admits and accepts the recommendation

or opinion of the sub-inquiry committee, the case will be decided accordingly. Here the council (main council) is not expected to hold formal deliberation on matters (cases) that do not need constitutional interpretation or are dismissed by the sub inquiry committee due to non-fulfilment of technical requirements.

If any of the main council members has a dissenting opinion, and thus requires briefing or deliberation, the case will be either remanded for further study or tabled for formal deliberation in the council. However, there are two exceptions to this rule. The first is that if the constitutional question is related to the unconstitutionality of law or non-justiciable matters,<sup>15</sup> even though the issue requires no constitutional interpretation, it has to be submitted to the main council for formal deliberation.

The second exception is that when any constitutional interpretation is referred to the council by the Federal Supreme Court, Regional States Supreme Courts or Addis Ababa city appellate court, the mandate to investigate the matter and hold deliberation and finally render a decision or recommendation is vested with the main council. If the same subject matter is submitted to the council by lower courts of the federal, states or Addis Ababa city administration, the cases have to be handled by the sub inquiry committee and will not be submitted to the main council for formal deliberation unless the issue requires constitutional interpretation.

The justification for this is that it is expected that constitutional questions referred by those specified courts will be serious constitutional matters and require similar consideration by the council. So the sub inquiry committee again has no mandate to recommend a decision or recommendation on such a matter without the full involvement of the main council. Practice reveals that most constitutional questions during court proceedings are referred by lower courts rather than by federal or state supreme courts. Since CCI establishment, only three cases were referred by the Federal Supreme Court and all other cases were referred by the federal and regional state lower courts.

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<sup>15</sup> CCI Directive, Article 2. Law is defined as any law legislated by federal or state or city administration legislative organs or constitutional questions regarding regional states' constitutions.

## 5. Main challenges of CCI

### 5.1. Organizational and structural factors

The CCI's main challenges, both practical and legal, are related largely to its structure. As discussed in the previous sections, in Ethiopia the constitutional adjudication system in general and its institutional structure in particular are unique. Based on the constitutional and legal framework and the practice, there are many challenges associated with the structure and organisation of the council. Due to those challenges, the CCI has not been as effective and efficient as expected, and these challenges primarily emanate from the law and the practice. So in this section of the article I try to identify and explore, though not in detail, some of those challenges that necessitate legal and practical reform.

### 5.2. Whose mandate (power) is it to organize the CCI?

As discussed in the previous sections, Ethiopia has adopted a unique constitutional review system and organises a unique institutional structure. The Constitution does not lay down in detail how the CCI should be organised beyond what has been provided under Article 62(2) and 84(3). According to these provisions, the Constitution, on the one hand, vested the power to organise the CCI with the HoF (FDRE Constitution, Article 62(2)). On the other hand, it also empowers the council to establish its own organisational structure which can ensure expeditious execution of its responsibilities (FDRE Constitution, Article 82(3)).

Contrary to what has been provided in the Constitution, neither the CCI nor the HoF has determined the organisational structure of the CCI; rather, it is the HoPR that has enacted a law for the organisation and reorganisation of the CCI, including its secretariat.

For instance, the secretariat of the council has been established and re-established three times since the CCI's inception. It was first established by the former CCI Proclamation,<sup>16</sup> and was designed to deliver service for the council alone. Later, in 2008, the other law which established the HoF secretariat clearly established one secretariat for both the HoF and the council, which was designed to deliver service for both the HoF and the CCI.<sup>17</sup> Finally, the current functioning proclamation was re-enacted as a proclamation for strengthening and specifying the power and

duties of the council (CCI Proclamation No. 798/2005), establishing the Office of the Council to deliver service for the council and without making any amendment to the already existing law of the House. It seems that the council secretariat is two-fold: one is established independently by Proclamation 798/2005 and the other is established by the HoF proclamation, which was designed to serve both the House and the Council.

It seems that this problem emanates from the Constitution: the Constitution empowered both the House and the Council to organise the CCI. There is no clear law determining or defining the extent of the power of the House and the Council.

It may be argued that as far as the detailed organisational structure of the council, which helps it to ensure the expeditious execution of its responsibilities, is concerned, the council itself has to determine its organisational structure rather than the House. For instance, the establishment of the secretariat of the council is primarily designed to provide all administrative matters and provide research and study services to members of the council. This will help the council to ensure the expedition of its performance. Based on this justification, establishing the secretariat should be left for the Council rather than the House. However, this does not mean that the constitutional role of the House should be undermined and that determining the general organisational structure of the Council should be left to the House.

### 5.3. Working conditions of the council members

One of the major challenges that affects the efficiency and effectiveness of the council, one emanating from the CCI proclamation, is the working conditions of the council members. Undertaking the task of constitutional interpretation or adjudication on a full-time and permanent basis is decisive for many; primarily, it is vital to ensure the effectiveness and efficiency of the council.

In Germany, for instance, the constitutional court judge is required to state in writing his willingness to be a judge of the constitutional court and, upon appointment, except for lecturing law

<sup>16</sup> No. 250/2001, Federal Negarit Gazeta, Year 7, No. 40.

<sup>17</sup> Establishment of the Secretariat of the House of the Federation Proclamation, Proclamation No. 556/2008, Federal Negarit Gazeta, 14th Year, No. 3, 2008.

at a German higher institution, he or she is not allowed to continue or assume another occupation. It is a must to undertake the judicial service as full-time and permanent work (Getachew, 2015, p. 39). In Austria, as in the case of Germany, upon appointment the judges of the constitutional court should decline another occupation. They are not allowed to be involved in any civil service work in the public administration. In South Africa too, constitutional court judges are not allowed to assume other governmental responsibilities (Getachew, 2015, pp. 33-34).

In Ethiopia, the Constitution does not provide for the working condition of the council in regard to whether they should undertake the task on a part-time or full-time basis, or a permanent or temporary basis. However, the proclamation has provided some indication, in a very controversial manner, that the members of the council have to undertake the service on a part-time basis. The proclamation, in the provision referring to remuneration and transport allowance, provided that members of the council shall be entitled to a per-diem and transport allowance commensurate with their attendance of meetings at the council for the extra service they deliver as members of the council.<sup>18</sup> Concerning the sub inquiry committee members, it is also provided that the working condition of members of the Sub-Inquiry Committee shall be determined by agreement to be entered into by the council and their employer based on a joint employment principle if they are an employee or appointee.<sup>19</sup>

Constitutionally speaking, it is designed that the president and the vice president of the Supreme Court can only undertake the task on a part-time basis; it may also be difficult for the members of the council designated from the HoF to undertake the task on a full-time, permanent basis. However, the six legal experts appointed by the President of the Republic, at least constitutionally speaking, should serve in the council on a full-time, permanent basis. The Constitution does not provide, at least for the six legal experts, to serve in the council on a part-time basis. The part-time working condition of the council emanated from the law and practice as against the essence of the Constitution.

Practice confirms that the council members have assumed the task only on a part-time basis. Most of the council members have other full-time responsibilities and are not able to assume



the constitutional adjudication full-time. For instance, practice reveals that the three members designated by the HoF from its members are higher government officials at the ministerial position; of the six legal experts appointed by the President of the Republic, two are private legal practitioners, one is a judge at the Federal Supreme Court, and the remaining three members also have government responsibility at ministerial level (Tadesse, 2020).

The working conditions provided by the proclamation have affected the quality and number of constitutional cases decided, recommended, and pending in the council. The fact that the members of the CCI have another full-time responsibility sometimes makes it difficult for the council to constitute a quorum at its regular meetings. To constitute a quorum, the presence of two-thirds of the members of the councils is required. This means that seven, members including the chairperson or deputy chairperson, must be present to conduct the CCI's business (Tadesse, 2020). It has been identified that there are instances where the council fails to conduct its regular meetings. There are also instances where scheduled regular meetings were cancelled due to similar reasons.

The other major problem is related to the quality of the decisions and recommendations the CCI submits to the HoF. As indicated above, the council decides and recommends all cases via a half-day of short meetings. Constitutional adjudication is not a light task to be regularly discharged by half-day meetings. The time allocated for discussion and deliberation for each and every constitutional case is not sufficient. The council members are expected to engage in complex constitutional matters as legal experts; however, the time allocated for such engagement is very short as they are expected to dispose of as many cases as possible within a short time. This can potentially undermine the essence and depth of the cases decided or recommended. As a result, many constitutional complaints have been decided and recommended to the HoF without proper, critical, and in-depth deliberation.

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<sup>18</sup> CCI Proclamation, Proclamation Number 250/2001, Federal Negarit Gazeta, Year 7, No. 40, Article 18.

<sup>19</sup> CCI Proclamation No. 250/2001, Federal Negarit Gazeta, Year 7, No. 40, Article 26.

The other challenge is related to the delay of cases. A cursory examination of the data in the Case Flow Management Directorate of the secretariat of the council's three consecutive years report, which provides a list of constitutional cases submitted to the council, cases decided and recommended to the HoF, indicates that the CCI has disposed of less than 50 per cent of cases submitted to it each year. For instance, in 2010 E.C, 974 new constitutional cases were opened at the council secretariat, whereas only 463 cases were seen and disposed of. In 2011 E.C, 1,181 new constitutional cases were submitted to the council and only 318 (27 per cent) were seen and disposed of. In 2012, 674 new cases were opened, whereas only 278 (41 per cent) were seen and disposed of.

Therefore, the discrepancy between the numbers of constitutional new cases submitted to the council each year and the number of cases disposed of by the council each year is very large. This has resulted in a large number of backlog cases. The number of constitutional cases disposed of by the council every year has never shown a significant difference in the last three years. From this figure, there is no denying that the work ahead in resolving the backlog of cases remains highly significant. Even if the council wanted to speed up and tried to resolve many cases, with its existing composition and working conditions it cannot and will not resolve the average cases submitted annually to it.

These problems emanate from the CCI proclamation, which provides for the part-time working condition of the council. It is unconstitutional and not in line with the essence of Article 84(1) of the Constitution, at least as far as the six legal experts are concerned. It is not clear why the proclamation required the council members to serve in the council on a part-time basis and to have assumed another full-time responsibility. It may be that, at the beginning, the number of constitutional complaints expected to be submitted to the council were few. However, the reality has been completely different. The secretariat of the council is facing a major problem in managing those large numbers of pending constitutional cases. The reality on the ground is now necessitating legal and practical reform on the composition and working conditions of the council.

## 6. Conclusion

In Ethiopia, the CCI is established by the Constitution to investigate any constitutional matters to determine whether the matter requires constitutional interpretation or not. It is established to deliver and submit its recommendation to the HoF on constitutional matters requiring constitutional interpretation. It is also established to decide on constitutional matters not meriting constitutional interpretation. The role of the CCI in constitutional interpretation is decisive and vital in the Ethiopian constitutional interpretation system. However, the jurisdiction and competence of the council have been subject to debate for decades among legal scholars, courts, and the council members.

For a long time, CCI decisions and recommendations did not sufficiently address these issues. Recently, the council, in its different decisions, particularly so in the “election case”, has ruled that the council has the power to investigate any constitutional matter without any exception or limitation. It ruled that the question of whether the CCI has jurisdiction depends on the nature of the matter or the relief claimed.

However, concerning its efficiency and effectiveness, the council in practical terms has remained inefficient in disposing of or rendering a decision and submitting its recommendation to the HoF. Constitutional interpretation tasks require, among other things, sufficient preparation, deep constitutional analysis, and continuous deliberation and discussion. It also requires full-time engagement. It is not a light task to be performed as an extra service. However, the working condition of the council provided by the CCI proclamation and the practice is completely contrary to the premises of the Constitution. Practically all the council members have other full-time responsibilities in another government or private institution and have only undertaken the constitutional interpretation task as part-time responsibility. This has affected both the quality and quantity of constitutional cases decided and recommended. The statistical data and the backlog cases in the council sufficiently indicate how the council has been inefficient in delivering its task. Thus, there is a need to give more attention to speedy trials by correcting the working conditions of the council members.

One of the fundamental objectives of the FDRE Constitution is to preserve or guarantee its supremacy through constitutional interpretation. All constitutional interpretation matters should be investigated by the council based on this constitutional objective. This major constitutional task is vested with the council and promised by the Constitution to be genuinely, effectively, and efficiently settled. Yet this has remained largely true in theory more so than in practice.

The HoPR, which is constitutionally empowered to nominate the six legal experts, has issued no rule, regulation or guidelines to enforce its constitutional mandate to determine better working conditions for council members. Equally, the HoF, which is constitutionally empowered to organise the council and safeguard genuine and speedy constitutional trials, has remained silent. The finding is that the inefficient and constitutional adjudication in the council has been legally and practically incompatible with the principle of speedy constitutional adjudication trial and justice. The working condition of the council provided in the CCI proclamation necessitates amendment and revision of the CCI proclamation.

Therefore, it is recommended that the proclamation should be amended and the working conditions of the council members, particularly the six legal experts, should be corrected. The council should undertake the constitutional adjudication task on full-time bases. In this way, we can establish an effective and efficient constitutional adjudication system in Ethiopia.

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