

International Conference
«Protection of Rights and Constitutional Supervision»

26 June 2024, Saint Petersburg

**Session II « Protection of Rights and Freedoms as the Result of Constitutional
Review»**

Mr Tewodros MEHERET, President of the Council of Constitutional Inquiry

Distinguished Justices of the Constitutional Court of the Russian Federation
Organizers of the St. Petersburg International Legal Forum
Ladies and gentlemen,

As a Chairperson of the Council of Constitutional Inquiry of the Federal Democratic Republic of Ethiopia and the Chief Justice of the Federal Supreme Court, I would like to begin my message by thanking the Constitutional Court of the Russian Federation for inviting me and my team to such grand international legal forum which is dedicated to the subject of one of the most important component of a modern legal system – **“Protection of Rights and Constitutional Supervision”**.

I firmly believe that this invitation is a vivid testimony of the long established friendship between the Federal Democratic Republic of Ethiopia and the Russian Federation in general and an evolving partnership between the Council of Constitutional Inquiry of the Federal Democratic Republic of Ethiopia and the Constitutional Court of the Russian Federation, in particular.

I can't explain how happy I am to use this momentous occasion to share with you on the subject of **protection of Rights and Constitutional Supervision** from the perspective of the Constitutional System of the Federal Democratic Republic of Ethiopia.

To begin with, Ethiopia's clear declaration of its belief in the dignity and worth of human kind and its commitment on the international stage to the protection of universal human rights standards goes as far back as the 10th of December 1948, when it voted in favor of the Universal Declaration of Human Rights (UDHR) in Paris, France. Since then, Ethiopia has been proving its belief in the values of fundamental rights and freedoms by signing different international and regional human rights treaties, which include, *inter alia*, the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), and the African Charter on Human and Peoples Rights (as known as the Banjul Charter).

More interestingly, Ethiopia has incorporated those internationally recognized fundamental rights and freedoms into its domestic Constitution, officially known as the *Constitution of the Federal Democratic Republic of Ethiopia*, and it has also put in place a mechanism of constitutional supervision for the observance of those rights. I will return to the constitutional supervision mechanism in a moment. Now, let me give you a succinct explanation of the rights that are protected in the constitution of the country. Roughly one third of the constitution, article 13 through 44, is dedicated to human rights and freedoms.

Perhaps, what makes the Constitution of the Federal Democratic Republic of Ethiopia unique to many other modern constitutions is the fact that it protects all the generations of rights – civil and political rights (first generation rights), economic, social and cultural rights (second generation rights) as well as solidarity rights (third generation rights) such as the right to development and the right to clean and healthy environment in its bill of rights chapter. In this respect, the constitution is up to the state of the art of modern constitutional bill of rights. Besides, the constitution has clearly provided a mechanism through which its bill of rights provisions could be interpreted in a manner that is consistent with international human rights standards.

To be clearer, I need to directly quote the relevant provision of the constitution, that is, article 13 (2) which provides that: *“The fundamental rights and freedoms specified in this chapter (chapter three) shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia”*. Ethiopian legal scholars call it a *conformity clause* or the *principle of conforming interpretation*. The inclusion of the conformity clause is vital as it always reminds the responsible constitutional organs to make sure that domestic application of human rights and freedoms always get in tune with Ethiopia’s international human rights obligations.

There is no debate, however, that having a constitutional bill of rights without an existence of a robust constitutional supervision is to no avail. This is true in Ethiopian constitutional system too.

That is why the drafters of the Ethiopian Constitution skillfully devised the institutional supervisory mechanism for the proper observance of the very constitution.

The Council of Constitutional Inquiry of the Federal Democratic Republic of Ethiopia, which I am serving as its chairperson since January 7, 2023, is at the forefront of constitutional supervision in the country. As clearly provided in article 84 (1) of the very constitution, the council is vested with the power to investigate constitutional disputes and to submit recommendation to the House of Federation (the upper chamber), should it believes that the constitutional dispute at its disposal requires constitutional interpretation. Since its establishment in 1995 by the constitution, many constitutional disputes have been brought before the council by individual citizens and different private and government bodies. Practice has shown that many, if not all, of the cases that have been brought to the attention of the council are related to the issue of protection of fundamental rights and freedoms.

Thus, in Ethiopia, as elsewhere, protection of rights and constitutional

supervision are inseparably linked. In the interest of time, I will explain to you only one landmark constitutional issue that was investigated by the council in the recent past. It is the constitutional issue that was investigated by the council in relation to the constitutional interpretation case that was brought before it by the House of People's Representatives (the Ethiopian Parliament) with regard to the postponement of the sixth general national election owing to the national emergency decree that was proclaimed by the parliament following the outbreak of COVID-19 pandemic.

As clearly stipulated in article 54 (1) of the constitution, election has to take place every five year on the basis of universal suffrage and by direct, free and fair election held by secret ballot. As a matter of fact, the sixth general election was due to be held in May 2020, and since Ethiopia follows a parliamentary system, both the term of office of the parliament and the executive was due to expire in October 2020. However, things did not and could not go as constitutionally designed. The National Election Board of Ethiopia, the only constitutionally designated election management body in the country, presented a report to the parliament that it is not in a position to conduct election as scheduled owing to the restrictions put on its functions as a consequence of a national emergency decree proclaimed by the parliament to contain the spread of COVID-19 pandemic.

Unfortunately, the constitution does not provide a clear solution in case conducting election becomes practically impossible as a result of national emergency situations. Simply, there was a constitutional gap in this regard. After receiving the report of the National Election Board, the parliament brought the matter before the Council of Constitutional Inquiry, seeking constitutional interpretation on how best to govern the country amid the emergency decree and expiry of the term of office of the very parliament itself and the executive. In this case, many rights become at stake, in a manner that human rights scholars usually call *conflict of rights*. On the one hand, the postponement of election affects the right to elect and the right to be elected and the right to be governed by a government of one's choice as constitutionally guaranteed.

On the other side of the spectrum, conducting an election in the midst of COVID-19 pandemic puts the health and lives of citizens at risk. It was such a conundrum.

After receiving the constitutional interpretation request of the parliament, the council of constitutional Inquiry has made a thorough investigation on the case through different mechanisms in order to reach at the best possible solution to the constitutional puzzle. The council directed its constitutional research staff to conduct research on the matter and also received *amicus* briefs from prominent legal and affiliated scholars and organizations. Besides, the council has also conducted a public hearing in which different *amicus curiae* made an oral presentation on how best they think the issue could be solved. After such rigorous investigation, the council concluded that the constitution contains a legal lacuna that requires constitutional interpretation. In order to fill the gap, the council forwarded two key recommendations to resolve the constitutional issue at hand. These are:

1. The council recommended that the term of office of the parliament, regional state councils and the executive has to be extended as long as COVID-19 pandemic remains a health threat to the country and;

2. The council recommended that general national election has to be conducted between nine months and one year after COVID-19 pandemic ceases to be a public health threat as confirmed by the ministry of health of the country, the public health institute of the country and the scientific community in the field based on the COVID-19 update to be released by global and continental health institutions and further approved by the county's parliament.

Interestingly, the House of Federation approved the recommendation of the council as it is originally submitted to it with an overwhelming majority.

In nutshell, the council played a prominent role in discharging its constitutional supervision duty and thereby protecting the rights to elect and the right to be elected of citizens by preventing the postponement of election for an indefinite and undefined period, by protecting the right to health and lives of citizens by preventing the conduct

of election amid a deadly COVID-19 pandemic through its professionally crafted recommendations. Above all, the recommendation of the council ensured the smooth continuity of the constitutional system as a whole by rationalizing the legitimacy of the leadership of the government whose term of office is expired to govern the country amid COVID-19 pandemic.

The recommendation prevented what many political skeptics labeled as a moment of **constitutional crisis**. Owing to the well-reasoned recommendation of the council, what many commentators considered as a moment of **constitutional crisis** turns out to be a key **constitutional moment** with positive success story in the history of Ethiopia's constitutional practice.

I believe that this brief explanation sheds a light on how the protection of rights and constitutional supervision are inextricably linked and mutually reinforcing in the Ethiopian constitutional system and the role of the council of Constitutional Inquiry in maintaining this mutuality. However, I would like to be honest with you that there is a long way for the Council to go. It has many backlogs of cases to dispose, structural challenges to be reconsidered and some more. In this respect, the experience and expertise of the constitutional Court of the Russian Federation and other conference participants is of a paramount importance in offering us vital lessons which could help us to strengthen our council.

Finally, as an incumbent chairperson of the Council and Chief Justice of the Federal Supreme Court, I hope that the experience that has been gained at this pivotal international legal forum will help me and my team to improve the service of the Council. I also would like to reiterate that the partnership between our Council and the Constitutional Court of the Russian Federation will continue ever and forever.

Thank you so much for your attention!