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የሁለተኛ ዲግሪ
e-mail- solomonbersabeh19@gmail.com

አርታኢ

ኖህ የሱፍ

ከወሎ ዩኒቨርሲቲ በህግ የመጀመሪያ ዲግሪ
ከአዲስ አበባ ዩኒቨርሲቲ በሰብአዊ መብቶች ህግ
የሁለተኛ ዲግሪ ተማሪ
e-mail- noahyesufyimer@gmail.com

የህትመት አስተባባሪ

ማህሌት ንጉሴ

ከባህር ዳር ዩኒቨርሲቲ በህግ የመጀመሪያ ዲግሪ
e-mail- mahletnegussie12@gmail.com

በዚህ መጽሄት ውስጥ የተካተቱት ጽሁፎች የጸሀፊዎቹ ሃሳብና አስትያየቶች ሲሆኑ ድርጅታዊ አቋምን አያመላክቱም።

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Our official website at https://ahrethio.org
+251 910921294 edenjossy2005@gmail.com
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ርዕስ አንቀጽ

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The Role of the Judiciary In Redressing Human Rights Violations During State Of Emergency In Ethiopia

Zerihun Waza*

1. Introduction

A state of emergency derives from a governmental declaration made in response to an extraordinary situation posing a fundamental threat to the public and the nation.[1] The declaration may suspend certain normal functions of government, alert citizens to alter their normal behavior, or authorize government agencies to implement emergency preparedness plans as well as to limit or suspend civil liberties and human rights.[2] The need to declare a state of emergency may arise from situations as diverse as an armed action against the state by internal or external elements, a natural disaster, civil unrest, an epidemic, a financial or economic crisis or a general strike.

This article tries to evaluate the role of judiciary in redressing human rights violations during state of emergency. The states of emergency proclamations to be evaluated are; Council of Ministers Proclamation No. 2/2018 Issued to Defend the Constitution and Constitutional Order From Threat,[3] Proclamation No. 3/2020 Enacted to Counter and Control the Spread of COVID-19 and Mitigate Its Impact,[4] and Proclamation No. 5/2021 Enacted to Avert the Threat Against National Existence And Sovereignty.[5]

2. State of Emergency Measures

It is the nature of state of emergency laws to define and list out emergency measures and prohibitions. As reflected in the series of emergency proclamations recently adopted by the Ethiopian government, the power of issuing specific emergency measures is vested to a command post established by each of the respective state of emergency proclamations. Emergency measures may vary depending on the specific threat and the objectives that justify the adoption of the law, though there are similarities as to their implementation.

The State of Emergency Command Post, when it believes that it is necessary to enforce and protect the Constitution and Constitutional order, maintain public and citizens' peace and security, may[6] among others prohibit or cause the closure or termination of any means of communication; prohibit public assembly, demonstration and association, arrest any person without a court warrant, determine conditions under which curfew may be imposed, give order for persons to stay in a certain place, take all other necessary measures in order to enforce and defend the Constitution and Constitutional order and protect people and citizens peace and security. The remaining two emergency

* Zerihun Waza LLB, LLM in Law and Development, Lecturer of Law at Hawassa University, School of Law; Attorney and Consultant at Law.

[1] The Geneva Centre for the Democratic Control of Armed Forces, state of emergency, Home | DCAF – Geneva Centre for Security Sector Governance.

[2] Id

[3] FDRE Council of Ministers, *State of Emergency Proclamation Issued to Defend the Constitution and Constitutional Order from Threat*, *Proclamation No. 2/2018*, Federal Negarit Gazette, 24th Year, No. 35, Addis Ababa, 23rd March 2018.

[4] House of Peoples Representatives, *State of Emergency Proclamation Enacted to Counter and Control the Spread of Covid-19, and Mitigate its Impact, Proclamation No. 3/2020*, Federal Negarit Gazette, 26th Year, No. 33, Addis Ababa, 16th April 2020.

[5] FDRE council of Ministers, state of emergency proclamation enacted to avert the threat against National Existence and sovereignty no 5/2021.

[6] Supra note 3

proclamations and their directives also share communality in terms of the list of measures albeit a slight difference in the scope of their application.

3. Human Rights issues during state of emergency

The problem with any state of emergency is the inherent risk it poses against the rule of law and enjoyment of the rights of individuals.[7] States of emergency proclamations by their nature suspend ordinary law enforcement system and, this usually legitimizes human rights violations. In the 2018 emergency declaration Amnesty International documented widespread human rights violations at the time of emergency, including torture and other ill-treatment, arbitrary arrests and detentions, as well as patterns of denial of access to justice in Ethiopia.[8] The Proclamations and their enforcement Directives also affect non-derogable rights, specifically freedom from torture and other ill-treatment. The proclamations allowed the law enforcing authorities to arrest, without a warrant, anyone if there is "reasonable suspicion" and to detain them without judicial review indefinitely.[9] There is a procedure demanding judicial authorization to arrest a person and there are also rules to be followed to bring arrested person before formal court. However, State of emergency proclamations provide discretion to suspend compliance almost to all of the procedures by law enforcement bodies during implementation of emergency measures.

There are human rights which cannot be derogated even during state of emergency. The International Covenant on Civil and Political Rights (ICCPR) under Article 4(2) prohibits derogation of rights including Article 6 (right to life and freedom from arbitrary deprivation of life); Article 7 (freedom from torture and other forms of ill-treatment); and Article 15 (freedom from non-retroactive application of criminal law); Article 16 (right to recognition before the law).[10] Non-derogation is not limited only to these human rights, through the process of interpretation and comment other basic human rights are added to non-derogable rights. The UN Human Rights Committee, in its General Comment Number 29, identified additional non– derogable provisions, including: Article 3 (the right to an effective remedy); Article 14 (right to fair trial); and the right to take proceedings before a court to challenge the lawfulness of detention (Article 9(4) on habeas corpus).[11]

Some measures provided for under the emergency Proclamations and Directives are in breach of the ICCPR's non-derogable rights compliance standards. The implication of violating the non-derogation principle, in relation with the right to fair trial, accessing the judicial system, and the right to an effective remedy, is twofold. The first one shows that the State of emergency proclamations by their nature violates human rights. The second is individuals have no way to redress other human rights violations, since they are denied from accessing the judicial system. According to emergency proclamations, remedies for human rights violations as provided for in substantive and procedural laws of the country may not be applicable during the state of

[7] Guy Lurie, 'Ministerial powers over court administration in the Israel judiciary (2021) 12 (2) International Journal for Court administration', p. 4

[8] Concern over state of emergency declaration (proclamation 2/2018), Amnesty International Secretary General Letter, Ref TG AFR 25.2018.002, file:AFR2579812018ENGLISH.pdf

[9] Amnesty International Country report, Ethiopia, 2021/22

[10] UN General Assembly, *International Covenant on Civil and Political Rights (ICCPR),* 999 UNTS 171, 1966.

[11] UN Human Rights Committee (HRC), *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, CCPR/C/21/Rev.1/Add.11.

emergency. For instance, people in detention under the state of emergency provisions may not be able to pursue the habeas corpus remedy as provided for in the Ethiopian Civil Procedure Code and the judiciary may not be able to oversee the conditions of detention to ensure the rights of those detained are respected, including their right not to be subjected to torture and other ill-treatment.

4. The role of judiciary in redressing human rights violations

A. International human rights framework

International human rights instruments prohibit violation of human rights and impose obligations on state parties to provide effective remedy if human rights violations are occurred. This is about guaranteeing the right to access to justice during rights violation. It is impossible to redress human rights violations without ensuring access to courts and allowing judicial review of administrative actions. Therefore, there is strong believe in the role of judiciary in redressing human rights violations during emergency period.

States may legally derogate from their international obligations provided that the rights do not fall under the non-derogation clause. ICCPR enunciates two sets of non-derogable rights. The first one is those listed in the Covenant expressly under article 4 as specified above. The second sets of rights are added through General Comments and include fundamental principles of a fair trial (GC No. 29), presumption of innocence (art. 14(2)); prohibition of arbitrary deprivation of liberty (art. 9(1)); and prohibition of collective punishments as peremptory norms. Moreover, in General Comments 24, 29, 34, and 35, UNHRC has also identified additional rights and prohibitions that cannot be subject to lawful derogation. These include the right to an effective remedy in the case of violations under the ICCPR; the right to be tried by a competent, independent, and impartial tribunal established by law; the right to take proceedings before a court to enable the court to decide without delay the lawfulness of detention; the right not to be compelled to testify against oneself or to confess guilt; prohibition of statements or evidence that are obtained in violation of art 7 of ICCPR and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art 15; and prohibition of prolonged incommunicado detention. From this, it is understandable that the right to an effective remedy or access to justice is among basic human rights that cannot be derogated even during state of emergency. Non-dergoation of such rights ensures the protection of all human rights, by allowing review of administrative action by the judiciary.

B. Rules and procedures in Ethiopian Emergency proclamations

In Ethiopia Judicial power is vested in the courts.[12] Courts of any level shall be free from any interference or influence of any governmental body, government official or from any other source.[13] Everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.[14] In addition to constitutional rules, both civil and criminal procedural laws allow accessing the judicial system for purpose of redressing violations of rights.

There are clauses inserted in state of emergency laws that deal with the role of judiciary. According to state of emergency proclamation No. 2/2018 to safeguard constitution and constitutional order, for

[12] *Federal Democratic Republic of Ethiopian Constitution, Proclamation No. 1/1995*, Federal Negarit Gazette, 1st year No. 1, Addis Ababa, 21 August 1995, Article 79 (1).
[13] Id, Article 79 (2).
[14] Id, Article 37 (1).

example, the Federal First Instance, High and Supreme Courts shall organize special benches to efficiently adjudicate criminal cases (crimes against constitution and constitutional order and violation of state of emergency measures and duty of cooperation).[15] The purpose of this provision is to ensure effective implementation of emergency measures, rather than to allow individuals to seek effective remedy from courts. Additionally, in state of emergency proclamation No. 3/2020 to control COVID-19, any Federal or Regional law, Procedure or decision that is in contravention with state of emergency Proclamation or Regulations issued pursuant to the Proclamation shall have no effect while the Proclamation is valid.[16] The criminal procedure code and criminal procedural provisions in other laws are also suspended by the emergency proclamation.[17]

Moreover, in the proclamation to avert the Threat against National Existence and Sovereignty, any judicial organ shall not have authority with regards to the enforcement of the Proclamation until the expiry of the same.[18] This means the role of judiciary is almost null during its implementation until the expiry of the proclamation and, it amounts a total block of the constitutional function of the judiciary as to the scope of the emergency proclamation.

C. What roles should the judiciary play?

The judicial system plays a crucial role in the control of the executive's prerogatives during states of emergencies. Judicial control of the declaration of state of emergency may be limited to the control of the procedural aspects of emergency declaration. This does not mean that the power of judiciary should be limited only to the control of the procedural aspects of its implementation. If emergency measures involve derogations from human rights, the substantive grounds for the state of emergency shall be subject to judicial review as well.[19]

The other step is the role of the judiciary that comes after the decision or measure taken by the command post established to implement the emergency proclamations. Decisions taken by the emergency rule authorities are typical unilateral administrative acts and actions and for this reason they should be reviewed by courts.[20] The judicial system must provide individuals with effective recourse in the event that government officials violate their human rights.

The judicial system must continue to ensure the right to fair trial. It must also provide individuals with an effective means of recourse in the event that government officials violate their human rights. In order to guard against infringement of non-derogable rights, the right to take proceedings before a court on questions relating to the lawfulness of emergency measures must be safeguarded through independence of the judiciary. The courts can play a major role in decisions concerning the legality of a declaration of a state of emergency as well as in reviewing the legality of specific emergency measures.[21]

[15] Article 13 of proclamation 2/2018. Supra note 4.

[16] Article 3 of proclamation no. 3/2020, supra note 5.

[17] State of emergency proclamation no 3/2020 implementation regulation 466/2020, article 6(1)

[18] Article 8 of proclamation no. 5/2021, supra note 6.

[19] Alivizatos Nicos, Bilkov Veronica, et al, *Respect for Democracy, Human Rights and Rule of Law: During States of Emergencies Reflections,* European Commission for Democracy Through Law, CDL-AD (2020)014, 2020, PP. 18-19.

[20] Id.

[21] The Geneva Centre for the Democratic Control of Armed Forces, state of emergency, Home | DCAF – Geneva Centre for Security Sector Governance.

5. Conclusion

States of emergency proclamations in Ethiopia have been mostly in contradiction with the principle of non-derogability in relation to rights of recourse. The proclamations clearly suspend the courts from redressing human rights violations during the implementation period even if the international instruments to which Ethiopia is a party prohibit derogation. As stated above, additional non– derogable rights, including: the right to an effective remedy, right to fair trial, and the right to take proceedings before a court to challenge the lawfulness of detention (habeas corpus) are included through interpretation.[22] The recognition and protection of these rights in state of emergency proclamations is mandatory and, helps to redress violations of all other human rights.

To this end, first the emergency laws should be designed in a way guaranteeing more protection for human rights and should provide clear rules and procedures to redress the violations through judicial process. This enables the judicial system to play a crucial role in the control of the executive's prerogatives during states of emergencies.[23] Second, the emergency proclamations must be clear enough to be understood and be designed with the aim to limit administrative abusive actions.

Third, the Ethiopian judicial system must apply international human rights framework for domestic purpose, particularly to redress human rights violations that occurred during state of emergency. There are two ways to apply international human rights framework domestically. These are indirect and direct applications.[24] The first mechanism is indirect way, which works through the process of interpreting the constitution and other laws in line with international instruments. The second mechanism is a direct one, in which Ethiopian courts apply international human rights instruments regardless of the fact that there is no national law domesticating such instruments since the constitution itself domesticates these instruments as declared under article 9 of FDRE constitution.

Therefore, the state of emergency proclamations shall not deny judicial oversight of the implementation of the emergency laws and, at the same time should allow access to a judicial system for better protection of human rights. Also the judicial system shall use the existing legal framework effectively and exhaustively for better human rights protection during state of emergency.

[22] UN Human Rights Committee, General Comment Number 29, Paragraphs 13-16; Ethiopian: Draconian State of Emergency Measures, Amnesty International Public Statement, AI Index: AFR 25/5669/2017, pp. 5-6.

[23] Alivizatos Nicos, supra note 20,

የህዝብ ጥቅም ሙግት፡ ጥፋት ፈፅሞ ሳይቅጡ የመቅረት ልማድን ለመዋጋት!!

ጥበቡ ኃይሉ[1]

የሕዝብ ጥቅም ሙግት ወይም Public Interest Litigation ልዩ ልዩ የሕዝብን ጥቅም የሚመለከቱና የሚነኩ አሳሳቢ ጉዳዮችን በማንሳት በጉዳዩ ዙሪያ ሰፊ ግንዛቤ እንዲኖርና ክርክር እንዲደረግ ብሎም በደል የደረሰባቸው የማኅበረሰብ ክፍሎች ፍትሕ እንዲያገኙ፣ ለበደል ተጋላጭ ለሆኑትም ጥበቃ እንዲደረግላቸው ለማስቻል የሚረዳ የሙግት ሥርዓት ነው። የሕዝብ ጥቅም ሙግትን በመጠቀም የሕግና ፖሊሲ ሰነዶችን እንዲሁም የመንግሥት አሠራሮችና ውሳኔዎችን ጨምሮ የትላልቅ ንግድ ኩባንያዎች ርምጃዎችን እና ሌሎችም መንግሥታዊ ያልሆኑ አካላት ድርጊቶችን ሕጋዊነት (legality) እና ተገቢነት (appropriateness) በተለይም ከዓለም አቀፍ ሕግጋትና መርሆዎች አንጻር በመፈተሽ ሙግት እንዲቀርብባቸው ማድረግ ይቻላል። በዚህም ሰብአዊ መብቶችን፣ እኩልነትን፣ ፍትሐዊ ተጠቃሚነትን፣ አስተዳደራዊ በደልን የተመለከቱ ልዩ ልዩ የሕዝብ ጥቅምን የተመለከቱ ጉዳዮችን በሕግ ለማስከበር፣ የግፉዓንን ድምጽ ለማጉላት እና ተጠያቂነትን ለማስፈን ይቻላል።

ይህ አማራጭ በሀገራችን እምብዛም ባይለመድም ዘርፈ-ብዙ ማኅበራዊ፣ ፖለቲካዊ እና ኢኮኖሚያዊ ችግሮች ባሉባቸው ሌሎች ሀገራት የተለመደና ተጨባጭ ለውጦችንም ያመጣ ሥርዓት ነው። በዚህ ዙሪያ በእኛ ሀገር ያለው ልማድ አነስተኛ ቢሆንም ለአብነት ሊጠቀሱ የሚችሉ ጥቂት ጉዳዮችን ግን ማንሳት ይቻላል። በ1993 ዓ.ም በታዋቂ የሕግ ባለሙያዎች የተቋቋመው Action Professionals' Association for the People (APAP) የተሰኘው የሲቪል ማኅበረሰብ ድርጅት እና የኢትዮጵያ አካባቢ ጥበቃ ባለስልጣን የተሟገቱበት የአካባቢ ብክለት ጉዳይ ቀዳሚው ነው። በዚህ እስከ ሰበር ችሎት በደረሰ የፍርድ ቤት ሙግት ዙሪያ የተጻፉ በርካታ ጥናቶች እንደሚያመለክቱት እና እኔም እንደማምነው APAP በፍሬ ነገሩ ቢሸነፍም የሕዝብ ጥቅም ሙግትን በተግባር እንዲፈተሽ ማድረጉና የክርክሩን ጭብጥ በተለመከተ አሁን ድረስ የዘለቀ እመርታዊ አሻራ በማስቀመጡ አሸናፊ ነው።

በዚሁ በአካባቢ መብት ዙሪያ ከተመሰረተ ገና አጭር ዕድሜ ያለው ''ቁም ለአካባቢ (Defend the Environment)'' የተሰኘው የሲቪል ማኅበረሰብ ድርጅት በቅርቡ በሲዳማ ክልል ሀዋሳ ከተማ የነዋሪዎችን በንጹህ እና ጤንነቱ በተጠበቀ አካባቢ የመኖር መብት ጥሷል፣ የአካባቢ ብክለትም አስከትሏል በተባለው የሀዋሳ ከተማ ልማትና ኮንስትራክሽን መመሪያ ላይ ለፍርድ ቤት ባቀረበው ክስ፤ ለቆሻሻ መጣያነት ባገለገለው አካባቢ ከዚህ በኋላ ቆሻሻ እንዳይጣል እና ተጠሪ ተቋሙ በሥፍራው ላይ የደረሰውን የአካባቢ ብክለት በማጽዳት ወደ ቀድሞ ተፈጥሯዊ ሁኔታው እንዲመልስ በፍርድ ቤት እንድወሰንበት አድርጓል።

በሌላ በኩል "የሕግ ባለሙያዎች ለሰብአዊ መብቶች" የተሰኘው የሲቪል ማኅበረሰብ ድርጅት በቅርቡ ለሕገመንግሥት ጉዳዮች አጣሪ ጉባኤ በተለያዩ ክልሎች ውስጥ የሚኖሩ ጎዳጣን ብሔረሰቦችን ‹‹መብት የሚጥሱና ከፌዴራሉ ሕገመንግሥት ጋር የሚቃረኑ›› ናቸው ባላቸው የስምንት ክልሎች ሕገመንግሥቶች ውስጥ የሚገኙ አንቀጾች እንዲሻሩ ያቀረበውን ማመልከቻ በዚሁ የሕዝብ ጥቅምን ለማስከበር በሚደረግ ሙግት ስር በምሳሌነት ለማንሳት እንችላለን። እንደምሳሌ ይሆኑ ዘንድ እነዚህን አነሳሁ እንጂ የሕዝብ

[1] ፀሀፊው ከሀዋሳ ዩኒቨርሲቲ በህግ የመጀመሪያ ዲግሪ ያለው ሲሆን በአሁኑ ጊዜ በኢትዮጲያ ሰብአዊ መብቶች ካውንስል በሪፖርት አናሊስትነት እየሰራ ይገኛል። ፀሀፊውን ለማግኘት tibegar76@gmail.com ላይ መልእክት መላክ ይቻላል።

ጥቅምን ለማስከበር የተደረጉ ሌሎች ሙግቶችም ሊኖሩ እንደሚችሉ ታሳቢ አድርገን ወደ ነጥባችን እንመለስ።

ከላይ በአብነት የጠቀስናቸውን ጉዳዮች በፍሬ ነገር ያመጡትን ውጤት መገምገምና የሚፈለገውን ውጤት ማምጣት በሚችሉበት መንገድ ዙሪያ ተከታታይ ምርምሮችና ውይይቶች ማድረግ እንደሚገባ ሁሉ ከዚህም የሚበዙ ጉዳዮችን ወደፊት ማምጣት እንዴት እንደሚቻል ከወዲሁ ማሰብ እና በሙሉ አቅም መንቀሳቀስ አስፈላጊ ነው።

በተለይም አሁን ያለንበትን ውስብስብ የማኅበራዊ፣ ኢኮኖሚያዊ እና ፖለቲካዊ ቀውሶች ጊዜ ለማለፍ ከቤተሰብ አንስተን ማኅበረ-ፖለቲካው፣ ሲቪል ማኅበረሰቡ፣ የኢኮኖሚና ቢዝነስ ተዋናዩ ያሉበት አንድ ወገን መንግሥት ደግሞ በሌላ ወገን ሆነው ርስበርስ የሚኖራቸውን መስተጋብር የሚወስኑ ጉዳዮችን በመለየት ለችግሮቹ መፍትሔ ማበጀት ያስፈልጋል።

በቅርብ ጊዜ ከተከሰቱና የአንድ ሰሞን አጀንዳዎች ሆነው ካለፉ ጉዳዮች መካከል እንደ የስልክና ኢንተርኔት አገልግሎት በተደጋጋሚ የማቋረጥ ተግባርን፣ የመንግሥት ኃላፊዎች ተደጋጋሚ ግጭት አነሳሽና ሃሰተኛ ንግግሮችን እንዲሁም የዘፈቀደ ውሳኔዎችን የመሳሰሉትን ጉዳዮች የእያንዳንዱን ርምጃዎች ሕጋዊነት እና ተገቢነት ሙግት እንዲቀርብባቸው ማድረግ ይቻላል። ከላይ በአብነት አንስተን ያየናቸውና በቅርብ ጊዜ የቀረቡትን የሕዝብ ጥቅም ሙግቶች መሰረት አድርገን፤ ሥርዓቱን ይበልጥ ለማነቃቃት እና በተለይም የሰብአዊ መብቶች ጥሰቶች ፈጽመው ሳይቀጡ የመቅረት ልማድን (Impunity) ለመዋጋት ከሚኖረው ሚና አንጻር ለማየት እንሞክር።

በቅርብ ጊዜያት በሀገራችን በትግራይ የተጀመረው እና ወደ አጎራባች የአፋር እና አማራ ክልሎች የተስፋፋውን ጦርነት ጨምሮ በሌሎችም የሀገሪቱ ክልሎች በተከሰቱ የፀጥታ መደፍረሶች በጦር ወንጀል እና በሰብአዊነት ላይ የተፈጸመ ወንጀል ደረጃነት የሚገለጹ የጭካኔ ወንጀሎች፣ የሲቪል ሰዎች ግድያዎች፣ ከቤት ንብረት መፈናቀል እና ንብረት ውድመቶች፣ ማንነትን መሰረት ያደረጉ ጥቃቶች እና የአጸፋ ጥቃቶች፣ ሕገወጥና ከፍርድ ውጪ ግድያዎች፣ የዘፈቀደ እና ሕገወጥ እስሮች፣ ፖለቲከኞችን፣ ጋዜጠኞችን፣ የሚዲያ ባለሙያዎችን እና የሰብአዊ መብቶች ተሟጋቾችን ዒላማ ያደረጉ የእስር ዘመቻዎችን የመሳሰሉ ከፍተኛ የሰብአዊ መብቶች ጥሰቶች በተደጋጋሚና በአሳሳቢ መጠን ተፈፅመዋል። የአጥፊዎቹን ማንነት ለመለየት ሰፊ የሰብአዊ መብቶች ጥሰት እና የወንጀል ምርመራዎችን ማድረግ የሚጠይቅ መሆኑ እደተጠበቀ ሆኖ፤ በመንግሥት ማዕቀፍ ውስጥ በየደረጃው ያሉ የፀጥታ መዋቅሮች፣ የመንግሥት ኃላፊዎች፣ ታጣቂ ኃይሎች እና ሌሎች ማንነታቸው ያልታወቁ አካላት የሰብአዊ መብቶች ጥሰት ያስከተሉ ድርጊቶችን መፈጸማቸውን ወይም እንዳይፈጸሙ የሚያስችሉ ርምጃዎችን አለመውሰዳቸውን የሚያረጋግጡ የምርመራ ግኝቶች በተለያዩ ጊዜያት በዓለም አቀፍ እና ሀገር በቀል የሰብአዊ መብቶች ተሟጋች ድርጅቶች፣ በኢትዮጵያ ሰብአዊ መብቶች ኮሚሽን እና በፍትህ ሚንስቴር ይፋ ተደርገዋል።

እንደዚህ ዓይነቶቹ ዓይነተ-ብዙ የሰብአዊ መብቶች ጥሰቶች መከሰታቸው ሳያንስ፤ በሀገሪቱ በስፋት የተንሰራፋው ጥፋት ፈጽሞ ሳይቀጡ የመቅረት ልማድ እጅግ አሳሳቢ አደጋን አብሮ ይዟል። ለሰብአዊ መብቶች ጥሰቶች ቀዳሚ ባለግዴታ መንግሥት እንደመሆኑ፤ የመብት ጥሰቶችን መመርመር፣ አጥፊዎችን በሕግ ተጠያቂ ማድረግ እና ለተጎጂዎች ውጤታማ መፍትሔ የመስጠት ብሎም ፍትሕን የማረጋገጥ ግዴታ አለበት። ይኹንና፤ መንግሥት በተደጋጋሚ ጊዜ ይህንን ግዴታውን ሳይወጣ ሲቀር ታይቷል።

በአሁናዊ የኢትዮጵያ ሁኔታዎች የአጥፊዎችን ተጠያቂነት በተመለከተ ሁለት ዓይነት መሠረታዊ ችግሮች አሉ። በመጀመሪያ ደረጃ በአንድ በኩል ፖለቲካዊ ጥቅምና ኪሳራዎችን በማስላት አጥፊዎችን በዝምታ የማለፍ፣ አስተዳደራዊ የሚመስል ርምጃ ብቻ በመውሰድ የሕግ ተጠያቂነትን የሚያስከትሉ ርምጃዎችን አለመውሰድ፤ በሌላ በኩል ከመንግሥት የፀጥታና ደህንነት መዋቅሮች መላላት፣ አጥፊዎች ካላቸው

ማኅበራዊ መሰረትና ኢኮኖሚያዊ እንዲሁም ወታደራዊ አቅም ወዘተ የተነሳ በመንግሥት በኩል ተጠያቂነትን ለማስፈን የቁርጠኝነት እና/ወይም የአቅም ማነስ ይታያል። በሁለተኝነት ደግሞ በሀገራችን ያሉ የፍትሕ ተቋማት (በዋናነት ፖሊስ፣ ዐቃቤ ሕግ እና ፍርድ ቤቶች) ከመንግሥት አስፈጻሚ ቀጥተኛ እና ቀጥተኛ ያልሆኑ ጫናዎች ነጻ አለመሆናቸው እንዲሁም በገንዘብና ብቁ የሰው ኃይል ውስንነቶች ምክንያት አጥፊዎችን ወደ ሕግ በማቅረብ ተገቢውን ቅጣት የማሰጠት ደካማ ልማድን በመሰረታዊነት ማንሳት ይቻላል።

ማጠቃለያ እና ምክረ ሃሳብ

በመሆኑም፤ ዛሬ ላይ በስፋት የተንሰራፋውን ጥፋት ፈጽሞ ሳይቀጡ የመቅረት ልማድ በዘላቂነት ለማስወገድ የሕዝብ ጥቅም ሙግትን እንደአማራጭ በመጠቀም፤ መንግሥት ሰብአዊ መብቶችን በተመለከተ ያለበትን ቀዳማዊ ግዴታ እንዲወጣ በአጽንዖት ለመወትወት፣ ዜጎች ስለ ሰብአዊ መብቶች ንቁ ተሟጋች እንዲሆኑ ግንዛቤ ለማስፋት፣ አጥፊዎችን በሕግ ተጠያቂ በማድረግ ሌላ ጥፋት አሳቢዎችን ከድርጊታቸው ለማገድ እንዲሁም ለተጎጂዎች ውጤታማ መፍትሔ እንዲያገኙ ለማድረግ እጅግ ይጠቅማል።

እንዲህ ዓይነት ጉዳዮችን አንስቶ ሙግቱን ለማከናወን በግልም ሆነ በጥቂት ግለሰቦች ስብስብ ለማድረግ ቢቻልም፤ ጉዳዩን ከመለየት፣ ከማደራጀትና ከመተንተን አንስቶ እስከ ሙግቱን ማካሄድ፣ ለውጤት ማድረስና ሰፊ የውትወታ ሥራዎችን ማከናወን ድረስ ሂደቱ ከሚጠይቃቸው ሰፊና ውስብስብ ተግባራት፣ ክህሎቶች፣ አስፈላጊ የሰው እና የገንዘብ አቅም አንጻር በተቋም መዋቅር ውስጥ ቢከናወኑ ይበልጥ ውጤታማ ይሆናሉ። ከዚህ አንጻር በቅርብም ሆነ ቀደም ባሉት ጊዜያት የተቋቋሙት የሲቪል ማኅበረሰብ ድርጅቶች ሁነኛ አማራጮች ናቸው።

በእርግጥ ቀደም ባለው ጊዜ በነበሩ አፋኝ ሕጎችና ፖሊሲዎች፣ በውስጣዊ አሠራር ጉድለቶች፣ በትብብር የመሥራት ደካማ ልማዶች እና በመሳሰሉት ምክንያቶች ብዙዎቹ የሲቪል ማኅበረሰብ ድርጅቶች ብቁ ቁመና አላቸው ለማለት አያስደፍርም። እነዚህ ተቋማት ለሰብአዊ መብቶች መጠበቅ፣ ለሕግ የበላይነት መከበር እና ለዴሞክራሲያዊ ሥርዓት መጎልበት የሚኖራቸውን ትልቅ አስተዋጽዖ ከግምት በማስገባት ያሉባቸውን ዘርፈ ብዙ ውስጣዊ እና ውጪያዊ ችግሮች ለማስወገድ በረዥም ጊዜ ዕቅድ፣ ስልታዊ የተቋማት ግንባታ ሂደቶችን በመከተል ወደሚፈለገው የብቃት ደረጃ እንዲያድጉ የማድረጉ አስፈላጊነት እንዳለ ሆኖ፤ ላነሳነው ወቅታዊና አንገብጋቢ ችግር ግን ምላሽ ለመስጠት የሚችሉበትን መንገድ መጠቆም ይገባል።

በኢትዮጵያ በሰብአዊ መብቶችና ዴሞክራሲያዊ ሥርዓት ግንባታ ዙሪያ የሚሠሩ ሀገር በቀል የሲቪል ማኅበረሰብ ድርጅቶች በሰብአዊ መብቶች ክትትልና ምርመራ፣ ሰነድ በማደራጀት እና በዘገባ፣ የክስ አቤቱታዎችን በማደራጀት፣ በውትወታ... ወዘተ ዘርፎች የየራሳቸው በቂ ልምድና እውቀት አዳብረዋል። በመሆኑም፤ እነዚህን የካበቱ ልምዶችና እውቀቶች የሚያቀናጅ እና ሂደቱን የሚያስተባብር የጋራ ጥምረት ማቋቋም ጥሩ አማራጭ ሊሆን ይችላል ብዬ አምናለሁ። ይህ ጥምረት እንደየድርጅቶቹ አቅምና የካበተ የሥራ ልምድ ሂደቱን የማስተባበር እና የማቀናጀት ኃላፊነት እንዲኖረው ለማድረግ እና በሕዝብ ጥቅም ሙግት አማካይነት ጥፋት ፈጽሞ የመቅረት ልማድን ለማስቀረት ጥረት ማድረግ ይቻላል።

Implementation of the Right To Access To Justice For Persons With Disability In Ethiopia Vis-A-Vis The United Nations Convention On The Rights Of Persons With Disability

Lemlem Dejenu*

Abstract

Persons with disability (PWDs) are vulnerable groups of people most of the time marginalized due to poor health, education, economy, environmental hindrance, limited employment prospect, and stereotypical societal attitude. These challenges added to their impairment exacerbate their condition and hinders their equal participation within society. Therefore, the right to access to justice is very crucial for persons with disabilities to fight any discrimination against their right. This article examines the implementation of the right to access to justice vis-à-vis Ethiopia's duty as a ratifying member of the United Nations Convention on the Rights of Persons with disability.

Keywords: *Persons with Disability, Right to Access to Justice, United Nations Convention on the right of Persons with Disabilities.*

Introduction

Based on recent data approximately one billion people or 15 percent of the global population experience some form of disability. In Ethiopia, the right of access to justice is a constitutionally guaranteed right. The FDRE Constitution ensures the exercise and enjoyment of the right of access to justice in general stipulating that every person has a right to bring justiciable matter before a court or competent tribunal.[1] In addition, several international and regional laws provide for the right to access to justice directly or indirectly[2] and the CRPD (Convention on the Right of Persons with Disability) is the first international human rights instrument that explicitly and specifically provides for the right to access to justice for disabled persons.[3] Ethiopia is one of the state parties which signed and ratified CRPD.[4] The signed and ratified Convention is the integral part of the law of the land and has

* Lemlem Dejenu, LL.B (Mizan-Tepi Unversity) ,LL.M in Human Right and Criminal law (Jimma University),Lecturer in Law, Salale University School of Law. The author can be reached at lemlemdejenu@gmail.com

[1] Constitution of the Federal Democratic republic of Ethiopia, 8th day of December, 1994, federal Negarit gazette, 'extraordinary issue', Proclamation number 1/1995, article 37 (1) [here in under –the FDRE Constitution Article 37.

[2] Art 14 of ICCPR, Art 12 and 40 of CRC; Article 5(a) of CERD Article 15(2) of CEDAW and Article 13 of the CRPD Art 7, 8, and 10 of the UDHR and Art 14(1) and 26 of ICCPR.

[3] United, Nation Convention on the Right of Persons with Disability, 2006, Art 13.

[4] Convention on the Right of Persons with Disability Ratification Proclamation No. 676/2010

a binding effect on Ethiopia.[5] This article aims at investigating whether or not the right to access to justice for persons with disability implemented or not in line with signed and ratified CRPD and deals with the right which indirectly affect the implementation of the right to access to justice. To this end, laws and practices are examined by using qualitative research tools.

The Right to Access to Justice under International law

There are international human rights instruments[6], regional and national legislation which protect the right of access to justice. CRPD is the first international human rights instrument that explicitly provides for the right to access to justice of persons with disabilities. It calls for the elimination of obstacles and barriers faced by persons with disabilities in accessing justice on an equal basis with others and innovate on previous standards developed under international human rights law.[7] The Convention not only clarifies what access to justice means for persons with disabilities but also upholds equal and effective participation at all stages of and in every role within the justice system as a core element of the right to access to justice. The Convention thereby expands this right beyond; the notions of a fair trial effective remedies which have been the principal features put forward by human rights instruments and their monitoring bodies. CRPD also imposes general obligations of States Parties to CRPD: first, to adopt legislative, administrative, and other measures to implement the Convention, and second, to abolish or amend existing laws /regulations, customs, and practices that discriminate against persons with disabilities.[8] Article 4 further requires States Parties to adopt an inclusive approach to protect and promote the rights of persons with disabilities in all policies and programs. Art 13 of the CRPD specifically imposes a duty on state to provide effective access to justice for PWDs and obligation to give training for persons working in the administration of justice on how to accommodate PWDs when they come to their office to seek justice. Ethiopia recognized the right to access to justice for PWDs by signing and

[5] Art 9(4) of FDRE supra note 1

[6] International Covenant on Civil and Political Rights, 1966, adopted by the UN General Assembly, Resolution 2200 A (XXI), , New York, 16 December 1966, Article 14, [here in after- ICCPR-], Universal Declaration of Human Rights, 1948, reprinted in Brownlie, I., and Goodwin-Gill, G., (eds.), Basic documents on International Human Rights, 5th ed., Oxford University Press, Oxford, New York, 2006, Pp. 24-28, [here in after- UDHR-], Charter of the United Nations, 1945, at WWW http://www.un.org/aboutun/charter/ (accessed Feb 5, 2020.

[7] Preamble of UNCRPD supra note 3

[8] Ibid

ratifying the CRPD.[9] An international treaty ratified by Ethiopia is considered to be an integral part of the law of the land by virtue of Art 9(4) of FDRE Constitution and the fundamental human rights provisions enshrined under chapter three of FDRE Constitution should be also interpreted in line with ratified international human rights treaties.[10] Since, Ethiopia is a state party to the CRPD, the rights of persons with disabilities should be interpreted in line with this convention.

Challenges and barriers faced by PWDs in the pursuit of their right to access to justice

Access to justice is a more justiciable human right that doesn't require the state's economic status and is not subjected to the doctrine of progressive realization. However, the FDRE Constitution provides that "the state, shall within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian".[11] Article 41 (5) of the FDRE Constitution is the only sub-article which is dedicated to the concern of disability right. It indicates the state's duty to progressively realizing rather than requiring immediate and full-fledged enjoyment of the rights. The existence of progressive realizations based on the country available resource is a challenge for PWDs to claim most of the right including access to justice as of a right. States are required to ensure that persons who lack capacity are able to participate effectively in proceedings.[12] However, civil procedure code stipulates only persons capable under the law can become a party to a suit, both as a plaintiff as well as defendants. The Civil Procedure Code restricts the capacity of PWD legal standing right under article 34 which states that; A person under disability may sue or be sued through his Legal representative, where a person under disability is not represented by his legal representative; the proceeding shall have stayed until a legal representative is appointed in accordance with the relevant provisions of the Civil Code.[13] The above provisions lack clarity as it generally refers to persons under disability without giving definitions for the

[9] Convention on the Right of Persons with Disability Ratification Proclamation No. 676/2010.

[10] Art 13(2) of FDRE Constitution, supra note 1,International Covenant on Civil and Political Rights, 1966, adopted by the UN General Assembly, Resolution 2200 A (XXI), , New York, 16 December 1966, Article 14, [here in after- ICCPR-], Universal Declaration of Human Rights, 1948, reprinted in Brownlie, I., and Goodwin-Gill, G., (eds.), Basic documents on International Human Rights, 5th ed., Oxford University Press, Oxford, New York, 2006, Pp. 24-28, [here in after- UDHR-], Charter of the United Nations, 1945, at WWW http://www.un.org/aboutun/charter/ (accessed Feb 5, 2022)

[11] FDRE Constitution Art 41(5) supra note 1.

[12] ECHR, Zehentner v. Austria, No. 20082/02, 16 July 2009, pp, 65 and 78.

[13] Ethiopian Civil Procedure Code of 1960, Art. 33.

category of persons with different types of disability. It seems to refer to PWDs and restricting persons with all types of disabilities from exercising their right to access to justice by themselves without representations through their guardians or tutors. Article 340 of the civil code is one among provisions which negatively affect PWDs rights. It stipulated that "infirm, deaf-mute, blind persons and other persons who as a consequence of permanent infirmity are not capable to take care of themselves or to administer their property may invoke in their favour of the law which affords protection by imposing legal restrictions by court.[14] As it is clear from this provision, it negatively affects the right of PWDs in multi directions including; use of the terminologies.[15] The terminology used to express PWDs under Amharic version of this provisions are, ድዉሮች፣ ዱዳ፣ ደንቆሮ፣ ዕዉር፣ ኣብዱ፣ የአዕምሮ ጎዶሎ which appear insulting to PWDs and this causes grave psychological harm to PWDs.[16] Unlike CRPD there is gap on accessibility due to absence of compressive plan of action and standards on accessibility, including accessibility of transportation, building, environment, communication and information.[17] Some individuals with disabilities are not comfortable with the normal mode of communication due to the effect of their disabilities. In this aspect, persons with hearing impairment are the most disadvantaged group. There is no law or policy that clearly requires justice sector professionals to make sign language interpreters available for communications with persons with hearing impairment. PWDs are yet have access to legal information transcribed in their preferred communication modalities as most of the ratified human rights treaties and domestic laws of Ethiopia are not translated in Braille, in electronic copies.

Conclusion and Recommendation

The right to access to justice is a fundamental human right in itself and a precondition for the realization of other human rights by fighting any discrimination which affect PWDs. It is a very crucial right and lack of implementation of this right is a violation of human right in itself and seriously affects other human rights. So, without the existence of the right to access to justice, other rights of PWDs cannot be realized. In Ethiopia, just like any other least

[14] Ibid, Art. 351(3).

[15] Ibid, Art 351.

[16] Interview made with Mr Darresse Tadese, physically impaired , Communication officer, in Ethiopian Federation on persons with disabilities on (12 ,Jan, 2022)

[17] Committee on the right to persons with disability concluding observation on the initial report of Ethiopia on 29, August 2016.

developing country,[18] the effective implementation of the right to access to justice for persons with disabilities is questionable. There are multifaceted challenges that affect the realization of the right of access to justice for PWDs. Therefore, national laws and the practical implementation on the right to access to justice should be harmonized in line with CRPD to ensure the implementation of the right to access justice for PWDs in Ethiopia.

[18] Interview made with Mr Darresse Tadese supra note 17

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