

Research Article

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The Ambiguities of Legislative Power under the Ethiopian Law: Emphasis to Forest Proclamation

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Abstract

Keywords

Ambiguity,
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Constitution

This study mainly deals with the Ambiguities of Legislative Power under the Ethiopian Law: Emphasis to Forest Laws (Proclamation). In conducting this research, researchers have adopted both Doctrinal and Non-Doctrinal Legal Research. Hence, Primary and Secondary Sources of Data's were used in this study. FDRE Constitution is established Federal and Democratic Republic recognizing autonomous regions. However, the area of this study is not clearly delineated under Ethiopia laws including under the Federal Constitutions. The practice, however, indicates that both authorities are legislating laws in respect to Forest/Natural resources. Hence, the law enacted has been found ambiguous and/or inconsistent with each other. Besides, Regional States enactment overlap with legislative competence of Federal government and the vice versa is also true. So the researchers found that, this kind of move is against the FDRE Constitution. Therefore, based on the above findings, the study recommends that, the Federal government and Regional states should refrain from enacting the ambiguous laws which contradict to each other. Researchers were so recommend that, in areas requiring administration of Forest/ Natural resources interested parties should have to resort to House of Federation to interpret the law. Finally, recommends that, in order to mitigate the ambiguities and inconsistency of laws, both tiers of the government should establish Intergovernmental relations so as to address the pragmatic problems through making formal dialogue.

1. Introduction

1.1. Background

Ethiopia has become a federal polity since 1995.¹ But, before, Ethiopia has been ancient and *Defacto* federal country from 1992-1995.² Ethiopia as a part of federal arrangement/set up concerned look at the preamble and Article 1 and 8 including Article 39 of the FDRE constitution is currently Federal and Democratic Republic, recognizing the Nations, Nationalities and peoples of Ethiopia to self-determination.³ Pursuant to article 39(3) of the FDRE constitution, self-determination refers the rights of Nations Nationalities and peoples of Ethiopia, among others to have full measure of self-government, which includes establishing institution of government in the territory they inhabit and to equitable representation in State and Federal governments.⁴

Currently, the federal government and regional State Councils are enacting laws as regards to development, utilization and conservation of natural resources including laws regulating [the] developments and conservation of forest resources in which these laws are inconsistent⁵, and ambiguous to each other. In this case an ambiguous word refers, “a word in the law which may have more than one meanings and it is not clear to which one of the meanings it refers. In

trying to give solution for the legal ambiguity the canons of interpretation suggest searching the legislator’s intention sought to arrive at which of the meanings is intended by the legislation.”⁶ Even, since laws enacted at federal and regional level councils as regards to forest development and utilization seems contrary to each other’s competence; which seems the main cause, mainly is the word “administration” which is more or less related to the competence of regional states thereof.

The main purpose of this study is to seek examination of the Ambiguities including Contradictions and Inconsistencies of legislative competences under the Ethiopian Laws, in particular emphasis to Forest Proclamations.

2. Literature review

This research has used various materials that have relevance to the problems underlying this research. Domestically and Internationally various materials are written in relation to federalism specially relating to division of power under federal-set up. But none of these goes to the same with current research since the current vary in terms of time, space and scope of the research underlying the problem.

In 2013, John Law wrote a book entitled how we can define Federalism. According to him, while the study of federalism has in many respects reached an advanced stage today, there nevertheless remains a troubling absence of agreement as to the precise meaning of the concept. It is subject to multiple definitions, which overlap with one another in various ways and sometimes conflict. This leads to material negative consequences for both academic research and public policy, which can no longer be overlooked.⁷ According to him Federalism is defined as, a political organization in which the activities of government are divided between

¹ Tsegaye Ararsa. (2009). “Sub-National Constitutions in Ethiopia, Towards Entrenching Constitutionalism at state level, Mizan Law Review” Vol.3 No.1 p.42.

² Asefa Fisseha. (2007). “CONSTITUTIONAL ADJUDICATION IN ETHIPIA: EXPLORING THE EXPERIENCE OF THE HOUSE OF FEDERATION” Mizan Law Review Vol.1 No.1

³ The Constitution of Federal Democratic Republic of Ethiopia Proclamation No1/1995, 1st year No 1, (1995).

⁴ Ibid, see also, art.39(2) of the FDRE Constitution: self determination is further includes, every Nation, Nationality, and peoples in Ethiopia, has the right to speak, to write, and to develop its own languages; to develop and promote its culture, and to preserve its history.

⁵ Mulugeta Mengist, on the power of the federal government to develop and enforce criminal laws: Part 2 <https://www.abysinnialaw.com/blog-posts/item/1558-on-the-power-of-the-federal-government-to-develop-and-enforce-criminal-laws-part-2>: accessed on 20 March 2019

⁶ Tesfaye Abate. (2009). Introduction to Law and The Ethiopian Legal System Teaching Material, Addis Ababa P.156

⁷ John Law. (2013). How we can define Federalism? Perspective on Federalism. Vol. 5, issue 3, p.94

regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions.⁸

The writer also further defines ‘...a federation may be conveniently defined as a constitutional system which instances a division between central and regional governments and where special or entrenched representation is accorded to the regions in the decision-making procedures of the central government’.⁹ The definitions provided under the first literature have a great of help in using in this paper, but not similar with this paper since the current paper deals the theory and pragmatics underlying the inconsistencies (ambiguities) in legislative enactment under current Ethiopia’s federal set up.

Elton E. Richer wrote on issues concerning “Exclusive and Concurrent power in the Federal Constitution.”¹⁰ The research paid great emphasis to the legislative power division between federal government and states in US though the researcher has used the script as tangential matter specially in developing the theories. So the researcher would believe that this paper written by Elton E. Richer would have great importance to use as valuable data for this research.

3. Research Methodology

This study adopted Doctrinal and Non-doctrinal legal research design. The researchers have also employed Doctrinal Method of data collections, were in essence appropriate to collect legal rules, treaty practice, Jurisprudences, Cassation Bench Decisions rendered on similar legal issues requiring interpretation. In this study also, as the tool for Data Collection method was an Interviews; this has been administered to key informants. This method is the vital method of data collection in socio-legal and many legal researches. Thus, the researchers have been adopted this data collection tool so as to enrich the information needed for this study. Accordingly, among 28 members of House of Peoples Representatives, 5 (five) Committee members of Legal, Justice and Democracy affairs were purposively selected by the researchers. With these in depth interview has made. Because, it was the committee who could make any legislations at federal level in Ethiopia and the Committee is relevant institution as to data from them. The language media of the interview to these key informants was Amharic Language-as it was constitutionally granted to be federal language in Ethiopia. And later with very due care, the researchers have translated to English-language.

4. Research Result and Discussions

According to the constitution of FDRE¹¹, the federal government and regional states have shared powers and functions over natural resources. The federal government is entrusted with the power to develop laws for the utilization of land and other natural resources; whereas regional states are mandated to administer such resources in accordance with the federal law.¹² To state clearly, the federal government is expressly given the power to enact laws as regard to natural resources. This is true in the case

⁸ *Ibid*

⁹ *Ibid*

¹⁰ https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4416&context=ndlr_exclusive and concurrent power in the federal constitutions, accessed on 19 marches 2019.

¹¹ FDRE-refers Federal Democratic Republic of Ethiopia.

¹² <https://www.abysinnialaw.com/blog-posts/item/1558-on-the-power-of-the-federal-government-to-develop-and-enforce-criminal-laws-part-2> Accessed on 07/10/2019.

of forest resources, whereas regional states are entrusted to administer natural resources including forest resources. Accordingly, various laws (proclamations) were enacted by federal law makers.

The preamble of the proclamation No 542/2007 states that the development of national economy and the satisfaction of the society's needs are dependent on development, conservation and sustainable utilization of forest.¹³ Hence, the move is to put legal frame work so as to administer and boost the sustainable utilization of the country's forest resources through ensuring the participation and benefit sharing by the concerned communities as well as by harmonizing forest policies and programs with those of other economic sectors, particularly with agriculture and rural development policy.¹⁴

Moreover, Ethiopia has made various legislative endeavors to boost forest Conservation, Development including its Utilization since enactment of proclamation No 94/1994 [during Transitional Period].¹⁵ This proclamation has been however, amended by proclamation No 542/2007 [on Conservation, Development and Utilization of forests].¹⁶ Proclamation No 542/2007 is also, amended by very recent proclamation No 1065/2018 [on Forest Development, Conservation and Utilization of forest resources in Ethiopia].¹⁷

Besides of the legislative power entrusted to the federal legislators, there is so much exceed of power by taking away of the administration power of regional states. While, the federal legislative

body has given legislative power, regional state has constitutionally entrusted to administer natural resources including forest resources. But, various provisions of laws have been enacted which takeover the power of the administration power of regional states. This seems unclear as regards to legislative practice; since the legislative-administration practice is full of inconsistency and ambiguity.

4.1. The Development of upward Delegation of administration of the Forest Resources

Pursuant Article 16 of the federal forest proclamation, it provides power and duties of the executive organs specifically by making references to powers and duties of the ministry.¹⁸ Proclamation No.1065/2018 states, notwithstanding the power of each regional state to administer its forest resource in accordance with this Proclamation, the Federal Government may take over and administer, in cases where:

- a) *The forest could not be properly developed and conserved jointly by neighboring regional states;*
- b) *It becomes necessary to administer the forest or forest land by the federal government because of its national, regional and international significance.*¹⁹

These provisions of forest proclamation, seems taking away the ownership of the forest or forest land from the regional states. Besides, this power of delegation is also unconstitutional feature of interferences by federal legislative body. Because constitutionally, to administer land and other natural resources including forest in accordance with federal laws is entrusted to regional states.²⁰ It is ambiguous whether the federal government or regional state is competent to administer vs legal enactment. Nevertheless, the competence for forest resources administration, comprising development, conservation and utilization must

¹³ *The Preamble of Forest Development, Conservation And Utilization Proclamation No. 542/2007 Negarit Gazette* 13th Year No 56 (2007)

¹⁴ *Ibid*

¹⁵ *The Forest Conservation, development and Utilization Proclamation No 94/1994, (1994)*

¹⁶ <https://www.abysinnialaw.com/blog-posts/item/1558-on-the-power-of-the-federal-government-to-develop-and-enforce-criminal-laws-part-2> Accessed on 07/10/2019

¹⁷ *Forest Development, Conservation and Utilization Proclamation No 1065/2018 24th Year No 21, (2018)*

¹⁸ *See Ibid*

¹⁹ *See Ibid*

²⁰ *CFDRE art.52(2d)*

have been reserved for regional states; because, the power over these resources is concerned with administration and utilization; which is inherently under the administrative jurisdiction of the regional state thereof.

The FDRE Constitution, specifically article 55(2a) provided legislative power but not other (administration) competence is expressly or impliedly given on utilization of land and other Natural resources including forest resources. Nevertheless, rivers and lakes crossing the boundaries of the national jurisdiction and/or lands and other natural resources linking two or more states are under the administrative competence of regions.²¹ Cognizant of this, can the upward delegation was valid and Constitutional? The answer is definitely no. Even naturally upward delegation is not allowed in Ethiopian Constitution and upward power delegation is against the intention of the FDRE Constitution.²²

On the issues of competence up-ward delegation: The FDRE, Constitutional (d)rafting Commission initially drafted Article 50(9) of the constitution as allowing both tiers to delegate their respective constitutional power to one another. Nonetheless, the Constitutional Assembly rejected portion of the proposal which authorizes regional governments to delegate part of their power to the federal government. The proposal of the constitutional drafting commission was referred to federal and regional power division committee of the constitutional assembly. *Ato Hassen Ali*, the chairperson of the committee, reported the findings and recommendations of the committee to the general constitutional assembly in the following phrases.²³

As regard to provision of article 50(9)... The committee is of the opinion that it is appropriate for the federal government to delegate some of its

²¹ CFRE art. 55(2a)

²² C FDRE art. 50(9)

²³ Keleme Work Mideska. (2018). *the Constitutional Status of Up-Ward Power Delegation in Ethiopia: the Case of Large Scale Agricultural Land Administration Power*. LLM thesis, Addis Ababa University, School of Law.

*powers and functions. However, letting the regional states delegate their power and function to the federal government will not only hinder their capacity of making decisions independently but also has psychological impact and this makes it inappropriate for regional states. They have also stated that Regional states are exercising the mandate entrusted to them by the public, delegation of this mandate is considered incongruous and the federal government has the responsibility of providing the necessary support for strengthening regional states.*²⁴

As per these minutes of the Constitution drafting commission, therefore, making the law which possibly delegates the power of regions, up-ward to federal government is not the power of the House of Peoples representatives; rather it should have been the mandate of the constitution. The proposal to make up-ward delegation was failed during making of the Constitution, in Ethiopia. Hence, the making of forest development, conservation and utilization Proclamation No 1065/2018 specifically an area dealing with administrative delegation is against the Constitution because it would clearly go against the FDRE constitution. Pursuant Article 50(9) of it allows only down ward delegation stating “.... the Federal Government may, when necessary, delegate to the States powers and functions granted to it by Article 51 of this Constitution”²⁵ and for the powers and functions of the federal government shall enact laws for the utilization and conservation of forest, land and other natural resources, including historical sites and objects. Both federal and regional states have their own structure demarcating executive, legislative and judiciary branch.²⁶ Thus, the federal government can delegate these powers down ward. However, as per article 52(2d) of the FDRE Constitution since the inherent power [t]o administer land and other natural resources in accordance with federal laws²⁷ is vested to federations/regional States competence, vesting

²⁴ *Ibid* p.49-50

²⁵ CFRE art. 51(5)

²⁶ CFRE art. 50(2)

²⁷ CFRE art. 52(2d)

administration power to federal legislative organ is actual and grossly an intrusive so as to make obsolete the federal system. Therefore, it is very important to address the provision of the proclamation specifically article 16 of the proclamation dealing particularly on areas of delegation of administrative function of regional states going through the process of amendment.

4.2. Inconsistencies and ambiguities in the laws of the forest resources: specific to provisions of Criminal punishment.

The forest resource laws especially proclamation No 1065/2018 and Oromia Regional State forest resources proclamation No 72/2003 are inconsistent to each other. Before discussing on area were inconsistency lies, one shall wonder from the very inception whether regional state can validly hold the making of the proclamations and/or other laws based on the inherent constitutional competence.

The FDRE Constitution expressly proves as to the existence of competence of making of laws over ...natural resources is under the Federal legislative organ, but entrusts the administration to regional state executive councils as so far stated. In other talk since the discussion related to the concept of “inconsistencies in the laws of the forest resources, specific to provisions of punishment as it is expressly envisaged in laws that means, between FDRE forest proclamation and Oromia regional state forest proclamation. According to *Mulugeta Mengist* ...criminal law as a form of law cannot be said to be belong to the federal or regional level of government. He cautioned against the literal and independent reading of article 55(5) of the constitution which says that the House of Peoples’ Representatives shall enact a criminal code and Regional States shall enact criminal law on matters not covered by the federal criminal legislation.²⁸ Besides, Oromia Supreme Court Cassation Bench stated, “pursuant article 51(5) and article 55(2a) of the FDRE Constitution, the competence to enact the law on Utilization, and Conservation of land and natural

resources including the forest law is the competence of the *HoPR*²⁹, however, regional state law makers may make laws provided that, the laws enacted by federal legislator is insufficient to cover the area so as to be able to govern the utilization and conservation of resources.³⁰

But the problem arises when the law which actually enacted by federal and regional states becomes inconsistent and vague to each other. What legal actions may exist to address the problems of inconsistency? To be pragmatic, pursuant article 52 (2d) of the FDRE Constitution, it states, regional states can administer land and other natural resources “*in accordance with Federal laws.*” However, as opposed to the constitutional phraseology which states “in accordance with federal laws” the law (*proclamation No72/2003*) specifically, the provision dealing on the administration of forest crime is inconsistent to FDRE forest development, conservation and utilization proclamation No 1065/2018. Besides, before this proclamation was issued, proclamation No 72/2003 was debatable since it is not in accordance with proclamation of the then, proclamation No 542/2007, which was deemed to be enacted on the basis of federal Constitution. Specially, the penalty provisions issued under these proclamations are incongruent: the penalty provided under proclamation No 72/2003 is rigorous compared to penalty issued under the proclamation No 1065/2018. For example, pursuant article 15(4) of Oromia forest proclamation No 72/2003 prescribes punishment “who erased, falsified, and destroyed the forest boundary mark and shall be punishable with 5 years to 15 years.”³¹

As opposed to this prescribed punishment, the FDRE Forest proclamation No 1065/2018 Article 16(2) provides, any person who destroys, damages

²⁹*Girma Wubayehu and etal, Vs Oromia Attorney General (Oromia Supreme Courts Cassation Bench, 2012, Criminal Case No 303547, Unpublished).*

³⁰ *Ibid*

³¹ *Oromia Forest Proclamation No 72/2003*

²⁸ *See Mulugeta Mengist, Supra note 4 above at, p 2-3.*

or falsify forest boundary marks shall be punishable with rigorous imprisonment not less than one year and not exceeding three years including fine from Birr 10,000 to 30,000.³²

This provisional comparison shows specially the former proclamation issues rigorous punishment for (5-15 years imprisonment) whereas the later provides lenient prescription for imprisonment (1-3 years imprisonment) against individuals in case found guilty of committed an acts provided illegal acts. Besides, difference may be also relates to the second proclamation , in addition to imprisonment, which issues fine as mode of punishment, as opposed to only imprisonment prescribed by the first proclamation. Constitutionally speaking which one is valid to apply?

Abebe Godebo, believes to actual existence of inconsistency envisaged in between laws enacted by federal and regional laws. To minimize the cost of inconsistency works are started to digitalize and upload the laws enacted since 1993 and make accessible for all interested researcher to conduct a research upon these inconsistencies between regions and federal laws. Since 1993 there are around 11,601 laws (proclamation) which have been enacted.³³ It needs research, and accordingly, researchers can access it easily. Therefore, through conducting a research they can suggest solutions and help areas of the inconsistency and/or vagueness to be amended.³⁴

The project for digitalizing is deemed to be inclusive of land and natural resources; forest resources proclamation No 1065/2018 and proclamation 72/2003, which is federal forest and Oromia forest proclamation respectively. Therefore, according to the data, these proclamations inconsistency and/or ambiguities will be amended thereof through the use of the research product.

³² See Proclamation No 1065/2018 article 16/2

³³ Interview with, Abebe Godebo, House of Peoples Representatives, standing Committee for Legal, Justice, and Democracy Affairs, 2011 E.C

³⁴ Ibid

The other Mechanism of resolving the risk of inconsistency taken by the government as stated by *Abebe Godebo*, is that, under the official chairmanship of the Federal Attorney General, regional states Attorney General would have a forum of discussion at least twice annually in order to evaluate issues of legal ambiguities and inconsistencies including the challenges in execution between federal and regional law including natural resources law³⁵ Still though Attorney Generals' Council established among federal and regional States, it is never been legislative body, but executive one.

This scheme may have a great of help had the discussion forum is held prior to making the law by the respective legislative bodies so as to minimize the risk of inconsistencies and ambiguities. There is what we called Forum of Inter Governmental Relations (IGR).³⁶ Such scheme put in place, appropriate institutions and mechanisms of coordination when need arises. This mechanism is an informal and/or formal forum of inter-governmental relations (IGR). IGR forums allow frequent interactions to take place between the Federal and State governments. They are of little value in areas where a federal constitution assigns exclusive powers to either level of government,³⁷ but on issues of shared legislative acts.

Although the system of IGR³⁸ in a parliamentary system is predominantly an executive task, elected bodies of both levels of governments also

³⁵ Ibid. see also Federal Attorney General Establishment Proclamation No 943/2016, Federal Negarit Gazette, pursuant art.20 establishes Attorney Generals' Joint Council Pursuant art. 20/1

The Attorney Generals Joint Council (hereinafter called the "Joint Council"), whereby the senior management of the Federal Attorney Generals and regional public prosecution institutions work in collaboration and jointly, is hereby established in accordance with this Proclamation.

2/ The Joint Council shall issue joint plan on common and similar matters of the justice sector to make their performance effective, efficient and uniform.

³⁶ Asefa Fiseha and ZemelakAyele. (2016). *Concurrent Powers in the Ethiopian Federal System*, Vol.8.(ed, Nico Steytler,) p.257.

³⁷ Ibid

³⁸ IGR-abbreviations represent Inter-Governmental Relations.

interact to facilitate their respective roles in the law-making process in areas of concurrent jurisdiction. This is an important forum for the legislative organs of both governments to consult, communicate and interact with each other on framework and concurrent laws before the promulgation of such laws; otherwise both legislative bodies may enact conflicting legislation on the same concurrent functions, leading to inconsistencies and legal ambiguities.³⁹

Asefa Fiseha et al....argued that “legislative IGR is particularly important in Ethiopia since the *HoF*, second chamber, has no legislative and policy-making role at federal level. In such cases, the only way to facilitate effective interactions among Federal and State Legislative organs with respect to concurrent functions is through forums of legislative IGR.”⁴⁰As *Abebe Godebo* has raised, the working procedure of Intergovernmental Relation is made in between and among regional state Attorney general councils, headed by Federal office Attorney General. This idea has got attention in current federal Attorney general establishment proclamation No 943/2016.⁴¹

It is better to understand that, the issue of concurrent jurisdiction is always inevitable to contradict; become subject of inconsistency, and vagueness. However, besides of the scheme of intergovernmental forums/ relations, making other schemes adoptive to the circumstances is necessary. Hence, it is better if the forum is made by each representative, which means regional states councils and federal law makers to have twice a year and if possible beyond under the umbrella of the office of Federal attorney generals’. This would have two merits. First, it helps to evaluate the inconsistencies of laws in each regional States versus federal government in the light of the law currently in force. Secondly, it would have a great of help to have a discussion on areas of potentially concurrent legislation so that laws going to be enacted shall not become

contradicting, minimize in inconsistent and ambiguities. In this way, any legislative problems specifically, relating to inconsistencies, contradictions and vagueness of forest resources in between regional and federal legislations can be addressed.

4.3. Besides of the above case, can we address legal Inconsistencies and ambiguities through Cassation Bench Decision?

The issues of the contradictions and inconsistencies of the laws can be practically resolved by interpretation under the judicial system called “*Cassation Bench*.” The FDRE Constitution under article 80(3) has adopted Cassation bench and provides:

- A. *The Federal Supreme Court has a power of cassation over any final court decision containing a basic error of law.*
- B. *The State Supreme Court has power of cassation over any final court decision on State matters which contains a basic error of law.*⁴²

Accordingly, interpretation of a law a by the Federal Supreme Court rendered by the cassation division with not less than five judges shall be binding on federal as well as regional council laws.⁴³ Besides, decisions rendered by regional states Supreme Court Cassation Bench would have binding forces on the cases finally disposed on the basic error of the laws. The debate and controversy between federal forest and Oromia regional state forest proclamation has been prolonged since its enactment. It’s contemporaneously that, the Oromia Supreme Court Cassation Bench has given binding interpretation regarding concurrent forest proclamation specially giving emphasis to criminal provisions. In the case between *Girma Wubayehu and etal*, Vs Oromia Attorney General, the court has Interpreted that:

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Federal Attorney General establishment Proclamation No 943/2016 22nd year No 62, (2016)

⁴² CFDRE art. 80(3)

⁴³ Federal Court Proclamation re-amendment proclamation no 454/2005, 11th year No 42 Addis Ababa, 4th June 2005

Under the FDRE Constitution the Competence to enact criminal law has been expressly entrusted to the Federal government; based on this power, HoPR has enacted forest proclamation containing provisions of Criminal Matters. Cognizant of this, the competence of Regional State councils/legislators shall be limited to an area where federal legislative body has not expressly legislated and perhaps not covered through its legislation. The issue of the crimes committed against forest resources that now is handled by this court of law has been the act that expressly inculcated in the Federal forest resources legislation. Nevertheless, Regional proclamations can't again make the provisions of law relating to crimes once already covered by federal law makers.⁴⁴

Therefore, on the issue of the forest related crimes, the Oromia Supreme court cassation bench decided that, it is not, Oromia Regional States forest proclamation No 72/2007, rather Federal forest proclamation No1065/2010 which have better applicability⁴⁵ (interpretation by the authors).

In fact pursuant article 55(5) of the FDRE Constitution provides that, HoPR shall enact criminal code. However, states may enact penal laws on matters that are not specifically covered by federal penal legislation.⁴⁶ It seems that, it is on this constitutional provisional base that the Cassation Bench has interpreted. In this case, the Cassation Bench has given the first place for federal law through its interpretation for in case not only the Regional law goes in clear conflict against federal laws; it is also for redundancy of the subject matter once governed by Federal laws. In this Interpretation two views are inevitable to be raised. One idea may be the courts of laws can interpret in such inconsistency of laws leaving away the clear provisions of laws. Whereas the other idea can be such issues are constitutional issues and courts of laws must interpret the

intention of law makers and negating it would ultimately render invalid.

The researcher will support the second view. Proclamation No72/2003 is proclamation issued by Oromia regional state council. Leaving this criminal/ punishment provision and adopting punishment provided by the Federal Forest proclamation is against the principle of separation of power and regional autonomy. The role of the court is searching the true intention of the law makers in this law. Therefore, rather than adopting the interpretation provided by the Supreme Court Cassation bench it is advisable to undergo an amendment process.

4.4. Can also Constitutional Interpretation address the problem so?

The other arguments and the way forward to resolve inconsistency in between laws specially federal forest proclamation and Oromia regional State forest proclamation pursuant article 51(5) cum 52(2d) which altogether succinctly stated, regional State shall administer land and natural resources in “*accordance with Federal laws.*” In fact one may understand that the forest laws of regional State in above stated provisions are not “*in accordance with*” federal laws. Though the sources of all regional and federal laws are the federal constitution, may cause conflict with FDRE Constitution through creating inconsistency and ambiguity. Article 9 of the FDRE Constitution clearly adopted *Supremacy clause*. This provisions of the FDRE Constitution states as follows:

Article 9/1: The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect. Article 9/2: All citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it.⁴⁷

⁴⁴ See GirmaWubayehu and et al, Vs Oromia Attorney General, Supra note 27 above.

⁴⁵ Ibid

⁴⁶ CFRE art. 55(5).

⁴⁷ Consolidating House of the Federation and the Definition of its Powers and Responsibilities Proclamation No 251/2001 Federal Negarit Gazeta, 7th No. 41 (2001).

Here, what is worthy to note is a phrase which states “*any law*”. Therefore, what is law? Proclamation No. 251/2001, consolidating House of the Federation and the Definition of its Powers and Responsibilities Article 2(2) defines “law” as, “ Proclamations issued by the federal or State legislative organs, and regulations and directives issued by the Federal and States government institutions and it shall also includes international agreements that have been ratified by Ethiopia.”⁴⁸

According to this proclamation, therefore, law means Proclamations, regulations and directive issued enacted either by federal and /or regional authorities. It includes, international agreements ratified by HoPR as per article 9(4) of the FDRE Constitution. These laws are therefore, should be issued in accordance with federal Constitution. The Ethiopian Constitution is silent regarding the thorny issue of regulating the relationship between federal and state laws in general and in relation to concurrent powers in particular.⁴⁹ There are certainly two options. The first is to view the supremacy of federal legislation as the default position in the case of inconsistencies between state and federal proclamations on certain concurrent functions. If this route is followed, then most of the principles stated above will hold true in Ethiopia as well. The other option is to take into consideration the sovereignty of the ‘nations, nationalities and peoples’ and the fact that the Constitution is – as indicated in the Preamble – a mere ‘political contract’ among them. Such consideration makes it difficult to assume that a federal law will preempt state law. In this case, Asefa Fiseha & etal states “the best compromise is to decide the issues on a case-by-case basis rather than subscribing to either principle at an abstract level.”⁵⁰

Nevertheless, it is very rare federal laws putting supremacy clause. The federal proclamation regulating rural land provides, [a] land administration law enacted by any regional council shall be applicable insofar as it is not inconsistent with this proclamation.⁵¹ These land proclamations show insofar as regional land laws are inconsistent with federal laws it is not applicable. However, proclamations specially, Oromia and federal forest proclamation does not clearly stipulate provisions what would happen if inconsistency created in fact in between and among these laws.

The researcher has a view that, if regional laws defined as a law goes contradicting, inconsistent, ambiguous to the FDRE Constitution, and federal laws by contextualizing altogether with article 51(5) and article 52(2d) ultimately would render no effect. It can be strongly argued that proclamation No72/2003 of the Oromia regional state forest proclamation specially, of the provision dealing with criminal provision is contradicting, inconsistent and ambiguous compared with federal forest proclamation No 1065/2018, as a result of which would render ultimately invalid under the FDRE Constitution in general. In other word, it would render proclamation No72/2003 inapplicable in an area found inconsistent, and ambiguous; however, it never means that it would make ineffective the overall provisions of the proclamation.

According to *Ato Teshome*, “These proclamations, regulations and directives must be consistent and free of ambiguity with federal laws, because the sources of laws were FDRE Constitution. If regional state council laws are in conflict with federal land and natural resources laws, the federal legislation shall prevail. Regions should accept the authority of the federal government; if failed to accept, it is amounts to succession.”⁵²

⁴⁸ *Ibid.* art.2(2)

⁴⁹ see Asefa Fiseha and Zemelak Ayele, *Supra note 36 above* at p. 258-259

⁵⁰ *Ibid*

⁵¹ See Proclamation 89/97, art. 8.

⁵² See Interview with Ato Teshome Eshetu, House of Peoples Representatives, Standing Committee for Legal, Justice, and Democracy Affairs, 2011 E.C

Dr. Adane, also agrees to the view of Mr. Teshome, and further opined that, it is also a federal government that has established by regional peoples. Hence, Federal constitution serving at federal level were established by regional states. FDRE Constitution is a social contract expressed through the consent of the regions. He further opined, if inconsistency, contradictions and ambiguities has seen in between federal and regional laws it can be resolved through Councils of Constitutional Enquiry and House of Federation.⁵³

Pursuant article 83 of the FDRE Constitution, all Constitutional disputes shall be decided by House of the Federation.⁵⁴ House of the Federation, is a federal house which the Ethiopian nations, nationalities, and peoples are represented as per the constitution which is the supreme law of the land and constituted as a governmental institution and the fundamental powers and responsibilities of which are specified in the Constitution.⁵⁵ Were 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. Hence, the House of Federation assisted by CCI⁵⁶, and when it necessary to interpret the Constitution, it shall submit its recommendations thereon to the House of the Federation.⁵⁷

The interpretation given by the HOF would be rendered binding only on issues pertaining to unconstitutionality of laws. Regarding the effect concerning either federal laws or regional laws decided to be disputed with the FDRE Constitution and/or found unconstitutional unless otherwise found necessary, the effect of the final decision shall remain limited to only that very law.⁵⁸ In this case, therefore, the researcher argue

that HoF have the power to interpret the inconsistency and ambiguities of the law seen in between the forest laws of the federal and Oromia regional states rather than giving precedence to regional Cassation Bench Interpretation.

5. Conclusion and Recommendation

5.1. Conclusion

Under this study, the Ambiguities of Legislative power under the Ethiopian Law, emphasis to forest Law [Natural Resources] were analyzed. The reason that necessitates, this study is that, currently the federal government and regional state councils are enacting laws, as regards to utilization, development and conservation of forests including other natural resources, in which these laws are inconsistent and ambiguous to each other. The main purpose of this research is therefore, worked to elucidate the ambiguous and inconsistent nature of Ethiopia's Laws regarding forest and in lighted were these problems lies. Hence, issues relating to weather administration entails making of the law or not and ultimately forwarded clarification in relation to legislative power over utilization of forest-associated to natural resources in Ethiopia.

5.2. Recommendation

-) Under the current attorney general proclamation, the working procedure of intergovernmental relations was made in between and among regional attorney general, headed by federal attorney general office so as to mitigate inconsistency and ambiguity of enactments. Hence, it is better if the forum is made by each representative that means regional states councils and federal law makers to have twice a year and if possible beyond under the umbrella of the office of federal attorney general.
-) Pertaining to Utilization and Conservation of Natural resources, including to Forests resource, regions shall not enact inconsistent, ambiguous and redundant laws of criminal punishment upon provisions already given coverage by FDRE House peoples Representatives by enactments.

⁵³ .See Interview with Dr. Adane Haile, House of Peoples Representatives, Standing Committee for Legal, Justice, and Democracy Affairs, 2011 E.C

⁵⁴ See CFDRE art. 83

⁵⁵ See proclamation No 251/2001

⁵⁶ CCI-refers Councils of Constitutional Inquiry.

⁵⁷ See CFDRE art. 84(1&2)

⁵⁸ See Proclamation No. 251/2001, article 12.

) In case of inconsistency and ambiguities of forest laws, concerned stake holders should bring to House of Federation so that the laws get interpreted rather than trying to set precedent by regional cassation bench.

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