

Challenges to Rule of Law in Contemporary Ethiopia: Oromia in Focus

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Abstract

The term rule of law is much cherished historic idea. World Justice Project (WJP), a global Rule of Law Index that quantitatively measure adherence to rule of law practice in the world, shows persistently declining trend around the world. Among countries where rule of law sharply declined is Ethiopia. It is therefore, worth to inquiry challenges to rule of law in the country which initiated the author to do this work. In this article, the author tried to look at the status of rule of law in Ethiopia focusing on cases involving opposition political figure in Oromia. In doing that, different court cases and orders given on cases relating to opposition political figures are examined. Secondary sources, such as different human right institution's report were main sources. Critical look at different provisions of laws and courts reasoning is other sources used in this paper. Doctrinal and qualitative research methodology therefore employed while conducting this paper. The finding claims majority of court orders given on opposition political figures cases have been disregarded by the police endangering principles of rule of law. Courts also failed to exercise their functional power to ensure court order executed. If it is to genuinely uphold rule of law which government usually headlines, court's order should be respected irrespective of who the person is or political ideology s/he holds. It is because, obligation to uphold rule of law demands respect for function of each branch of government. Courts need to go further to ensure rule of law is upheld than simply calling and asking why they failed to execute court order; while Caffee has to intervene when executives fail to implement judiciary order to ensure existence of check and balance as per constitutional order.

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1. Introduction

Rule of law in its genesis is as old as human civilization which dates back to the written Code of Babylonian King Hammurabi in seventeenth century BC and ancient Greece.¹ The definitions and practices of rule of law have evolved since then, although core principles, like presumption of innocence and limits on executive power remain essential features. This rule of law encompasses the idea that all individuals, regardless of their status in society, "are bound by and act consistent with the law."² This definition requires laws to be prospective, be made public, be general and clear, and be stable and certain.³

As a central notion in legal thought and in the practice of democratic states, rule of law influences every person's daily life.⁴ Challenged by violence, corruption and countless impunities people around the globe are negatively affected by non-adherence to rule of law. According to World Justice Project, rule of law continues to be crumbling around the world.⁵ While rule of law continues to diminish around the world, many countries are embracing authoritarian tendencies which are anti to rule of law and weakening institutional mechanisms that are meant to uphold rule of law and ensures the just enforcement of laws for the protection of human rights.⁶

Rule of Law, as a universal validity concept need for universal adherence to and implementation of the Rule of Law at both the national and international levels and such was endorsed by all Members States of the United Nations in the 2005 Outcome Document of the World Summit.⁷ As such it is important to investigate countries' adherence to rule of law principles which is the intention of the author in this article. The author therefore tried to look at Ethiopia's adherence to rule of law focusing on Oromia. In doing that, laws of the country and its enforcement are looked in detail. Doctrinally, provisions of laws including the constitution and procedural laws are critically investigated the existence of legality, one the element of rule of law and its implementation as another element of legal certainty. To assess this element of rule of law, selected cases of political opposition

¹Elizabeth Andersen (2019). The Meaning, Measuring, and Mattering of the Rule of Law DOJ Journal of Federal Law and Practice 103.

²Brian Z. Tamanaha, *A Concise Guide to the Rule of Law* 3 (St. John's Legal Studies Research Paper No. 07-0082) (Sept. 13, 2007).

³Ibid.

⁴World Justice Project Rule of Law Index 2022.

⁵Ibid.

⁶Laurent Pech, Dimitry Kochenov, 'Strengthening the Rule of Law Within the European Union: Diagnoses, Recommendations, and What to Avoid' (2019) Policy Brief No. 1 <<https://reconnect-europe.eu/wpcontent/uploads/2019/06/RECONNECT-policy-brief-Pech-Kochenov-2019June-publish.pdf>>

⁷The Rule of law checklist, Venice Commission of the Council of Europe 2016.

figures in Oromia were analyzed to examine adherence to legal certainty and the practice of rule of law in the region. It is therefore, doctrinal on one hand, which looks at provisions of laws and cases analysis on the other hand that qualitatively analyzed adherence to rule of law in practice on the other hand.

Organizationally, the article is divided into four sections. Following this introductory section, section two deals with historical and definitional aspect of rule of law; while section three deals with deferent laws and existing practices with regard to adherence to rule of law. In this section selected cases were look at to see enforcement of laws and respect for each branch functions. Finally, conclusion and recommendations were forwarded in section four.

2. Rule of Law: General Overview

Rule of law was historically developed long ago as a means to restrict governmental power and has now gained global recognition.⁸ It was viewed as an instrument to restrict executive's extended power over other branches of government especially judiciary. Being recognized worldwide as an essential component and precondition of good governance and sustainable economic development⁹, the rule of law principle oblige states to guarantee individuals under their jurisdiction have access to effective legal means to enforce the protection of their human rights.

Despite worldwide recognition and famous nature of the term 'rule of law', it is yet one of the most controversial and universally appealing contemporary legal political concepts.¹⁰ The deferring interpretations of the term Rule of Law have put its significance under question as a concept.¹¹ These days however, there is broad consensus around its core meaning and the main elements. It is good to look at how some known institution and individuals defined rule of law.

"For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."¹²

From this definition, it is understandable that rule of law is maintained when laws protect fundamental rights and no one is above law. This definition demands the existence of law that limits power in the first place and its implementation accordingly. It also requires separation of power as its non-existence directly affects the Rule of Law. It also requires measures to ensure adherence to the supremacy of law principle and equality before the law.

Venice Commission in its report in 2011 examined the concept of rule of law which is followed by parliamentary assembly to correct interpretation of rule of law. The commission then said rule of law requires a system which is certain and foreseeable law, where everyone has the right to be treated by decision-makers with dignity, equality and in accordance with the law having opportunity to challenge such decisions before independent and impartial courts through fair procedure.¹³ The commission listed out sets of principles of rule of law in 2011 which EU framework strengthened.¹⁴ European Commission in its communication in 2019 further strengthened the rule of law within the EU and defined it setting out well-established principle. Accordingly, *under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts*.¹⁵ The commission stated that rule of law includes different principles such as principle of legality, legal certainty and separation of power. According to this definition therefore, it could be understood that every branch of government should acts within the power given by law and interference with other's function affects rules of law.

In the United States, rule-of-law system includes checks and balances¹⁶ to ensure that no part of government

⁸ J. Beqiraj, L. Moxham (2022), Reconciling the Theory and the Practice of the Rule of Law in the European Union Measuring the Rule of Law.

⁹AdriaanBedner, "An elementary approach to the rule of law," *Hague Journal on the Rule of Law*, 2 (2010): 48.

¹⁰AdemAbebe (2012),*Rule By Law in Ethiopia: Rendering Constitutional Limits on Government Power Nonsensical*; University of Cambridge · Centre of Governance and Human Rights · *Working Paper I*

¹¹ See discussion in Venice Commission, 'Report on the Rule of Law', 2011, CDL-AD (2011)003rev-e, at paras 34, 68–69, available at [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)003rev-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)003rev-e).

¹² The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General (S/2004/616, 23 August 2004).

¹³ The Rule of law checklist, supra note 7.

¹⁴ European Commission Communication, 'A new EU Framework to strengthen the Rule of Law', 19 March 2014, COM (2014) 158 final/2 (corrected English version), at page 4, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014DC0158R\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014DC0158R(01)).

¹⁵ J. Beqiraj, L. Moxham supra note 8.

¹⁶ In the guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework (2010), check and balance is one of five elements that comprise rule of law. Accordingly, "The rule of law depends on a separation of governmental powers among both branches and levels of

becomes too powerful.¹⁷ Tamanaha¹⁸ observed rule of law and its concept as the least understood, difficult to define and controversial despite its popularity. According to him, “everyone is for it, but have contrasting convictions about what it is”.¹⁹ He says, almost every state claims to adhere to and respect the rule of law although they often have their own authentic understanding of the rule of law.²⁰ Rule of law is frequently used term in wide variety reference. The term usually refers to a state in which citizens, corporations and the state itself obey the law, and the laws are derived from a democratic consensus.²¹ The USAID description of the rule of law is of two notable references. The first is rule of law as “protecting fundamental political, social, and economic rights, and the other, reference comes from the UN which refers the rule of law to a principle of governance in which all persons, institutions and entities are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated.²² Nevertheless, most scholars agree that the rule of law serves two “core” purposes: curbing arbitrary and inequitable use of state power to “bind power”, and protecting citizens’ property, liberty and lives from infringements or assaults by fellow citizens.

The World Justice Project (WJP) Rule of Law Index, the world’s leading original data source for measuring rule of law defined rule of law based on four universal principles that are used to measure rule of law. According to WJP, Rule of Law is defined as ‘a durable system of laws, institutions, norms, and community’s commitment that delivers accountability, just law, open government and accessible and impartial justice’.²³ According to WJP, existence of law that puts constraint on governmental power and accountability per the law is based on which adherence to rule of law measured. Rule of law therefore requires published law that limits each branch of government’s power on one hand and its effective enforcement on the hand. World Justice Project Rule of Law Index assesses the rule of law index based on the conceptual frameworks and factors and sub-factors which comprised of eight factors²⁴ further disaggregated into 44 sub-factors. These factors are developed from four universal principles base on which rule of law can be measured. These four universal principles are:

Accountability, Universal Principle One. This principle deals with accountability of both government and private actors under the law. **Just Law**, Universal Principle Two. This principles deals with the clarity of laws such as published laws, stability of laws, uniformly application of laws to everybody, protection of human as well as democratic rights. **Open government**, Universal Principle Three. This principle deals with the processes by which the laws are enacted, administered, and enforced are accessible, fair, and efficient. **Accessible and Impartial Dispute Resolution**, Universal Principle Four. This principle deals with timely delivery of justice.

In this paper, the author focus on the two universal principles used to assess the rule of law. Universal Principle One; which focus on limiting the government power, and universal principle four that focus on timely delivery of justice. The author focused on these principles because they enable me to assess the practice of rule of law in area of mu focus. The same is done by WJP Rule of Law Index to access the practice of rule of law in countries where they conducted and measured the rule of law Index. The author selected WJP Rule of Law Index from wide range of Index since this index used more gregarious quantitative tool to measure rule of law. WJP Rule of Law Index measured the adherence to the rule of law by looking at policy outcomes, such as whether people have access to courts or whether crime is effectively controlled. From all definitions given on rule of law, core elements such as legality, legal certainty and separation of power are common that are important for rule of law base on which the author also looked at how rule of law looks like in contemporary Ethiopia focusing selected cases.

government. An independent judiciary is seen as an important “check.” At the same time, checks and balances make the judiciary accountable to other branches of government. Like all branches, the judiciary is also accountable to the public. An independent and strong bar association can also help support the judiciary and serve as a check against judicial power”.

¹⁷ 67 DOJ J. FED. L. & PRAC., no. 4, 2019. Available at <https://www.justice.gov/usao/resources/journal-of-federal-law-and-practice>.

¹⁸ Tamanaha Guide to Rule Of Law Country Analysis: The Rule of Law Strategic Framework (2008).

¹⁹ For Shklar, the “‘overuse’ of the rule of law has led to it losing its meaning: It would not be very difficult to show that the phrase “the Rule of Law” has become meaningless thanks to ideological abuse and general overuse. It may well have become just another one of those self-congratulatory rhetorical devices that grace the public utterances of Anglo-American politicians. No intellectual effort need therefore be wasted on this bit of ruling-class chatter” – Judith Shklar “Political Theory and the Rule of Law” in *The Rule of Law: Ideal or Ideology? eds.* Allan C. Hutchinson and Patrick Monahan, 1 (Toronto: Carswell Legal Publications, 1987).

²⁰ Tamanaha, *On the Rule of Law*, 4.

²¹ Guide to Rule Of Law Country Analysis: The Rule of Law Strategic Framework (2008).

²² *Ibid.*

²³ World Justice Project Rule of Law Index 2020.

²⁴ Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice. World Justice Project Rule of Law Index 2020 page 10. Indicators of constraint on government power for instance is whether judiciary have independence and can limit government’s extended hand by checking its activity through its law interpretation power. Among indicators of fundamental right for instance is whether police or other government officials conduct physical search with warrant. Practices of fundamental right is also measured based on due procedure of law in respected. For instance if the basic rights of criminal suspects are respected, including the presumption of innocence and the freedom from arbitrary arrest and unreasonable pre-trial detention it can be said fundamental right based on which rule of law is measured ensures the adherence to the rule of law. Indicators or order and security are measure based on whether conflict is effectively limited. Indicator of criminal justice for instance is measured based on the independency of criminal justice system from government political influence.

3. Rule of Law Challenged: a Look at Laws and Practices

Ethiopia has laws that are meant to promote rule of law. Such can be read from the Ethiopian constitution.²⁵ From the reading of different provisions of the FDRE Constitution, there is no doubt that the drafters of the Constitution established a constitutionally limited government. The Constitution provides substantive standards against which legislation and other measures are to be tested. All State organs, especially the legislative and executive organs, should therefore ensure that any measures they take are in line with the constitutional constraints, including those embodied in the human rights provisions. Any measures or practices against such limitation are void as the constitution is the supreme law of the land. This is unequivocally spelt in the constitutional provision, which reads, “any law, customary practice or a decision of an organ of state or a public official which contravenes” constitutional provisions.²⁶

The supremacy of the Constitution and the expansive recognition of human and democratic rights necessarily imply that the Ethiopian Constitution embodies a substantive version.²⁷ Not only that, the Ethiopian Constitution has recognized international instruments that accepted principles of rule law unequivocally; and the adoption of the 1995 Constitution played a significant role in establishing the normative legal framework for the human rights landscape of the country. However, the implementations of these rights have faced continuous challenges.

Despite existence of substantive laws that are meant to promote rule of law in many countries, WJP concluded the research outcome of 2020 stands limited adherence to these laws.²⁸ As such the world justice project yearly measures how countries of the world adhere to the rule of and index/rank them. It is as such that Ethiopia ranked 114th out of 128 countries worldwide and 26th out of 31 African countries in 2020. In 2022, Ethiopia’s worldwide rank was 123th out of 140 countries with score 0.39 with 1 rank change decrease from the previous year.²⁹ According to the measure made by the WJP Rule of Law Index, the more score near 1, the more adherence to rule of law and the vice versa. Means the more score near to 0, the more non-adherence to rule of law. This, being what WJP Rule of Law Index shows the status of rule of law in Ethiopia, the author tried to look the practice on the ground using different human right reports and cases analysis to show how rule of law is being challenged in the country.

There is no doubt that the judiciary, if not the only, is the key custodian of the rule of law and individual rights. When violations of rights happen, courts are there to act and ensure the protection of rights per their power according to laws. Melese says judiciary is the most crucial institution that protects human rights.³⁰ This however can only be meaning full and sustainable when what courts orders are executed. Effective implementation therefore depends on whether there exist strong and competent institutions to protect and enforce these rights. Recently, judiciary seems courageous to order what they believe is correct though their orders rarely implemented especially when the case relates to opposition political figures. This makes intermingling of politics in rule of law and challenging the effort to uphold rule of law in the country.

i) Right Violations

According the Ethiopian Human Right Commission, following Artist Hacalu’s assassination, there has been an ongoing massive violation of rights guaranteed in the FDRE constitution.³¹ The right to be informed the reason of arrest as well as to be brought before court law within 48 excluding the time from arrest to court of law are said violated in the report. According to the report, the usual ways of handling justice like decision regarding arrest and detention of selected individuals is determined by political authorities than prosecution institutions.³² Prosecutors and offices of attorney general have no role or say in whether to release of persons arrested. Such act may undermine the professional independence to determine on the rights of individuals based on rule of law. It is therefore, rule of politics seems overriding rule of justice as executive play a key role than institutions established to uphold rule of law per laws at hand. The following Ethiopian Human Right Report shows this fact.

“በተደረገው ክትትል ከቦታቦታ መጠኑ ቢለያይም የእስረኞችን አያያዝ በተመለከተ በርካታ የሰብአዊ መብቶች ጥሰቶች

²⁵ In the preamble for instance, the term rule of law is unequivocally told. We the Nations, Nationalities and People of Ethiopia: Strongly committed, in full and free exercise of our right to self-determination, to building a *political community founded on the rule of law* and capable of ensuring a lasting peace guaranteeing, a democratic order, and advancing our economic and social development. Under Art 52 of the constitution the regional governments are established to administer themselves based on rule of law while defending the FDRE Constitution. Art. 52 (2 a) for instance read as follows ‘(a) To establish a State administration that best advances self-government, a democratic order based on the rule of law; to protect and defend the Federal Constitution’.

²⁶The Federal Democratic Republic of Ethiopia (FDRE) Constitution, article 9(1).

²⁷See CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA PROCLAMATION NO. 1/1995 Aug. 21, 1995, ch. 3 (Eth.) (Chapter three of the Constitution is devoted to “Fundamental Rights and Freedoms” in general. Part one of the chapter is titled “Human Rights” while part two is titled “Democratic Rights”.)

²⁸ Ibid.

²⁹ World Justice Project Rule of Law Index supra note 4.

³⁰ See RAKEB MESSELE, ENFORCEMENT OF HUMAN RIGHTS IN ETHIOPIA 15 (2002), available at <http://www.apapeth.org/Docs/ENFORCEMENT%200F%20HR.pdf>.

³¹ Ethiopian Human Rights Commission Report on May 6, 2021 after assessment of 21 police stations in Oromia Regional State.

³² Ibid.

መፈጸሚያውን የሚያመለክቱ መረጃዎች ቀርበዋል። ብዙ ሰዎች ያለፍርድቤት የመያዣ ችግር “በወቅታዊሁኔታ” የተጠረጠሩናቸው በሚልይታሰራሉ፣ ከነዚህም አገዛዥዎች ምርመራ ሳይጀመርባቸው እና ፍርድቤት ሳይቀርቡ በሕግ ከተቀመጠው ጊዜ በላይ ታስረው ይቆያሉ። በተጨማሪም በብዙ ፖሊስ ጣቢያዎች ዐቃቤ ሕግ በቂ መረጃ ባለመገኘቱ ምክንያት “የአያላማ ውሳኔ” የሰጠባቸው ወይም በፍርድቤት ችግር መሠረት መለቀቅ የነበረባቸው ተጠረጣሪዎች ዋና ተሳታፊ (ኮር) ናቸው ወይም በሌላ ወንጀል ይፈለጋሉ በሚል ያለ አግባብ ታስረው እንዲቆዩ የተደረጉ ሰዎች ነበሩ። የተለያዩ ፖሊስ ጣቢያዎች ኃላፊዎች “በወቅታዊ ሁኔታ” ተጠረጣሪው የታሰሩ እስረኞች ጉዳያቸው የሚታየው በዘን እና በወረዳ ደረጃ በተቋቋሙ “የፀጥታ ምክርቤቶች” (Manamareenageenyaa) መሆኑን ይገልጻሉ። የፍርድቤቶች ችግር አለ መከበር በክልሉ አንዳንድ ቦታዎች አሁንም የቀጠለ ችግር ነው።”³³

The literal interpretation of the above quote report using Google translation service to English is as follows. "In spite of the fact that the amount of monitoring varies from place to place, information has been provided that indicates that many human rights violations have been committed regarding the treatment of prisoners." Many people are detained on suspicion of being "temporary" without a court order, and most of them are detained beyond the statutory period without being investigated and brought before a court. In addition, in many police stations, due to the lack of sufficient information, the prosecutor gave a "decision not to prosecute" or the suspects who should have been released according to a court order were people who were wrongly detained because they were core participants or wanted for other crimes. Officials of various police stations state that the cases of prisoners arrested under "current circumstances" are dealt with by "security councils" established at the zone and district level. Compliance with court orders is still a problem in some parts of the region.

From this report it could be understood, legality principle of rule of law that requires publically promulgated laws that limit government and demand its fair implementation is in danger with rule of law having the same fate.

ii) Prohibition of Arbitrariness and Practice on the Ground

The FDRE Constitution and laws prohibit arbitrary arrest and detention and provide for the right of any person to challenge the lawfulness of his or her arrest or detention in court.³⁴ From the Ethiopian Human Rights Commission report, authorities, however, detained persons arbitrarily, including activists, journalists, and opposition party members.³⁵ Following the coming to power of current government in 2018, the promise with regard to rule of law was to arrest after investigation than arrest and investigates after an arrest or detention. As one can gather from human right reports, practices on the ground however shows the promise turned to mere false promise.

Even before the assassination of Hachalu, arbitrary arrest and detention of opposition political figures and members have been noticed and call for their release have been headlining even at international level. For instance, the international institutions call for the release of Abdi Regarssaa³⁶ and the disclosure of his whereabouts to his family by government.

Procedures that law demands for arrest and detention as per criminal procedure are not followed which is affecting procedural rule of law negatively. The procedure for arrest is there in the criminal procedure. As a principle the procedures says, “Save otherwise expressly provided, no person may be arrested unless a warrant is issued and no person may be detained in custody except on an order by the court.”³⁷ An arrest without warrant may only be made on the conditions laid down in article 50 of the code. This however is not respected in many of political cases. To guarantee the rights enshrined in the Constitution against arbitrary arrest and unjustified detention, the FDRE Constitution itself requires the detainer to bring the detainee to the court of law within 48 hours of arrest.³⁸ The practice however is different from what the law says in current politics of Ethiopia. On one hand, police arrest people due to political turmoil without warrant;³⁹ on the other hand, they don’t take court orders in the name of order from above.⁴⁰

³³ The Ethiopian Human Right Report on human right issues in Oromia from November 11- December 04 2013 E.C. /የኢትዮጵያ ሰብአዊ መብቶች ኮሚሽን (ኢሰመኮ/ኮሚሽን) ከህዳር 11 ቀን 2013 ዓ.ም. እስከ ጥር 04 ቀን 2013 ዓ.ም.

³⁴The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995. Article 17 (2) of the FDRE No person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him.

³⁵ Country Reports on Human Rights Practices for 2019 United States Department of State Bureau of Democracy, Human Rights and Labor.

³⁶<https://www.amnesty.org/en/latest/news/2020/03/ethiopia-police-must-account-for-missing-oromo-opposition-leader> accessed on 3/20/2021.

³⁷Criminal procedure code Article 49.

³⁸ Article 19 (3) of the FDRE constitution reads as follows: ‘Persons arrested have the right to be brought before a court within 48 hours of their arrest. Such time shall not include the time reasonably required for the journey from the place of arrest to the court. On appearing before a court, they have the right to be given prompt and specific explanations of the reasons for their arrest due to the alleged crime committed.’

³⁹The Ethiopian human right commission report on the page 7 reads as follows: ‘በአንዳንድ አካባቢዎች (ለምሳሌ አዳባ፣አሳሳ) እስሩ የሚከናወነው በዘመቻ (operation) ልክሌሊት ጭምር መሆኑንና የቤታቸው በር እየተሰበረ የፍርድቤት የመያዣ ችግር ባልያዙ ለይሁዴሎች እና መደበኛ ፖሊሶች ከቤታቸው ተወስደው የታሰሩ መሆኑን ለክትትል ቡድኑ የገለጹ እስረኞች ነበሩ።

⁴⁰ In Mohamad Deksiso for instance, police fail to release on bail despite court order for his release. The same is true for Dr.Husen Kadir. The Ethiopian human right commission also said there many incidences where court orders are failed to be respected. The following is quote

The Ethiopian Human Right Commission⁴¹ in its report also showed existence of arbitrary arrest and detention in the name of Oneg Shane.⁴² Ethiopian Human Right Commission was alarmed with arbitrary arrest and extra judicial killing at public place in Dambi Dollo which shows challenges to rule of law in contemporary Ethiopia. This could be said because it is only through court order that the fundamental human right; the right to life, can be taken away as per the FDRE Constitution.⁴³ According to the constitution, the right to life of any person may not be taken unless the act such person did is leveled as serious criminal offence that could lead to deprivation of his/her right to life by decision of court of law. The act was condemned by Ethiopian Human Right Commission calling it extra judicial killing which is quoted as follows.

*Ethiopian Human Right Commission is alarmed by the public parading and extra judicial killing of suspected criminal offender, Amanuel Wandimu, in Dambi Dollo, Kelem Wollega Zone on May 11, 2021 by security forces. The commission condemns all forms of extra judicial killings in the strongest terms and reiterates its message on the use of only lawful means for all law enforcement operations. Extra judicial killing undermine confidence in the rule of law and reverse any gains made in this regard. EHRC urges authorities to immediately investigate this incident and take appropriate measures. The commission is monitoring the situation closely and will continue to inform on its findings.*⁴⁴

The Country Reports on Human Rights Practices for 2019 United States Department of State Bureau of Democracy, Human Rights and Labor on Ethiopia affirms the arbitrary arrests and detentions as well as detaining in unofficial place of detention centre.⁴⁵ This shows rule of law being challenged as legality principle of rule of law and procedural aspect failed to be implemented effectively. From the above analysis, one can understand that substantive and procedural laws are there to prohibit arbitrariness. The practice however shows otherwise despite availability of legal provisions that are meant to enhance rule of law practice on the ground seems deviate which challenge to rule of law in the country.

iii) Judicial Independence and Respect for Court Orders

Judicial independence is the doctrine founded on the premise that decisions of the judiciary is impartial and not subject to influence from the other branches of government or from private or political interests.⁴⁶ Among substantial and basic principles of judicial independency in the constitutions and legal systems of the world, including Ethiopian constitution are: institutional, functional independency of judiciary, personal independence judges as well as execution of court's pronouncement. The FDRE Constitution establishes an independent judiciary as one the three branches of government.⁴⁷ Judicial powers, both at Federal and State levels, are vested in the courts. Courts are free from interference and influence of any governmental body, government official or from any other source.⁴⁸ They shall be directed and exercise their function with full independence and solely by the law. The practice on the ground according to the Country Report on Human Rights, though civil courts operate with a large degree of independence, criminal courts remained weak, overburdened, and subject to political influence.⁴⁹

As per the FDRE Constitution, courts are supposed to be exercising their adjudication powers free of any governmental body influence. The constitution established three branches of government for check and balance. Thus, each branch of government is supposed to be free from the influence of the other branch on one hand; and respecting any measure taken by the other branch according to the law mandatory per the constitutional principle. When it comes to safe guarding the rights of a suspect the role of the judiciary and executives become operational. When executives violate the right of individuals or groups other branch of government [judiciary] is there to judge whether the act violate laws or not. This means, the final judgment on whether police act is according to law or not is inherently given to courts. Thus, courts decision must be respected if the constitution has to be respected and rule of law must be upheld. Assessment of selected court orders regarding opposition political figures in recent time shows disrespect of judicial institutions in general and disregard of court's order

from the report, 'በዶ.ላ 13 ተጠርጣሪዎች በዋስትና ላይ ለቀቁ ፍርድ ቤት በሰጠው ትዕዛዝ መሠረት መፈታት ሲገባቸው በእስር እንዲቆዩ ተደርጓል።'

⁴¹ In the report it is read as follows, 'በእንዳን ደጋሊስ ጠቢቃዎች በተለይም በገደብ አሳሳ ወረዳ የሚገኙ እስረኞች እንዳንድ የፖሊስ አባላት (በተለይም የልዩ ሀይል አባላት) ሰዎችን "ለጥያቄ ትፈለጋለችሁ" በሚል በሌሊት ጭምር ከቤት በመውሰድ በቁጥጥር ስር ካዋቱ በኋላ ገንዘብ የሚጠይቁና የሰጡትን በመልቀቅ ይህንን የማይፈጽሙ ሰዎች ደግሞ "የእነግ ሸኔ" አባል ወይም ደጋፊ ናችሁ በማለት እንከሳችኋለን በማለት ዛቻ እና ማስፈራራያ የሚያደርሱባቸው መሆኑን ያስረዳሉ።'

⁴² This term is used by Government to call army wing of Oromo Liberation Front that refused to join peaceful struggle as opposition political party and they call themselves by other name.

⁴³ Article 15 of the FDRE Constitution reads as follows, "Every person has the right to life. No person may be deprived of his life except as a punishment for a serious criminal offence determined by law."

⁴⁴ The facebook post by Ethiopian Human Right Commission on the incidence <https://www.facebook.com/202584253551816/photos/a.274028913074016/1122455611564671/> accessed on 20/5/2021.

⁴⁵ According to the report, the law prohibits detention in any facility other than an official detention center, but local militias and other formal and informal law enforcement entities operated an unknown number of unofficial detention centers.

⁴⁶ Muluken Berhanu, Independence of the Judiciary in Parliamentary Democracy: The Ethiopian Experience (2009).

⁴⁷ The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995. Article 78.

⁴⁸ The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995. Article 79.

⁴⁹ Country Reports on Human Rights Practices for 2019 United States supra note 35.

whenever executive wanted to. Such is shown in different political cases assessed bellow.

For instance, in a case between Galan Police and Dr. Husen Kadir, on file No.02167, Galan Woreda court allowed bail. After the 10k [ten thousand] bail bond is paid, the court ordered the release of the suspect but police refused to release on day 16/3/2013 E.C. Based on the application of defence team for the suspect who asked court cause police to implement the previous order, the court wrote second order to release the suspect for second time on 1/4/2013. However, the order wasn't executed once again by police who rather transferred the suspect to other place and initiated other crime at Agarfa woreda. At Agarfa too based on application made to court for bail, court ordered release on bail but that order wasn't respected once again.

As claimed different literatures, a system of check and balance is crucial for rule of law. And this check and balance is needed to avert concentration of power in single individual and body so that people's liberty is may not be threatened.⁵⁰ This shows principle of separation of power which is guided by check and balance in most case is embodied in constitution and has linkage with the principles of rule of law. When such principle is violated then the constitution that advocates for check and balance that FDRE Constitution in our case is violated. In relation to the above case, police have power to arrest, stop and search whenever there is reasonable suspicion and facts as to the commission of crime. Government also has power to interfere with person's property as part of his government duty. Court has also interpreting power when cases are brought to them and constitution requires each branches of government to function without interference from any other branch. This includes respect for what they decide. So, failure to execute court order by police amount to violation of the principle of separation of power enshrined in the constitution on one hand, and dis regard for rule of law on the other hand. Such is challenges rule of law in the country is facing these days in general and Oromia region in particular.

In another case between Lammii Begna and Dawit Abdata⁵¹, the court gave decision not guilty of the crime they were charged off on day 16/04/2013 E.C. The same court ordered for the release of these individuals but the court order is not respected. Defence lawyers for these individuals have been applying repeatedly to the court to secure their release. However, police refused to release defendants. The court whose order failed unexecuted summoned the Oromia police commission to come to court and explain why they refused as well as bring the accused to the court of law. Yet police consistently did not respond to the court orders. The police failed to appear in court on different adjournments.⁵² The case is yet on going where the accused were appeared in federal courts on 3/24/2021 G.C. What can be concluded from this is observance of rule of law is highly challenged by dishonour of court order by police.

Yet in other case between Jimma police and Mahad Diksiso etal, Jimma city woreda court allowed the release of suspect on bail of birr 2000 on day 16/6/2013 E.C. Suspects provided bail bond but the police refused to release disrespecting court order. Police rather transferred to other station. On this case the Ethiopian Human Right Commission expressed its concern and asked for the release of suspects according to court order.⁵³ On cases of Kennasa Ayana, Mika'el Boran, Dr. Husen Kadir and two other persons on case No. 06250 at Galan Woreda Court, the court ordered for their release which actually is not implemented against what the law says. In very recent time dishonouring court order cases of colonel Gamachu Ayana et al⁵⁴ shows consistent disrespect for court order from police shows functional independency of court and access to remedy among elements of rule of law is at risk. On the other hand, legal certainty, which is essential to ensure confidence in the judicial system, and includes accessibility as well as foreseeability, is endangered.

In all the above cases, courts have administered cases brought to them basing on substantive and procedural laws. What can be observed from decisions given by courts now days as compared to courts during EPRDF government, tactical change seems visible. During the time of EPRDF government, courts do not give decision deviating from what government wants especially when cases brought to court are of opposition political figures. For instance, courts do not allow bail when the case is related to politicians. As has been claimed by wide range of literatures⁵⁵ the then institutional as well as functional independency of judiciary was very limited. Meaning,

⁵⁰ SL Harris & A Staker, *The Rule of Law in Parliament: A Review of the 2015-16 Session*, Bingham Centre for the Rule of Law, 2017.

⁵¹ Oromia Attorney General Vs Lammi Benya and Dawit Abdata file No. 328156 Oromia Supreme Court.

⁵² For instance, the case was adjourned for day 14/5/2013 for the release and explain to the court but done according to the court order. Then it is adjourned for 18/5/2013 once again no appearance; then for 21/5/2013 yet again no appearance or response. Then the case was adjourned for day 27/5/2013 on which there was no appearance in court or no release of accused from jail.

⁵³ According to Addis standar, the commissioner of the EHRC, Danel Bekele (PhD), said "the increasing incidence of dishonor of court orders in the Oromia region is a matter of great concern and needs immediate attention and resolution. In a statement released by EHRC, it has called for the immediate release of Mohammed Deksiso. The commission expressed its concerns about court orders not being respected in Oromia regional state and called for the release of Mohammed and many others who have been granted bail.

⁵⁴ Interview with lawyers of the accused posted on kello media social media [face book post] <https://www.facebook.com/kellomedia/videos/827633264828220> accessed on 21/5/20121.

⁵⁵ Aron Degol (2020). Institutional independence of federal courts in Ethiopia: observations (in Amharic) 14 Mizan Law Review 2: 310-340. Muluken Berhanu (2009). Independence of the Judiciary in Parliamentary Democracy: The Ethiopian Experience. According to Melaku, despite existence of legal provision that upholds the independence of judiciary, in practice there is no real independent organ which is entrusted with rule adjudication; therefore, the struggle to limit the act of government and for creating a powerful and independent judiciary must continue till not bowing to the will of any body is created.

there has been interference of government on the function of judiciary and influence what it decides. During that time, executives extend their invisible hand to courts and cause them to decide in its favour.

As can be observed from the above cases, it seems judges are trying to stick to constitution and decide cases brought to them based on their conscience and law against executive invisible hand; or the executives refrained from intervening into the independency or how they have to decide on cases as per the constitution. Such conclusion could be accrued from the above cases in which they decided favouring suspects despite political nature of the matter. What judges are lacking is the courage to take measure on those who defy their order. In the above cases, there are no incidences when judges take measure on those who dishonoured the court order. With the exception of calling police to ask why they failed to execute court order, no judge went extra mile to ensure implementation of court order or decision nor did they develop strategy for its implementation.

When someone is ordered to execute court order and s/he fail to do so, administration of justice will be negatively affected. And affecting justice administration is considered contempt.⁵⁶ Among ways of ensuring the execution of court order is by making the ordered and failed to execute the order responsible under contempt. Punishment for contempt of court could lead to fine or even jail time. So contempt is a very powerful tool to make police comply with court order. As constitutional principle, the three branch of government have to work on maintaining balance of power through check and balance. Parliament as supreme body can even call and ask government when the law they enacted is violated. In the above cases judiciary as an institution should take initiative to bring the issue of persistent defy of court order to Caffee so as make them accountable for their disobedience to its order.

4. Conclusions and Recommendations

a) Conclusions

Rule of law has worldwide recognition and is an essential component and precondition of good governance and sustainable economic development. As reflected by international institutions such as United Nation, international community, robust rule of law helps to promote security, democracy, development and human rights.⁵⁷ Now a days rule of law program are designed to advance all these goals of promoting security, enhancing democracy, development, human right protection, independent judiciary as well as accessing remedy, prohibiting arbitrariness and is considered as the bedrock of durable peace and sustainable development.⁵⁸

Principles of Rule of law are embodied in Ethiopian laws. For instance, independence of judiciary which Rule of Law advocates is unequivocally included in the Constitution. The FDRE Constitution established government limited by constitution and shared powers among the three branches of governments to make sure check and balance of powers. The constitution prohibits interference of each branch of government in to the power and function of other branch of government. As a framework therefore, we have limited government and each branch of government is not only prohibited from interfering to power of the other branch of government but also has duty to respect the other branch's function. This being what law in the book shows but different cases and human right reports show violation of rights that negatively affect rule of law on the ground.

Judiciary is the branch of government which is constitutionally established to be independent and safeguard rights of citizens. They are meant to function based on laws and their concise without being influenced by any government bodies. The constitution therefore, established independent court both institutionally and functionally while independency of court is meaningful when their decision is respected and the remedy they render is accessed by the one who wanted to access justice. When government violates rights be human or democratic rights of citizen courts are there to safeguard such rights and remedy for the violations according to laws. By doing that, courts uphold the rule of law. However, analysis of cases and human right report shows remedies given by courts are rarely accessed which indicates low adherence to rule of law according World Justice Project Rule of Law Index.

Courts during EPRDF government rarely decide against government interest as courts are not free from government influence. Analysis of cases shows these days functional independency of judges are respected but accessing remedy by accused is limited. This shows judges got courage to adhere to constitutional principle and executives reframed from influencing in how court /judges must decide but negatively affecting rule of law by defying courts order. Courts/judges whose order consistently dishonoured rarely take measure on those refused to implement their order.

⁵⁶ what does failure to comply with court order mean
<https://www.google.com/search?lei=mCMDZLHBOqSZkdUP8oOAOA0&q=what%20does%20failure%20to%20comply%20with%20court%20order%20mean&ved=2ahUKEwix7bKvjsL9AhWkTKQEHIIBANQQsKwBKAB6BAhMEAE>

⁵⁷ Hartzell, Caroline A., and Matthew Hoddie. (2019) Power Sharing and the Rule of Law in the Aftermath of Civil War. *International Studies Quarterly*, doi: 10.1093/isq/sqz023

⁵⁸ A global partnership to maintain rule of law in time of crisis <https://www.undp.org/blog/global-partnership-maintain-rule-law-times-crisis> accessed on 3/4/2023.

b) Recommendations

Upholding rule of law is globally accepted principle but facing challenges with declining trend all over the world. Ethiopia has recognized officially recognized principle of rule of law in different laws including constitution but facing consistent challenges on upholding rule of law it usually headlines. As one of principle of rule of law, Ethiopian constitution established independent courts so that needy of justice can access them and get remedy for the right violation. Analysis however shows accessing remedy courts give limited/denied by police which affect adherence to rule of law. It is therefore recommended that executive need to respect courts order so that principle of separation of power and check and balance enshrined in the constitutions effectively implemented and the rank of the county on global rule of law index be progressed.

Law enforcement bodies (institutions like police, and intelligence) have to respect constitution and uphold rule of law. These institutions need to be given awareness on the principles of rule of law and their duty to respect what constitution. Executive must give awareness to its personnel on principle of separation of power and respect for function of other branch of government. Civil society and other concerned organizations need to work intensively on creating public awareness about the rule of law and human rights and importance of respecting rule of law. Well-designed training and capacity building programs must address law enforcement agencies, which, of course, is an integral part of building strong law enforcement agencies to fill the existing gaps quickly.

Rule of law principle demands access to remedy given by courts. Analysis of cases in this work shows remedies given by courts are rarely accessed by accused. This directly affects standard of adherence to rule of law and global rank of the country Ethiopia on rule of law index. Government itself has to work on hailing its reputation on adherence to rule of law globally so as to encourage democratic practices.

Courts have to strive to make sure what they were empowered by constitution is fully practiced and their institution is respected in the eye of executives. In the face of consistent defy to their order courts by executive, courts need to initiate issues of rule of law to parliament [Caffee] in our case so that principle of check and balance and responsibility in government branch became a trend in the region.

As a means to influence and get its order implemented, courts can bring issues of persistent refusal on implementation of its order to justice sectors forum know as [Koree Fooyya'iinsa Sirna Haqaa] which has been forum of discussion to mutually solve misunderstanding between executive and judiciary since 2003 E.C. This being one strategy to get once order implemented by executive, courts need also stick to contempt measure when execution of its order is consistently denied. Measure could be issuing to cut salary for refusal. Such order may also fail to be executed since it is not in the hand of court to implement but at least it shows how courts are committed to see their orders implemented.