

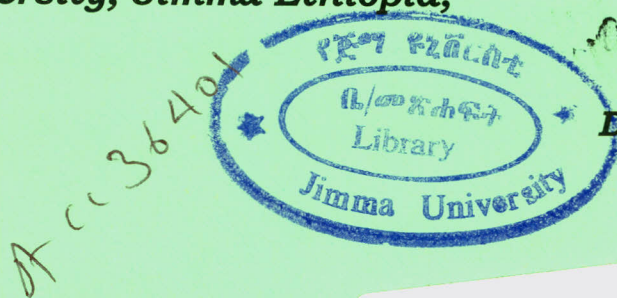
INTERNATIONAL AND REGIONAL INSTRUMENT ON
ELIMINATION OF RACIAL DISCRIMINATION AND THEIR
INCORPORATION UNDER ETHIOPIAN LAW

Done By Tewodros Debebe

Advisor Daniel Behailu (LLB, LLM)

*Submitted in partial fulfillment of the requirements
for the degree of Bachelor of laws at the faculty of law,
Jimma university, Jimma Ethiopia,*

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Acknowledgement

In the name of God and holly spirit, I am coming to being as a human, because he wishes so, considering this fact I would like to praise and his wisdom fill all my resemblance being,

But special gratitude goes to my father, Debebe Zewdu indeed my idol, who always be my strength in any aspect.

The constructive and inventive idea would never be come to this research with out the help of my advisor so special thanks go to my advisor, Daniel Behailu.

One could not imagine sparks in darkness, thank you my dorm mates shinning my research with editing and writing, adore you, I will always.....

Introduction

The principle of equality recognize that all human beings are essentially alike, one of the factor that denies this principle is racial discrimination since it deprive one from an equal exercise of fundamental freedom and rights in the social economic cultural civil and political fields.

By considering the consequence it will entail human right treaties in corporate under their preamble and article provision that prohibit racial discrimination and obliges member states to incorporate under its national legislation .let me see in what way does this provision incorporate, for better understanding of the whole idea the research .it is provided in general provision Appling to the protection or realization of those rights in the major treaties, like the united nation ,the International covenant on civil and political right and the African charter on Human and peoples right.

Elimination of racial discrimination specifically in detail, in concrete manner provided under the subsidiary treaties for instance convention on Elimination of Racial Discrimination.

Many states have become member states of these international and Regional convention on Elimination of Racial Discrimination and undertake to adopt under its national legislation the main goal of this research is whether Ethiopia is one of member states under such instrument and is it really manifested under its legislation

To have a clear picture of the incorporation of all international and Regional instrument under the Ethiopian law ,it is helpful to start from the bare meaning of race to the incorporation of these instrument under

Ethiopia law.

The research in the first chapter discuss about the general overview of Racial Discrimination it comprises what the term race and discrimination mean, racial discrimination in light of ordinary right, the caues and origin of racial discrimination will be dealt in this chapter.

In addition to the above background since it is essential to have a clear view of racial discriminations, the historical background of racial discrimination ,the link that exist between human right and racial discrimination and the reason for humanitarian intervention comes to being in relation to human right law will be discussed.

The other points this chapter touches upon is the division of human right i.e under what category does racial discrimination catagorized and the structure of modern international human right law that is the global and subsidiaries treaties will be dealt in this chapter.

After having the general overview of racial discrimination in the first chapter .The international convention on the Elimination of Racial discrimination will be discussed in the following chapter .the chapter deals first .the first international organization, league of nation and its provision of racial discrimination then its principle of human being are born free and equal dignity used as a corner stone for many international and regional instrument universal declaration of human right will be discussed.

The universal Declaration of Human Right and its division of major human rights adopted under UN i.e the International Covenant on Civil and Political Right and the International Covenant on Social Economic and Cultural Right way. These covenant want to protect racial discrimination will be dealt in this chapter, In addition to the above the

chapter discuss about the single issue treaty ,that is convention on Elimination of racial Discrimination which comes to picture for effective implementation of UN principle of equality will be elaborated.

The second chapter touches up on also the sub-commission conference on Elimination of racial discrimination and the recommended procedure that the state would take will be dealt .The last point this chapter discuss is the weakness of international human right covenant in the effective enforcing mechanism under state legislation will be dealt.

As the structure of International human right law consist of global and regional, the third chapter gives emphasis on the regional one especially from Africa perspective, it first discuss racial discrimination from historical background of the continent ,second the African charter on Human and peoples right in relation to racial discrimination ,at last this chapter discuss about the African commission on Human and peoples right in effective implementation of right will be discussed.

The main objective of the research is to indicate the incorporation of the international and regional instrument under Ethiopian law therefore the last chapter explicitly deals on the incorporation of international and regional instrument under Ethiopian legislation, that is under its constitution and other domestic legislation in addition to this the chapter will have glance on the historical back ground of international instrument under ethiopian law.

CHAPTER ONE

1. General overview of Racial Discrimination

1.1 Introduction

Racial Discrimination is one of the Factor that denies the principle of equality ,and that prevents equal exercise of fundamental freedom and right in the socio-economic civil and political sphere. Before discussing Racial Discrimination under international, Regional and Ethiopia perspective, it is helpful to have the general background about Racial Discrimination.

Thus, the first part of this chapter devoted to deal with, what is mean by Race and Discrimination, Non-Discrimination, Further more, Division of human right and categorization of human right treaties and the place of Racial Discrimination are other points this chapter touches up on

1.2 Definition

1.2.1. What is race?

Race is an ethical stock with great division of mankind having in common certain distinguishing physical peculiarities and consisting a comprehensive class appearing to be derived from a distinct primitive sources, it is also a tribal or national stock a division or sub division of one of great racial stock and of man kind distinguished by minor peculiarities¹. Race is defined also as a social construct the way in which individual are classified in to

racial group varies from person to person, place to place and time to time²

1.2.2. Discrimination In a Constitutional law, the effect of statute or established practice which confer particularly privileges on a class arbitrarily selected from a large number of person all of whom stand in the same relation to the privileges granted between those and those not favored, no reasonable distinction can be found between those favored and those not favored³. The term “Discrimination” can also be defined as it is a violation of civil rights law revealed by unfavorable or unfair treatment of a person or class of persons in comparison to other who are not members of the protected class because of race, sex, color, religion, national origin, age, physical/mental handicap sexual harassment and sexual orientation or reprisal for opposition to discrimination practice⁴

1.2.3. Racial Discrimination

The term “race” and “Discrimination” can clearly express what racial Discrimination mean, that is particular privileges on a class or a certain ethical stock⁵.that arbitrarily stand in the same relation to the privileges granted and between them without no reasonable Justification. It also means doing favor for certain racial stock, and not doing favor for another racial stock⁶. The principle of equality recognize the equality of all human being as it is inherently acquired, one of the factor for not accomplishment of this principle is racial discrimination, since it provides a particular privileges for certain class or group and not provides the other when stand in the same footing

The special reporter of the sub-commission on prevention of discrimination and protection of minorities in 1976 stated about racial discrimination as follows.

“The principle of equality does not, as one might assume exclude all the possible differentiation between individuals in particular it is not concerned with differentiation between based upon such individual qualities as mental or physical capacity talent or innate capacity, nor it is concerned with differentiations based up the individuals capacities, merits or behavior in so far as these are with in his control, it is rather concerned with differentiations based on factors, he has no control such as his race his colour, his descendant and his national or ethical origin”⁷

The principle of equality in short recognize that those elements of body and spirit, in which all human being are essentially alike far out weigh and transcend those purely accidental differentiation ,over which the individual has no control, the principle flows from basic ethnic concept that of human dignity, which implies in its simplest terms, that every human being is an end in himself, not a mere means to the end. Body and spirit is the core element in the principle of equality since it recognize all human being are alike in all field, the accidental differentiation that result in racial discrimination is against the principle of equality. As Mr Santana Cruz in addition to elaborating means of manifestation in the previous paragraph, she pointed out also that:

“It is for these reason that racial discrimination considers that “the very negation of the principle of equality “and adds that “it is a negation also of the social nature of man, who can reach his fullest development through interaction with his fellows”⁸

The most widely and carefully prepared, special report for definition of racial discrimination under article 1, of the International Convention on the Elimination of All Forms of Racial Discrimination appears, as:

The term “racial discrimination shall mean any distinction, exclusion and restriction or preference based on race, color, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human right and fundamental freedom in the political, economic social cultural or any other field of public life⁹.

The 1965 Convention On Elimination Of Racial Discrimination does not only provide the term racial discrimination, but also it incorporates the exception to an equal exercise of human right and fundamental freedoms these, I will discuss about this in the second chapter of my research but for the purpose of this chapter it means

“Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic group or individual requiring such protection as may be necessary in order to ensure to such groups or individual equal enjoyment or exercise of human right and fundamental freedom shall not be deemed a racial discrimination provided ,however , such measures do not as a consequence , lead to the maintains of the separate rights for different racial groups and that they shall not continued after the objectives for which they were taken have achieved”¹⁰

The 1965 convention also specifies the grounds up on which such discrimination may be based, that is, race, color, descent and national or ethnic origin; it indicates the kind of acts which led to discrimination; distinction ,exclusion, restriction and preference¹¹. Based on the ground indicated above people should not be prohibited from exercising their

right of socio-economic and cultural and civil and political right.

It stipulates that discriminatory acts include not only those having the effect of discriminating ,but also those having the intent or the purpose, it also brands as discriminatory those acts which nullify , as well as those which only partially impair ,the recognition ,enjoyment ,exercise of human rights and fundamental freedoms¹², it spells out not only what discrimination is but also what it is not , and provides for the measures necessary to secure the advancement and back ward racial or ethnic group or individual in order to ensure to them the equal enjoyment or exercise of human right and fundamental freedom¹³

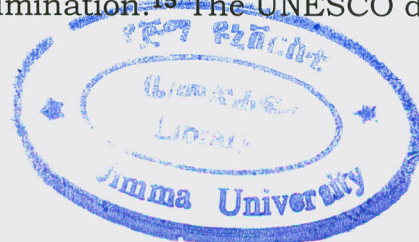
I could possibly say, racial discrimination means prediction of decision and policies on consideration of race for purpose subordinating a racial group and maintaining control over that group. In addition to this, it is discriminating in exercise of one economic, social, cultural, civil and political right because of his race, but it does not consist providing certain privilege to one race in order to have equal footing with other race when they are not in the same footing.

UNESCO under its preamble defines racial discrimination in the following ways

“All human beings belong to a single species and are descended from a common stock, they are born equal in dignity and rights and all form an integral part of humanity¹⁴

UNESCO under this provision talks about the principle of equality, that is all human being are equal in dignity and rights and they should be treated equally with out Racial Discrimination. It also defines all peoples of the world posses equal faculties for attaining the highest level in intellectual, technical, social, economic, cultural political development, with out racial discrimination.¹⁵ The UNESCO declaration

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on race and racial prejudice has clear view that I am agreed upon, that is, for attaining equality in all level (social economic and technical) all human being should be treated equally without racial discrimination

Racial discrimination includes also racist ideologies, prejudiced attitudes, discriminating behavior, structural arrangements and institutional used practice resulting in racial inequalities as well as fallacious notion that discriminatory relation between groups are morally and scientifically unjustifiable, it is reflected in discrimination provisions in legislation or regulation and discrimination practice as well as in anti-social beliefs and acts¹⁶. The manifestation of ,the discrimination provision, is one of the factor for not attaining equality among race, giving much emphasis on such issue is the goal of the research ,so in the consequent chapter I will deal up on the legislation on racial Discrimination.

1.3. Non discrimination in light of Ordinary Rights

The first is that , in respect of ‘ordinary’ rights , it is oftenly perfect to legitimate to differentiate between different individual in different circumstances and for different reasons, the law may for example , impose more stringent obligation on those who practice medicine than those who practice landscape gardening, in computing the compensation for loss of earning payable to the victim of a traffic accident, it may award a larger sum of a bucks than to a bus driver , it may give an insurer the right to avoid a contract for the mere non -disclosure of a material fact and yet decline to give any such right to a trader in commodities. But this kind of “ordinary” rights¹⁷ categorization or differentiation can not be possible in the modern world. In the case of Human rights in the same writer said about this as follows

But because of the reflection in the modern international canon of the twin principles of 'universal inheritance' and 'inalienability', no such differentiation is today permissible in the case of 'human' rights, in respect of those, the law must treat all members of the protected class with complete equality, regardless of their particular circumstances and, features, indeed, the concept of 'non discrimination' is so central to international human right law that all but one of the major instruments prescribe it, in an article of general application, expressed to extend to all the specific rights which they declare¹⁸. I will in the second chapter indicate the status of discrimination in major treaties like the civil and political right inclusion of this provision, and a single issue treaties racial discrimination too. The same writer provides about discrimination as:

The principle of universal inheritance and inalienability of human right which is not possible to differentiae like ordinary right is soundly based on experience, the pretext for many of the worst violation of human rights which have been perpetrated in the world's history has been discrimination, directed at different times and places against groups as desperate as slaves, serfs, women and races differing in skin, color, from a dominant group, religious, ethnic or linguistic minorities such as Christian, Jews, Armenians, Muslim, and Hindus, or the members of hereditary caste or social classes, those holding an orthodox political or other opinion, all such grounds of discrimination are therefore now expressly forbidden in the major instruments and many of the subsidiary instruments are devoted to particular aspects of them¹⁹ it possibly shows that all the grounds that result in discrimination i.e. race, religious, sex, national, origin and political attitude are expressly forbidden at different time, and a particular subsidiary instrument that specifically prohibit racial discrimination, Convention On Elimination Of Racial Discrimination is one of it.

To me ,it doesn't of course follow that modern international human right law adopts a simplistic philosophy of egalitarianism, on the contrary, it is the recognition that all human being differ from each other, and that each individual is unique, which underlines the concept of the integrity and dignity of the individual person which human right law is primarily concerned to protect. Even though each particular individual differ each other on accidental factor it should it be aground to derogate the integrity and dignity of human being.

This does not require that all person must be treated alike in all circumstances, what it requires is that, regardless of their many differences they are entitled to protection from those man made and avoidable impositions of oppressive powers which would restrict the development of their individual potential. Thus, regardless of their personal characteristics , they must not be tortured or enslaved, or arbitrarily killed or imprisoned with out a fair trial if they are accused of a crime, nor must they be deprived of the opportunity of gaining their living by work of their choice , or of fair access to foods , clothing , housing education and health service , Equality of treatment is required only in respect of the right and freedoms often called" fundamental' which are inherent in the individual humanity , and which are necessary to enable their personal diversity to develop and manifest itself.²⁰ Discrimination that lead not to maintain an equal access to economic social and cultural and political and civil right are explicitly prohibited.

1.4. ORIGIN AND CAUSE OF RACIAL DISCRIMINATION

Debates over the origins of racial discrimination often suffer from a lack of clarity over the term, many of the terms conflict on the recent forms with earlier forms of ethnic and national conflict. In most cases ethno-national conflict seems to owe to conflict over land and strategic

resources, and In other cases ethnicity and nationalism were harnessed to war between great religious empires/for example the Muslims Turks and the catholic Austro-Hungarians)²¹

The writer believes for existence of existence of racial discrimination, there should exist two conflicting interest, as the above statement mentioned. It could be on land strategic resource or other factor,

Historical economic or social disparity is alleged to be a form of discrimination which is caused by past racial discrimination affect the present's generation through deficit in the formal education and other kind of preparation is this parents generation²² the origin of racial discrimination have a lot of relation to strategic resource, land, the economic and social disparity (that caused the conquest of super power and exploiting the native) is a cause of racial discrimination.

Other view on origin of racial discrimination emphasis stereotyped, which psychologist generally believes are, formed by cultural factors²³ that means one culture believes that having a strong relation with other lead to degeneration of the ancestral generation

One strong cause of racial prejudice and discrimination is racism or the superiority complex” consisting of a set of popular belief which includes the following elements.

- 1, the differences between groups are due to hereditary biology and nothing can change them
- 2, that habit, attitudes belief behavior of all the things we learn are determined for us before we born.
3. That all differences between the non dominant group and the dominant group and
4. That if ,there should be a biological crossing groups, the children

will be more degenerate than either of the parent group, these racist beliefs have been so wide spread that although authoritatively and consistently proved erroneous, they still continue to be an important cause of prejudice²⁴ The writer believes that, the “superiority complex” is one of the main cause for Racial discrimination when it is seen in light of UNESCO Declaration On Race And Racial Prejudice, since it declared to terminate the prejudice attitudes of difference is hereditary.

1.5. History Of Racial Discrimination In The Modern World.

The history of racism is closely tied with the history of the concept of race itself the following is the summary of race from pioneer to now.

In 19th century Europe and America, scientists developed various theories about biological differences. Among races and these theories were in turn used to legitimize racist beliefs and practices. Much of the work that was done in the name of science is now rejected as pseudoscience, but the fundamental problem was the assumption that study superficial differences between humans would reveal categories with profound significance²⁵ The finding of the American and European proved to be unscientific foundation by the UNESCO declaration of race and racial prejudice and this declaration used as a base for current international instrument.

Today there is a general consensus among scientists that, “race “in the general sense in which it is used, is a social construct the way in which, individual are classified in to racial groups varies from person to person, and from place to place, and from time to time, ²⁶ The UNESCO declaration on Race, in 1978 has also a lot of influence for the right meaning of race.

Further more, it is now understood why this is so, the superficial

characteristics which are associated with racial grouping are poor predictors of genetic variability's, there can be more genetic variation within a racial grouping than between two racial groupings.

In the last part of the 20th century, one of the scientific theories that lent considerable weight to the idea that there is a biological basis for racial classification is, the multi-regional hypothesis of human origins. The hypothesis has several variations, but roughly speaking, if there were distinct regions of human evolution, then one could call the original populations of these regions the ancestral, and the other as "races of modern humans". The weight of evidence has gradually been shifting away from this hypothesis, and many observers believe that most versions of the hypothesis are no longer tenable in light of the findings published in 2001²⁷, as described in the article on multi-regional origin.

When the United Nations formulated human rights for all mankind this was the first such formulation in history. The ambitious new work began in 1946 when the Commission on Human Rights was created. The Economic and Social Council instructed the new commission to develop proposals for the prevention of discrimination on the ground of race.²⁸

1.6. Human Rights

What are human rights? "Human rights are internationally agreed values, standards or rules regulating the conduct of states towards their own citizens and towards non-citizens. Human rights as explained in the words of the preamble of the Universal Declaration of Human Rights as it 'is a common standard of achievement for all peoples and all nations' these rules which states have imposed upon themselves serve to restrict the freedom of states to act towards their entire population, citizens as well as non-citizens, men as well as women, adults as well as

children whites as well as non-whites, believers and non-believers, married person and the un married and heterosexual as well as homosexual.²⁹ As to me, Human Right means a common standard, that intentionally agreed to regulate the conduct of the state, when it derogate the standard that provided the state will be internationally responsible.

When I look at the bare meaning of human right, “the right one has simply because one is human being. This simple and relatively uncontroversial definition though is more complicated than it may appear on the surface, it identifies human rights as rights in the strict and strong sense of that term and it establishes that they are held simply by virtue of being human.”³⁰ The ‘right’ a human being have by virtue of being human has a meaning under this definition. The wirer believes one as being human itself enough to conclude he has human right.

Human or natural rights, as the right of each person simply as a human being specific their characters they are rights having their source in human nature. There are two basic answers to the human nature that give rise to human right, on the one hand many people argue that human rights arise from human needs from the naturally given requisites for physical and mental health and well being. On the other hand many argue that human rights reflect the minimum requirements for human dignity or moral personality, the latter arguments derived from essentially philosophical theories of human nature dignity or moral personal.³¹ The writer prefer to have the second position, since the minimum requirements for human dignity fulfills the common standard for the achievement of all nation and the observance of external bodies when it is not respected,

Human rights are by their nature universal. It is not coincidental that we

have a universal declaration of human rights for they are the rights of all men and women. Therefore in its basic outlines a list of human rights must apply at least more or less “across the board” but nature of human being is also shaped by the particular societies in which they live. Thus the Universality of human rights must be qualified in at least two important ways

First, the forms in which universal human rights are institutionalized are subject to some legitimate cultural and political variation for example what counts as popular participation in government may vary with in certain range from society to society both multiparty and single-party regimes may reflect legitimate notion of political participation. it is not allowed in the words of the nineteenth century.”³² As to me, the legitimacy of human right depends on cultural and political reality of the states is not in line with the essence of human right, because the minimum standard of human right will be denounce ,when it’s expected to conform with the national legislation.

Second and no less important, the universality (in principle) of human rights is qualified by the obvious fact that ,any particular list no matter how broad its cross cultural and international acceptance reflects the necessarily contingent understanding of a particular era.”³³ for instance, in Ancient Athens the confession or testimony of the slave was only accepted if he had been subjected to torture, after all what reason would a slave to confess or to betray his master ,if he had not been tortured.”³⁴ Thus, we must expect a gradual evolution of even a consensual list of human rights as collective understanding of the essential elements of human dignity the conditions of moral personality evolve in response to changing ideas and material circumstances.

In other words human rights are by their essential nature, universal in their form. They are by definition, the rights held by each (and every) person simply as a human being, but any universality of human right is

subject to a variety of justifiable implementation.

Let me have the reason for the establishment of a long list of human right, human rights which are continuously being violated all over the world can simply be found by referring to the situation in the national context, criminal and penal laws ,which oftenly violated at international human right standards. However there is no reason to abolish such national laws, similarly in international society there is no reason to abolish international human rights standards crimes, such as murder, theft, discrimination and rape in most national societies prohibited, nevertheless they do occur all the time, should the penal law prohibiting them therefore be abolished? No, on the contrary they must not be abolished, but the supervision of the laws should be improved. The same reasoning applies to international society. International standards are not found in laws but in declaration and treaties similar to the national context but the international supervision is fully inadequate. In an ideal world laws and treaties in the field of human right would be superfluous³⁵

1.7. Human Rights and Traditional International law

Traditional international law was defined as the law governing relation between nation states exclusively; this meant that only states were subjects of legal rights under the international definition, which was expanded some what after First World War. To include various newly created intergovernmental organization which were acknowledged to have some very limited rights under international law. Individual human beings were not deemed to have international legal rights as such, they were said to be objects rather than subjects of international law. To the extent that states had any international legal obligation relating to individual, they were deemed to be obligation owed to the states whose

nationality the individual possessed,

Those theories about the nature of international law compelled the conclusion that the manner in which a state treated its own nationals was not regulated by the international law, consequently, did not affect the rights of other states, because international law did not apply to human rights violation committed by a state against individual having its nationality the entire subject matter was deemed to fall within the exclusive domestic jurisdiction of each state, barring other states from interceding or intervening on behalf of the nationals of any state which maltreated them³⁶, there were exceptions to this rule of non intervention, they are dealt with in the section that follows.

The international law of human rights from time to time changes its prior definition, and it has become the law that deals with the protection of individual and groups against violation by government of their internationally guaranteed rights and with the promotion of these rights this branch of law is sometimes also referred to as international protection of human rights or international human rights law³⁷ As far as the state accedes to the international human rights under its legislation, I can say that individual will become the subject of common standard of the international law, that is Human Rights.

International human rights law, has its historical antecedent in a number of international legal doctrines and institutions, the most important of these are humanitarian intervention, state responsibilities for injuries to aliens, protection of minorities, the mandates and minorities system of the League of Nations, and international humanitarian law to the extent that these doctrines and institutions survive, they may be said to form an integral part of contemporary international human rights law³⁸

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1.7.1. Humanitarian Intervention

The legitimacy of humanitarian intervention, in cases where a state committed atrocities against its own subjects, which “shocked the conscience of mankind” was developing by the nineteenth century³⁹

When I see its relation with the doctrine of national sovereignty, it is a limited exception, its historical perspective relates with, “the Ottoman Empire in 1860 and in 1876 when around 12,000 Christians were massacred by irregular Ottoman troops in what is today Bulgaria, a strict view of the doctrine of national sovereignty that was the exclusive concern of the severely Ottoman state⁴⁰ and it was not the business of anyone else nonetheless by invoking the doctrine of humanitarian intervention in public and parliamentary speech the campaign was started⁴¹

The doctrine of humanitarian intervention as expounded by Hugo Grotius in the 17th century, together with other early in the national lawyer recognized as lawful the use of force by one or more states to stop the maltreatment by a state of its own nationals, when that conduct was so brutal and large scale as to shock the conscience of the community of nations, this doctrine was greatly misused in the past and frequently served as a pretext for the occupation or invasion of weaker countries.⁴²

Nevertheless, the doctrine of humanitarian intervention was the first to give expression to the proposition that there were some limits to the freedom states enjoyed under international law in dealing with their own nationals, contemporary arguments about the rights of international organization groups of states to use force, if necessary, to put an end to massive violations of human rights have been justified at times by reference

toy this doctrine.⁴³ The writer believes that, the doctrine of humanitarian intervention helps for the foundation of international Human Right law as a spring board, it is wise to see simultaneously under international Human Right law, prohibition of Racial Discrimination expressly provided, and when there exist a gross violation of equality of race, it is proper to intervene under the state sovereignty.

As it is indicated humanitarian intervention, helps for internationalizing human right law when a state exercised atrocities against its own nationals. The current situation of humanitarian interruption in the UN is "The united nation security council is today increasingly taking action to deal with large scale violation of human rights by authorizing enforcement measures under the powers that chapter VII of UN charter confers on it, this charter applies to situation involving a 'threat to he peace, breach of peace, or acts of aggression."⁴⁴

1.8. Racial Discrimination Under Human Rights Law

The principle of equality that most international and regional human right instrument adopted under their preamble and article, among other right protection against racial discrimination is one of it. For instance under universal declaration of human right under its second article it says

*Every one is entitled to all the rights and freedom set forth in this declaration with out distinction of any kind, such as race, color, sex language religion.*⁴⁵

and under Regional once like the African charter on human and peoples right, every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter

with out distinction of any kind such as race, ethnic group colour sex.⁴⁶

The main reason for inclusion of the provision that prohibit racial discrimination is because of its core right nature, i.e. core rights are rights that are indispensable for an existence in human dignity and there fore need absolute protection. They include the right to life and the right to the inviolability of the human person including the prohibition of slavery and discrimination.⁴⁷ Especially racial discrimination characterized as the very negation of the principle of equality and there fore it has effect to human dignity.⁴⁸ that is why it is included under the International and Regional instrument. As to the writer, the international and Regional instrument comes to picture, in order to entitle every one for exercising of rights and freedom. Set forth under its provision. It would be unsound not to recognize first the indispensable element of human dignity i.e. racial discrimination

In order to exercise or enjoy a fundamental freedom and right it is indispensable to see the racial discrimination in relation to human right that is why a single issue treaties i.e. convention on elimination of Racial discrimination comes to picture under UN sub-organ, The screen behind having a subsidiary treaties under the global international human right instrument like UN, is for exercising the right and freedom set forth in its provision, it is a must to have an effective mechanism ,that deal on the catastrophe that hinder the exercising of human rights, as racial discrimination, that is why convention Elimination of racial discrimination come out under UN

In the major treaties also, before listing the rights they mainly concerned under it's preamble and provision, first they enumerate

prohibition of racial discrimination. A close look at the preamble of the charter of the United Nations explicitly mentions the all nation of the world have fundamental human rights, and under Article 1, paragraph 3 of the charter.

as one of the purpose of the United Nation is the achievement of international cooperation in solving international problem of an economic, social, cultural or humanitarian character, and promoting and encouraging respect for human rights and for fundamental freedoms to exercise these right, it should be enjoyed by all with out distinction as to race,

From this entire international and regional instrument, I can confirm that, for attaining the objective they want to achieve. It is indispensable fact to include under their preamble and provision about Racial Discrimination

The main reason for inclusion of prohibition of Racial Discrimination under international and Regional instrument is, for attaining the objective they have basically agreed upon ,and when there exist any gross derogation for the standard that set out ,the state sovereign right will be intervene by the doctrine of Humanitarian intervention.

One as being a human, he do have human right, racial discrimination means, the violability of the dignity human so the two concept should be seen simultaneously

1.9. Division Of Human Right And Category Of Racial Discrimination

It is conventional to divide human rights in two major classes, civil and political rights and economic, social and cultural rights, such a division is rather crude and unenlightening, It also has too often been the basis for partisan arguments by left and right alike, for grating priority to one category or the other, arguments that often simply attempt to cloak the abuse of rights, Nevertheless, it is common and convenient categorization⁴⁹

The universal Declaration of Human rights was adopted by the UN General Assembly as a resolution, the role this declaration played will be discussed later, but for convenience of this research let me see the division it provides.

The universal Declaration of human right, Divide human Rights into two that is the civil and political Right in one hand the socioeconomic and cultural rights in other hand.

The civil and political rights enumerated in the universal Declaration of Human right it include the right to life, the right to nationality and recognition before the law ,protection against cruel degrading or inhuman treatment or punishment and the right to protection against racial ,ethnic. Sexual or religious discrimination⁵⁰ racial discrimination, under universal Declaration division, is categorized on the civil and political Rights, I support the categorization of racial discrimination under the civil and political Rights since this rights recognized the indispensable right of human dignity like the right to life.

The social and economic rights enumerated under the universal Declaration, it lists the right to work, the right to an adequate standard of living including food, clothing, housing, medical care and the right to education.⁵²

Universal Declaration of Human right that has acquired the status of resolution, in international customary law, defines core rights are

“rights that are indispensable for on existence in human dignity and therefore needs absolute protection they include the right to life and the right to the inviolability of the human person discrimination and other acts that relate human dignity.”⁵²

The universal Declaration of Human right sketched, a principal human rights into two division i.e. the economic social and cultural rights in one hand and the political and civil rights, in other hand those countries that are not parties to the covenant, of these right often accept the principles of the universal declaration. That is for existence of other human right it is indispensable to incorporate prohibition of racial discrimination.

In addition to elimination of racial discrimination in the category of universal declaration, there are single issue treaties that have been formulated under united Nation auspices on topics such as racial discrimination.⁵³

The universal Declaration of Human Right, under civil and political Right, it categorized Racial Discrimination. It is clear also to exercise other right Racial Discrimination comes first, as the basic principle of Universal Declaration accepted by most international and Regional instrument. In addition to these under international human right

organization like, the United Nations system also, major treaties i.e. the economic, social and cultural rights and civil and political rights provide about racial discrimination, in addition to these major treaties there are a single issue treaties like convention on elimination of racial discrimination that exhaustively talks about one kind of right i.e. Racial Discrimination

1.10. The structure of modern international human right law

The state parties to international human right law, has an obligation to provide under its legislation or other implementation method the obligation it undertaking in the field of international human rights law, many resolution and declaration have been adopted and a number of such treaties is now in force. Based on the forum their adoption, the specification of their obligation, content, and by establishment of the procedure, they fall into three broad categories, global, regional and subsidiary⁵⁴ In chapter two, the international human right such as United Nations Charter and a single issue treaties convention on Elimination of racial discrimination will be dealt in chapter three the regional instrument that is the African human and people right will be dealt.

The global and regional human rights differ from subsidiary treaties, mainly by the forum in which they have been adopted, and the way the states which are or can become parties to them.⁵⁵ In addition to the forum for their adoption there are other common features and these are

- 1, they specify the particular obligation of all their state parties in respect of certain 'human rights and fundamental freedom' of all the persons within their territories and subject to their jurisdictions.

- 2, they contain general provision Applying to the protection or realization Of those rights.
- 3, they define and circumscribe the rights and freedom concerned.
- 4, they establish institutions and procedure for the international supervision, interpretation and application of their substantive provisions.⁵⁶ In case of the subsidiary treaties, the following topic, will have a clue

1.10.1. The Subsidiary treaties

In previous topics, International human right law categorization in global and regional discussed, the subsidiary treaties like convention on Elimination of Racial Discrimination distinguished from the global and regional one principally by the fact that each of them deals with only one human kind of rights or a small number of related rights , at the same time , the obligation which they impose on their state parties are usually much more specific and detailed , being designed to provide concrete means for the protection realization of the right or rights with which they deal.

A single issue treaties such as Convention on Elimination of Racial Discrimination, is one kind of subsidiary treaty which was adopted by the UN General Assembly, it gives much emphasis on discrimination based on race,national origin, colour and the like.

What all those treaties have in common i.e. The Global ,Regional or subsidiary , what makes the legal code which they collectively constitute unprecedented in international law is, that by agreement between the state parties among themselves , they define and created specific rights for the individual over whom those states are able to exercise power , but who are not themselves parties to the instrument , in effect , they create *jura quaestiaterito* for hundreds of millions of the world's human population⁵⁷.

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CHAPTER TWO

2. International conventions on Elimination of racial Discrimination

2.1. Introduction

Most international law of human right, for the protection of individual and groups against violation by the government of their own against internationally guaranteed right, establish a treaty that held a state liable

The International law of human right evaluates how much a state implement the obligation that laid on it, it evaluates not randomly rather there is "international human rights standard that are widely accepted in principle at least by states". Thus the discussion and evaluation of national practices take place with in an evaluation set out by international standards to which virtually all states have explicitly committed themselves, whatever the force of claims of national sovereignty with its attendant legal immunity from international action, the evaluation of national human rights practices from the perspective of the international standards of the universal Declaration thus is certainly appropriate even if one is uncomfortable with the moral claim¹ it is clearly figure out that the evaluation is according to the international human right standard. This standard at this time incorporated under many legally binding treaties as well as in non binding declaration this international standard which is called human right² has become one part of it.

I have dealt the historical background of international human rights law but for having a better picture of this chapter, it is nice to see it again

“The two most important historical documents are western origin virginal Bill of rights of 1776 which was incorporated in 1791 in the United States constitution and the French Declaration of the Rights of man and citizen of 1789. Both Documents contain a list of human rights in the sense of individual liberates. Many of those rights are based writing of political philosophers such as john Locke and Jean-Jacques Rousseau”³ having a clue on the historic background of international or basic document would helps for the further steps this instrument passes.

The universal Declaration of human rights which was adopted by UN General Assembly as a resolution, have the legal status of recommendation, this Declaration have the list of rights which are divided in different category as most international instrument, and adopt the principal norms of this regime “that is norms and decision making procedures accepted by states in a given issue area.”⁴

Universal Declaration norms/rights are furthers elaborated in two major treaties the international covenant on Economic social and cultural Right and the international covenant on civil and political right, in addition there are a variety of single issue treaties that have been formulated under the UN auspices on topics such as racial Discrimination on⁵ as it is well known the universal Declaration used for UN as a recommendation , and its categorization and division of human right incorporated under the united Nation

One of international instrument that gives a special emphasis on the human right provision is, United Nation charter, this charter is

established based on the principles of the dignity and equality inherent in all human being and, universal respect and observance of human rights and fundamental freedom for all with out distinction as to race, sex, language or religion other reason this charter is established, by considering the universal Declaration of human Rights principle of all human being are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedom set out there is without distinction of any kind in particular to race ,colour or national origin . The last reason for its establishment is by considering that all human being are equal before the law and are entitled to equal protection of the law against any discrimination.⁶, thus the goal for the establishment of UN helps the prohibition of discrimination under its own provision and helps also for the subsequent institution under UN

In addition to adoption of the principle of equality under its own legislation the United Nation charter adopted the International Convention On Elimination Of All Forms Of Racial Discrimination, on 21 December 1965 by the General Assembly and it entered into force in January, 1969, I will in detail elaborate the establishment of this convention and the states parties obligation in the coming topics.

Racial Discrimination deprive one from exercising his right is the social-political and Economic life it elaborated under Vienna conference as follows

, According to the final Declaration of the world conference on Human Rights in Vienna (1993),

all human rights must be treated by the international community globally in a fair an equal manner on the same footing, and with the same emphasis.

The word 'all' refers to the whole of civil and political economic social and cultural as well as collective right⁷ the meaning provided under Vienna Conference mentioned also on convention on elimination of racial Discrimination also mention racial discrimination means exclusion distinction restriction based on race colour descent or national or ethnic origin which has impairing or nullifying, the recognition enjoyment or exercise on equal footing of human rights and fundamental freedoms the writer believes the 1993 Vienna conference , has the parallel message with the 1965 convention , since both recognize the economic, social and political right should be exercised in an equal footing among all human ,so I will discuss the civil and political covenanted and the economic social and cultural covenant.

2.2. The league of Nations

The covenant of the league of Nations, the treaty which is 1920 established the league and served as its constitution, contained no general provisions dealing with human rights, the notion that human right should be internationally protected had not yet gained acceptance by the community of nations nor was it seriously contemplated by those who drafted that treaty, The covenant did however ,contain two provision (Article 22 and 23) that bear on the development of international human right law ,the league also played an important role in helping with the implementation and post world war I treaties for the protection of minorities⁸ the writer believes that the league of nation does not serve as protection of human right at that time , but it paved the way for subsequent human right development

. 2.3. Universal Declaration of human Rights

The universal Declaration of Human Rights was proclaimed in 1948 by the United Nations General Assembly. It has no force of law, but it has the role of a resolution of the General Assembly. However, it is amazing that the role of this Declaration is more than a mere recommendation. On the other hand, the General Assembly has no international legislative power, so the universal Declaration is more than a mere recommendation⁹. As to me, this statement is undoubtedly true since the solemn declaration has a role of mere recommendation. To give an effect to the universal declaration with this mere recommendation is more than that.

The Universal Declaration contains a list of the most important human rights. These include the following civil and political rights.

- The right to life, liberty and security of person
- The prohibition of slavery
- The prohibition of torture
- The prohibition of arbitrary arrest, detention or exile
- The right to a fair trial
- The right to freedom of movement
- The right to property
- The right to freedom of thought, conscience and religion
- The right to freedom of opinion and expression
- The right to freedom of assembly and association
- The right to participate in the government of one's country

The universal Declaration also mentions some important social and economic rights

- the right to work
- the right to an adequate standard of living including food

clothing housing and medical care

-the right to education

The civil and political rights enumerated in the universal Declaration, gives a special attention for racial Discrimination and it categorized under this division¹⁰

Universal Declaration of Human Right states in the beginning of its preamble that the 'recognition of the inherent human dignity and inalienable right of all members of the human family is the foundation of freedom Justice and peace in the world', It is also true that the inclusion of prohibition of racial Discrimination in the major covenant of human right that established based on the universal Declaration Human Right¹¹

The Basic principle of equality i.e. all peoples without discrimination on race, colour or ethnical origin have an access to economic political and cultural field also included under this declaration, it said 'everyone is entitled to all the rights and freedoms set forth in this Declaration with out distinction of any kind such as race colour sex language religion, political or other opinion national or social origin property birth or other status ,the above and this paragraph, as to me indicates the universal declaration have fabulous provision that, to be referred as a common in most international and regional instrument

Further more no distinction shall be made on the basis of the political jurisdictional or international status of the country or territory to which a person belongs, whether it be independent nonself governing or under any sovereign state.¹² in light of the political rights also, this declaration grants all with out distinction has the right to exercise

Generally, Bodies of the united Nation have repeatedly confirmed the importance of the universal Declaration, and many declaration and

resolution call on states to respect the standards set out in the universal declaration In 1968 the first world conference on Human rights adopted the 'proclamation of Teheran', in which the universal Declaration was proclaimed as stating 'common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constituting an obligation for the members of international community', In the final declaration of the second world conference on human rights, which was held in Vienna in 1993, the universal Declaration was named the source of inspiration and the basis for the united Nation in making advances in standard-setting as contained in the existing international human right instrument¹³ as to me the universal declaration is a stepping board for many declaration and resolution since its standard are adopted under many human right instrument.

2.4. UN Charter based institution

2.4.1. Introduction

Unlike the league of Nations covenant, the UN charter contains specific articles on human rights, one of the principal purpose of the organization, according to Art 1, paragraph 3, of the charter, is international cooperation to promote and encourage respect for human rights and fundamental freedoms for all with out distinction as to race, sex language or religion .In this task, the General Assembly was given the power to initiate studies and make recommendations to governments (Article 13). The united Nations shall promote universal respect for all with out distinction as to race, sex, language or region.¹⁴ All members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purpose set forth in Article55 (56) One of the tasks of the economic and social council (ECOSOC) is to

make recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedoms for all. This general authority was supplemented with the specific requirement that the Economic and social council organize a commission for the promotion of human rights, finally one of the basic objectives of Trust ship system is to encourage for human rights and fundamental freedom for all without distinction as to race sex language or religion¹⁵

When the United Nations formulated fundamental human rights for all man kind, this was the first such formulation in history. The “human right provision which ultimately found their way in the charter and the UN feels short of the expectation created by Roosevelt’s vision and the war time that was to be expected for each of the principal Victorious powers and trouble some human rights problems of its own.”¹⁶ the writer consider UN inclusion of human right provision id the foundation of major and subsidiary treaties that promulgated subsequently.

In this chapter, I will briefly deal about the sub-commission i.e. the commission on Human rights established on the year 1947, which laid the foundation for preparing a convention on Elimination of All forms of racial discrimination, and the committee of elimination of Racial Discrimination which was adopted by the General Assembly and have the function of report annually to the General Assembly and to examine information placed before it by states parties to the convention but before discussing the subsidiary, the major UN treaties, i.e. the universal Declaration of Human-Rights Division on economic social and cultural rights and the civil and political right which have the same division on UN will be dealt.

The UN commission on Human rights which was established pursuant to the charter of the united Nation has worked for many years at the

formulation of the most important human rights in treaty form, this led to the civil and political rights and social economic and cultural rights¹⁷ the formulation of the UN commission, as to me directed from the universal declaration since, this declaration is used as the basic principle

The research doesn't critically analyze different materials for this chapter since most Declaration in all materials provided in the same manner and no need to give much emphasis as it is irrelevant for the topic of this research.

2.5. Major International Human right Treaties.

2.5.1 Introduction

The universal Declaration of human right, which was adopted by the United Nations as a resolution has a status of recommendation, this Declaration divides the human right into two major categories that is as I previously try to elaborate, i.e. the civil and political rights in one hand and economic social and cultural rights in other hand. The writer believes this division of universal declaration paved a way for the subsequent convention and declaration, I said so in realizing the subsequent Vienna conference of 1993

According to the final declaration of the world conference on Human Rights in Vienna (1993) all human rights must be treated by international community globally in a fair and equal manner on the same footing and with the same emphasis. The word all refers to the whole of civil and political economic social and cultural, as well as collective rights.¹⁸

The universal Declaration categorization of human right under socio-economic and cultural and Civil and political right, also followed in the UN framework, the UN about the establishment of this right.

The commission on human rights had established pursuant to the charter of the united Nation and worked for many years at the formulation of the most important human rights in treaty form. This led in 1966 to the two well known covenants, one on civil and political right and the other on economic social and cultural rights and come in to force in the year 1976.¹⁹

The step undertaken by the commission on human right, as to me, has a lot of privilege in the observance of these rights, since granting the right as a whole expose the right to prejudice

The term racial discrimination mean exclusion preference of a human being on his colour, descent, national origin from the participation on economic social civil and political sphere, I can possibly say this meaning of the term largely adopted in this major united Nation covenant under it preamble and article for equal exercise of rights enumerated in this convention with out discrimination and, it is helpful to see the major instrument in relation to 1965convention on elimination of racial discrimination, since these major instrument incorporate all the element the convention contains.

2.5.2. International covenant on civil and political rights

When human rights are mentioned ,one usually thinks first of the classic civil and political rights these are mentioned in the universal Declaration of human right, The international covenant on civil and political right, the regional treaties such as European convention of human rights and fundamental freedom and the African charter on Human and people's right.²⁰

The universal Declaration of human rights was divide the human rights in to two major classes i.e. civil and political rights and economic social and cultural rights , under the civil and political rights it include the right to life, nationality protection against racial discrimination, in addition to this the universal declaration gives also a special emphasis on indispensable right for the existence of human being i.e. the core rights they includes the right to life and the inviolability of the human person mainly discrimination.²¹

The preamble of the international covenant on civil and political rights exhaustively indicates all the discussion I have done in the universal Declaration “the states parties to this covenant considering that the principles proclaimed in the charter of the united Nations recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world it gives also recognized the rights derive from the inherent dignity of the human person.”²²

As most international instrument, the international covenant on civil and political right incorporate under their first provision, the obligation of state to respect and ensure all individuals with in its territory subject to its jurisdiction the covenant said also the rights recognized in the present covenant will be respected by state party with out any distinction of race, colour, sex, language, political or other opinion, national or social origin property birth or other status”²³

For states, that were not included under its legislative or other measures also determined in this convention to undertake, “where not already provided for by existing legislative or other measures, Each state party to the present covenant undertakes to take the necessary steps, in

accordance with its constitutional processes and with the provisions of the present covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present covenant”²⁴

International covenant on civil and political Rights in addition to the incorporation of prohibition of racial discrimination under its provision, it obliges a state to incorporate those rights under its legislation ,this measure of the international covenant on civil and political right ensure exercise of rights it wants to grant.

2.5.3. International covenant on economic and social Rights

United Nation charter, which established the commission on Human rights pursuant to its charter has formulated the most important human rights in treaty form. This led in addition to the civil and political covenant, the establishment of it the economic and social covenant.²⁵

Before I deal with the relation between racial discrimination with the international covenant on economic and social Rights. Let me have a looked at the need to have an the observance of economic and social rights the main reason for establishment of the economic and social right is “the observance of economic and social rights is receiving less attention than the observance of civil and political rights, perhaps this is caused by failure to recognize phenomena such as poverty, malnutrition, illiteracy and unemployment as human rights problems, this is manifestly wrong, it needs little imagination to see that the right to life ,which is generally considered as one of the classical civil rights is closely linked to the to the (economic)rights , to food housing and health care they are inseparable.²⁶the writer agreed by the above reasoning, it is unpalatable to think , political or civil rights separately from the

economic rights because without ensuring the sustainability of food security , providing the right to life is nothing

A Single issue treaties like convention on elimination of racial discrimination also have given a special emphasis under their preamble and provision to the effect of racial discrimination on the economic social and cultural field for instance under convention of elimination of racial Discrimination, the term 'racial discrimination' under this convention shall mean any distinction exclusion restriction of preference based on race, colour , descent, national or ethic origin which has the purpose or effect of nullifying or impairing, the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social ,cultural or any other field of public life.²⁷ that means based on race , colour , decent, national or ethnic origin one should not be deprived from exercising his right in the social economic and cultural field

Under convention on elimination of racial discrimination there are provision that specifically identify and dealt what are socio economic rights and the prohibition of any racial discrimination in those fields, I will deal this provision in Convention on Elimination of Racial Discrimination but for convenience of this topic let us have some

“The Convention On Elimination Of Racial Discrimination, which was adopted by the General assembly of united Nation in 1969 and entered into force in the year 1982.²⁸ obliges state parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right to every one, with out distinction as to race, colour or national or ethic origin and to equality before the law notably in the enjoyment of the following right an the economic social and cultural rights in particular.²⁹

The right to work, to free choice of employment, to just and favorable condition of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration, The right to form and join trade union, the right to public health medical care, social security and social service, The right to education and training, and right to access to any place or service intended for use by the general public the right to housing. The writer of this research observed that, this subsidiary treaty talks wholly in relation to racial discrimination that is it talks about one kind of human right.

The international covenant on economic social and cultural rights like most international instrument include the provision that prohibit racial discrimination it clearly provides that the states parties to the present covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised with out discrimination of any kind as to race colour, sex, language religion political or other opinion national or social origin, property birth or other states³⁰

Racial discrimination, under major treaties like international covenant on Economic, social and cultural right, prohibited generally for exercise of the right they exhaustively listed racial discrimination as one element prohibited that is gender (sex) or religion based discrimination and a single issue treaties specifically give emphasis on the exercise of right in relation to discrimination based on race.

2.6. The sub commission on prevention of discrimination and protection of minorities

The sub commission, a subsidiary organ of the commission on human rights, was established in 1947, it has laid the foundation for preparing a convention on elimination of all forms of racial discrimination that was adopted by the General Assembly in 1965³¹

The sub-commission consists of 26 members elected by the sub commission from a list of nominees designed by the member states of the UN, they serve for a period of four years and may be reflected the terms of reference of the sub commission require it, the main function of the sub commission is, to undertake studies and to make recommendation to the human rights commission” concerning the prevention of discrimination of any kind relating to human rights and fundamental freedom and the protection of racial , national , religious and linguistic minorities “, it is also empowered “to perform any other functions which may be entrusted to it by the economic and social council or the commission on human right ”ECOSOC res, 9 (II) of June 21 , 1946, in practice , these terms of reference have been interpreted broadly enough to permit the sub commission to deal; with the whole range of human right issues that arise in the UN context.³²

The UN sub-commission on prevention of minorities private compliant first discussed before it pose the Economic or social council.³³

“ The united nation sub commission on the prevention of discrimination and protection of the minorities” has prepared a verity of studies and reports, it has participated in the drafting of human right instrument , and it has devoted much time in recent years to the examination of charges of human rights violation , in fact the sub commission is largely responsible for stimulating the development of various UN procedures

for dealing with such violation and for pushing the UN's political human rights organ to strengthen these institution , it has played a particularly important role in the implementation of the 1503 procedures, and in focusing the UN's attention on human rights issues relating inter alia, to minorities , indigenous population , slavery and disappearance ,it is also laid the ground work for many important normative instrument adopted by the UN , including most recently the 1992 declaration of the right of persons belonging to national or ethnic , religious and linguistic minorities , adopted by the UN general assembly on Dec, 18. 1992.³⁴

2.7 Back Ground For Elimination Of Racism And Racial Discrimination Under UN Charter

The universal declaration has inspired the creation of wide net of new international regulations. In the form of multi lateral treaties they have been ratified by various states and give evidence of the increasing attention that international law pays to individual persons³⁵ the principle of equality and non-discrimination are set out clearly in the charter of the UN, which repeatedly refers to the realization of human rights and fundamental freedoms "by all with out distinction as to race, sex language or religion"³⁶ the same principle are enshrined in the Universal Declaration Of Human Rights, the international covenants of human right the declaration on elimination of all forms of racial discrimination and the declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief³⁷, But it is unforgettable fact that, the UN equality principle first emanate from the universal Declaration and by the reasons I will explain as follows.

The preoccupation of the UN with the expiration of racism, racial discrimination and religion intolerance is not new, it dates back to a Nov,

1946 when a draft resolution relating to “religion and so called, racial persecution and discrimination” was submitted to the General Assembly by the representative of Egypt.³⁸

It was stated in that draft that official and unofficial investigation carried out in several states of central Europe, among both members and non-members of the UN, indicated that citizen belongs to religious minorities continued in spite of the victory of the democracies to be the object of persecution and of discrimination which rendered life very difficult in their native countries, where they had an absolute right to be on an equal footing with all other citizens. It was further stated that such persecution and discrimination consisted a total disregard of the most elementary humanitarian principles and was contrary to the purpose of united Nation, and the General Assembly should therefore call on the government and responsible authority of the area put an end to it.³⁹

The General committee of the Assembly considered the proposal at its 25th meeting on Nov, 1946, A number of representative objected to the reference made to central Europe, later, the representative of Egypt submitted a revised version of the draft resolution which was worded in general terms and omitted the reference to central Europe, In that the draft resolution met with no objection and was unanimously adopted by the 48th plenary meeting of the General Assembly resolution 103(1) of 19 Nov,1946. The resolution as adopted read as follows.

*The General Assembly declares that it is in the highest interest of humanity to put an immediate end to religious and so-called racial persecution and discrimination and calls on the government and responsible authorities to conform both to the letters and to the spirit of the charter of UN and to take the most prompt and energetic steps to that and.*⁴⁰

For many years often the adoption of resolution 103(1) the united Nation bodies contained their consideration of the question of discrimination either to particular areas such as southern Africa and non-self-governing and Trust territories or to particular fields such as education employment and political rights.

However 1960, an out break and manifestation of racial prejudice and religious intolerance occurred in several countries and these were the subject of broad measures adopted by the Sub-Commission On The Prevention Of Discrimination And Protection Of Minorities The Commission On Human Right The Economic And Social Council and The General Assmbly.⁴¹

Early in 1960 both the Sub-Commission On Prevention Of Discrimination And The Commission On Human Rights noted with deep concern a series of manifestation of racism and religious intolerance which had occurred in several European countries late in 1959 and which the sub-commission characterized as "reminiscent of the crimes and outrages committed by Nazis prior to and during the second world war."⁴²

The General Assembly in the resolution 1510(xv) of 12 December 19 60 , shared the concern of the commission and its sub commission , affirming that " the united nation is duty bound to combat theses manifestation, to establish the fact and the cause or their origin and recommend resolute and effective measure which can be taken against them" the Assembly resolutely condemned "all manifestation and practice of racial ,religious and national hatred in the social ,political ,economic, educational and cultural spheres of the life of the society as violation of the charter of united nation and universal declaration of human right" and called upon

the governments of all states to take all necessary measures to prevent all manifestation of racial , religious and national hatred.⁴³

Two years later in its resolution 1779 (xvll) of 7, Dec 1962, the assembly, indicated that it was deeply distributed “by the continued existence and manifestation of racial prejudice and of national and religious intolerance in different part of the world “recommend further specific measures to eliminate such manifestation, the resolution read in part that.⁴⁴

- 1 The general assembly invites the government of all states, the specialized agents and non-governmental and private organization to continue to make sustained efforts to educate public opinion with the view to the eradication of racial prejudice and national religion in general.
- 2 Calls upon the government of all states parties to take all necessary measure to resigned discriminatory laws which have the effect of creating and perpetuating racial prejudice and national and religious intolerance wherever they exist , to adopt legislation , if necessary for prohibiting such discrimination, and to take such legislation for other appropriate measures to combat such prejudice intolerance
- 3 recommend the government of all state to discourage discrimination through media and information
- 4 invite the specialized agents and non governmental bodies to fully cooperate with the governmental of the states.
- 5 invites the government of member states the specialized agent and non governmental organization concerned to inform the secretary general of action taken by them in compliance with the present resolution.
- 6 request the secretary general to submitted further reports an actions taken by member states in compliance with general



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assembly at its eighteen nineteenth, twentieth and twenty first session and the general assembly , in its resolution 20199xx) of 1 November 1965 and 2143(xxl) of 26 October 1966, took note to the report.⁴⁵ the writer could possibly infer that all this events of the central Europe and submission of the revised version of Egypt helps the attention on Un and , forced the promulgation of the 1965 Convention On Elimination Of Racial Discrimination

2.8 . International convention on the Elimination of all forms of Racial Discrimination (1965)

The international convention on the elimination of all forms of racial discrimination was adopted by the UN General Assembly on 21 Dec 1965 (resolution 2106(xx1) and entered in to force on 21 January, 1969, THE DECLARATIOLN OF ALL FORMS OF RACIAL DISCRIMINATION entered in to force on Dec 1982, the text of the convention, annexed to resolution 2106(XX), ⁴⁶

The text of the convention was: -

The states party to this convention considering that the charter of the UN is base on the principle of the dignity and equality inherent in all human beings, and that all member states have pledged themselves to take a joint And separate action , in cooperation with the organization, for the achievement of one of the purpose of united nation which is to promote and encourage universal respect for the observance of human rights and fundamental freedoms for all, with out distinctions to race ,sex ,language or religion⁴⁷. The purpose of foundation of united Nation has got a direct relation on racial discrimination convention, since both want to eradicate all the hindrance that prohibit one from exercising his fundamental freedom and right.

The universal declaration of human rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind in particular, as to race, color or national origin. The universal Declaration as indicated the research has a give much emphasis on racial discrimination. Under its preamble and categorization of rights

The preamble of this convention talks about the principle of equality "All human beings are equal before the law and are entitled to equal protection of the law against any distinction and against any incitement to discrimination" The principle of equality to be effective the government should prohibit an incitement or propaganda under its own and on organ that comes out of government, is the main message that provided under this provision.

About colonialism that will entail racial discrimination provided under preamble

"The UN condemned colonialism and all practices of segregation and discriminations associated therewith, in whatever form and wherever they exist, and that the declaration or the granting of independence to colonial countries and peoples of 14 Dec 1960 (General Assembly resolution 1514(xv)) has affirmed and solemnly proclaimed the necessity of bringing them to speedy and unconditional end" the main purpose of having an international human instrument is in order to exercise a human its fundamental freedom and right this objective is also one of UN objective and in order to exercise this right it is under able tact, to condemn colonialism.

The UN declaration on the elimination all forms of racial discrimination of 20 November 1963 (General assembly Resolution 1904(xviii)) solemnly

affirms the necessity of speedy eliminating racial discrimination throughout the world in all its forms and manifestation and of securing understanding of and respect for the dignity of the human person

The preamble affirmed the UNESCO Declaration on race and racial prejudice, and it said

“Any doctrine of the superiority based on racial differentiation is scientifically false, morally condemned, socially unjust and dangerous and that there is no justification for the racial discrimination in theory or in practice, anywhere” it also affirmed by UN ESO declaration on race which affirms falsity of scientific justification. I will deal on it in the next topics

Racial Discrimination, as it is the main factor for obstructing a friendly relation among human race it listed under preamble like this

“Reaffirming the discrimination between human being on the grounds of race, color, ethnic origin, is an obstacle to friendly and peaceful relation among nations and is capable of distributing peace and security among peoples and the harmony of the persons living side by side even within one and the same state”.

Racial Discrimination is the main barrier for the development, since there is no an equal exercising of rights the convention under preamble said about this

“For every human society it is fact that racial discrimination is a barrier from development the same idea reflected on this declaration and said that the existence of racial barrier is repugnant to the idea of any human society”

The factors for adoption of convention i.e. the discrimination that man tested different time considered in this convention and the preamble said

“Alarmed by the manifestation of the racial discrimination still in evidenced some areas of the world by governmental policies based on racial superiority or hatred such as policies of apartheid, segregation or separation, Resolved To adopt all the necessary measures for speedily eliminating racial discrimination in all its forms and manifestation and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build on the international community free from all forms of racial segregation and racial discrimination”

Racial Discrimination also manifested through employment and occupation, and considering these, the convention provide under its preamble

“Bearing in mind the convention concerning discrimination in respect of employment and occupation adopted by the international labor organization in 1958, and the convention against discrimination in education adopted by the united nation educational scientific and cultural organization in 1960”

As it is repeatedly mention the UN incorporate these right for the attaining its objective and it said under this Declaration

“Desiring to implement the principles embodied in the united nation declaration on the elimination of all forms of racial discrimination and to secure the earliest adoption of practical measures to that end”,

In part one of the convention, What the term racial discrimination mean I.e. the term racial discrimination means any distinction, exclusion, restriction or preference based on race color, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human

rights and fundamental freedoms in the political economic social, cultural and the field of public life.⁴⁸

There are exception provided for equal enjoyment or exercise of human right and fundamental freedom with out discrimination of race colour, descent or national or ethnic origin under this declaration and it said.

“The convention shall not apply to the distinction, exclusion and restriction or preference made by the state party to this convention between citizen and non citizen”⁴⁹ Since the main attention was given among citizen, it does not prohibit racial discrimination for non-citizen.

Another exception of for equal exercise of human right and fundamental freedmen with out discrimination of those grounds listed in this provision

“Nothing in this convention may be interpreted as affecting anyway the legal provision of states parties concerning, nationality, citizenship or naturalization, provided that such provision do not discriminate against any particular nationality”⁵⁰ this provision of the convention. Warn unnecessary interpretation in the case of nationality citizenship or naturalization, since they are subject to the state domestic jurisdiction but when this rights prohibited against one particular nationality the convention comes to picture.

The government has the right to provide a special measure for disadvantageous certain racial group the declaration about this said that

“special measures taken for the sole purpose of securing adequate advancement for certain racial or ethnic group individual requiring such protection as may be necessary in order to ensure such group or individual equal enjoyment.”⁵¹

The Declaration listed what the governmental should under take for eradication of racial discrimination under part one, It said that,

States party to the under taking condemn racial discrimination and undertakes to peruse by all appropriate means and with out delay a policy of eliminating racial discrimination in all the forms and promoting understanding among all races and to this end.⁵², in addition to this undertaking a state pledged

The states party undertaking to pursue all appropriate means and without delay a policy of eliminating racial discrimination is the main objective of this research whether Ethiopia has done the policy or not. I will see in detail in the last chapter

A, Each state party undertakes to engage in no act or practice of racial discrimination against persons, group of persons or institution and to secure that all public authorities and public institution national and local, shall act in conformity with this obligation.⁵³

B, Each state party undertakes not to sponsor, defend or support racial discrimination by any persons or organization.⁵⁴ not only its public authorities and public institution national or local the state undertake to eliminate racial discrimination includes also any ordinary person or non governmental organization

C, Each state party shall take effective measures the review governmental, national and v local policies and to amend rescind or nullifying any laws and regulation which have the effect of creating or perpetuating racial discrimination wherever it exists.⁵⁵ in addition to the obligation it under takes to have legislation on elimination of racial discrimination the state will review the policy and nullity when it is necessary

- D,** Each state party shall prohibit bring to an end by all appropriate means including legislation as required by circumstances, racial discrimination by any persons or group or organization.⁵⁶
- E,** Each state party undertakes to encourage, where appropriate integrationist multi racial organization and movement and other means of eliminating barriers between races and to discourage anything which tend to strengthen racial division.⁵⁷, the writer pointed out that, the UN objective can not be successful with out collaboration of a state, that is in encouraging factors that state would have take like appropriate integrationist multi racial organization and movement and other means of eliminate barriers.

In part two, I found out that,

“States parties shall ,when the circumstance so warrant take, in the social economic and cultural and other field special and concrete measures to ensure the adequate development and protection of certain racial groups or individual belonging to them, for the purpose of guarantying them the full and equal enjoyment of human right and fundamental freedoms, these measures shall in no case entail as consequence the maintenance of unequal or separate right for different racial groups after the objectives for which they were taken have been achieved.⁵⁸ As previously mentioned in the major treaties i.e. in the international convention on economic social and cultural right.

For all rights that exhaustively enumerate under its provision to be attentive and meaning full racial discrimination must have to be come first and under the 1965 convention, it gives much emphasis on the consequence that would come if there doesn't exist racial equality

The obligation this convention impose on state does not only end on its in corporation of rights under its legislation it obliges a state also

“States parties condemn all propaganda and all organization based on the superiority of one race or group of person or one color or ethnic origin.”⁵⁹

The state eliminates racial discrimination by imposing the following measures also mentioned under this convention.

- A,** “States shall declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred, incitement or racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colors or ethnic origin; and also the provision of any assistance to racist activities, including the financing there of.”⁶⁰ This means a state can reduce or eliminate racial discrimination include penalizing those who intensity racial discrimination this is clearly provide under this declaration.
- B,** state parties to the convention on Elimination of Racial Discrimination shall declare illegal and prohibit organization and also organized and all other propaganda activities which promote and incite racial discrimination and shall recognize participation in such organization an activities as an offense punishable by law.⁶¹ like the previous provision this provision also obliges state to penalize on organization that spread racial discrimination
- C,** States shall not permit public authorities or public institution, national or local to promote or incite racial discrimination.⁶²

The political and civil rights and the social economical and cultural rights in the major instrument was not in detail discuss about racial discrimination but in the convention on elimination of racial discrimination lists the rights that a state party should respect in this manner: -

“In compliance with the fundamental obligation laid down in art 2 of this convention states parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the rights of everyone with out distinction as to race colour or national or ethic origin to equality before the law notably in the enjoyment of the following rights.”⁶³

The rights exhaustively mention in this convention starts with first the political rights and it is followed by the economic social and cultural rights i.e.

- A. The right to equal treatment before the tribunals and all other organ to administering justice.⁶⁴
- B. The right to security of person and protection by the state against violence or bodily harm whether inflicted by government official or by any individual group or institution.⁶⁵
- C. Political rights in particular the right to participate in elections to vote and to stand for elections on the basis of universal or equal suffrage to take part in the government as well as in the conduct of public affairs at any level and to have equal access to public service.⁶⁶
- D. Other civil right in particular
 - i. The right to freedom of movement and residence with in the boundaries of the state as it's clearly provided in the universal declaration Human rights too
 - ii. The right to leave any country including one's own and to return to once country.
 - iii. The right to nationality
 - iv. The right to marriage and choice of spouse
 - v. The right to own property alone as well as in association with others

The economic, social and cultural rights which was given special attention includes

“The right to access to any place or service intended for use by the general public such as tram port, hotels, restaurant, theatres and parks, The right work, protection against unemployment, the right to housing , the right to education and training should be exercised with out racial discrimination mentioned in this convention.”⁶⁷

I clearly identifying also states parties shall assure to every one with in their jurisdiction effective protection and remedies through the competent national tribunal or other state institution against any act of racial discrimination which violates his human rights fundamental freedoms contrary to this convention.

Under this convention state parties undertakes to adopt immediate and effective measures particularly in the field of teaching education culture and information for this research convenience, I only emphasis on the perspective of their presence under legislation or law.

Under part II, there’s a provision about the establishment on the committee the elimination of racial Discrimination, I will deal about it under here.

2.9. The committee on Elimination of Racial Discrimination

The Convention On Elimination Of Racial Discrimination, is the first human right instrument adopted by the united nation to embody international measures of implementation; it authorized establishment of the COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, composed of experts serving in their personal capacities, to consider reports from states parties on the legislative, judicial, administrative or

other measures adopted by them and which give effect to the provisions of the convention to make suggestion and general recommendation based on its examination of those reports and information received from state parties and to assist in settling disputes among states parties concerning the application of the convention.⁶⁸

It also provides (art 14)for committee to receive and consider communication from individual or group of individual with in the jurisdiction of state party claiming to be the victim of a violation of any of the right set forth in the convention, provided that state has made a declaration recognizing competence of the committee to do so.⁶⁹

2.10. UNESCO Declaration on Race and Racial prejudice

The adoption of the Declaration on Race and Racial Prejudice by the UNESCO general conference of its twentieth session in 1978 marked the culmination of a long period of research on scientific facts of race.

On its resolution 116(v1) of 1 march 1948, the economic and social council advised UESCO “of the interest of the UN in effective educational programme in the field of the prevention of discrimination and the protection of minorities “ and suggested “Collaboration between the united nation, and UNESCO in the formulation of such programmed” and in particular, that UNESCO consider the desirability of a programmed of disseminating scientific facts designed to remove what is commonly known as racial prejudice”⁷⁰

In the response the general conference of UNESCO, in 1950, called upon the director general to sponsor research on scientific facts of race, to diffuse these facts widely, and to prepare an educational program based on them , accordingly, UNESCO has undertaken a number of studies

designed to expose the unscientific foundation of racism and to show , its close link to the social and economic context of the society in which it exists, among the studies published are , the race question in the modern science(first published in 1956), race ,science and the society (1975) a series of booklet issued under the general title , the race question and modern thought examining the position of major world religions on racism⁷¹ UNESCO'S task on the unscientific foundation of racism has in corporate under the Convention On Elimination Of Racial Discrimination ,the studies published under UNESCO also helps for the foundation of the right meaning of what race mean.

In 1950, UNESCO called upon group of experts, acting in personal capacity, to set out in clear and simple terms on the finding on the scientific inquiry and rejected the idea that there were fundamental differences due to race in human species and unequivocally condemned the theories based on the superiority of one or more races, those two words only concerned either the biological and anthropological aspect of the problem and did not take into consideration the economic and social situation of various human communities.⁷² this finding of UNESCO on superiority of one or more races the is now a major evidence for all pro-racial discrimination reasoning that means, as to me the fundamental difference exist among race is for biological or anthropological factor , not for depriving human being from exercising his socio-economical and political right and consider one race is suerior than other .

A further meeting of the experts convened in 1964, the resulting proposal on biological aspects of race incorporated in the main argument.⁷³ as the biological aspect used for justification of racial discrimination by those who support it this perception, at last discovered as unscientific and this finding adopted by acclamation in the UN.

The general conference on 27 Nov 1978, By the Declaration On Race And Racial Prejudice “lays down the fundamental principle of the equality of all human being and hence of the unity of human race , condemning all theories the postulate inequalities in the endowment of or calling of different peoples , it affirms the right of men and group to lay claim to their own identity , to consider themselves as different and to be regarded as such , as the same time it provides that this right can not be invoked by any one seeking to justify a discriminatory practice or the basis of difference in ethnic origin, color or religions for the purpose of establishing inequalities among those disputing such differences, it consequently calls into the question polices of forced assimilation that seek to destroy the specific character of peoples as well as policies of segregation that are arbitrary because they conflict with the right of nation and the right of peoples linking the practice , attitudes and prejudice stemming from racism and inequalities in power which in varying degrees , facility their development , the declaration seeks to refuse racist ideas and to combat the economic inequalities underling and reinforcing them⁷⁴, the writer of the this research confidently accepts UNESCO’s previous statement, since it is true that there is a biological difference among race, one can not be denied his identity right, but based on this pretext , he can not deprive the other race right in exercising his right in the socio-economic and political life, for fighting racial discrimination UNESCO also prepare specific provision.

The declaration contains a preamble and 10 articles, in art 1 and 2 it defines the concept of race, racism and racial prejudice in the following terms

Under Article One

- 1 all human being belong to a single species and are descended from a common stock they are born equal in dignity and rights and all forms of

an integral part of humanity” based on the scientific foundation of UNESCO it declares all human being belong to a single species, I hope this provision is in order to achieve the principle of equality, the biological or physical difference can not be forgotten

- 2 all the individual and groups have the right to be different to consider themselves as different to be regarded as such , however, ,the diversity of the life style and the right to be different may not , in any circumstances serve as a pretext for racial prejudice ;they may not justify either in law or in fact any discriminatory practice whatsoever , nor provide a ground for the policy of apartheid, which is the extreme form of racism the right to consider one self as deferent does not racial misaim inaction at for as it is not serve as pretext for racial discrimination
- 3 identity of origin in no way affects the fact that human being can and may live differently, nor does it preclude the existence of differences based on cultural, environmental and historically diversity nor the right to maintain cultural identity
- 4 the differences between the achievement of the different peoples are entirely attributable to geographic, historical, political, economic social and cultural factors , such differences can in no case, serve as the pretext for any rank ordered classification of nation or peoples.⁷⁵

Any theory that claims the superiority of one race based on UNESCO declaration proved as unscientific and it said

Any theories which involved the claim that in racial or ethnic groups are inherently superior or inferior , thus implying that some would entitled to dominate or eliminate others , presumed to be inferior , or which bases value judgment or racial differentiation , has no scientific foundation, and in contrary to the moral and ethnical principles of humanity

- 1 What also included under Racial Discrimination also enlisted and it said

“Racism includes racist ideologies, prejudices attitudes discriminatory behaviors, structural arrangement and institutionalized practice resulting in racial inequalities as well as the fallacious notion that discriminatory relation between groups are morally and scientifically justifiable; it is reflected in discriminatory provision in legislation or regulation and discriminatory practices as well as in anti social beliefs and acts , it hinders the development of the victims , perverts those who practice it divides nations internally, impedes international cooperation and gives a rise to political tension between peoples; it is contrary to the fundamental principles of international law and consequentially, seriously disturbs international peace and security” as to me , racist ideologies, prejudice attitudes , discriminatory behaviors , structural arrangements and institutionalized practice , as by itself it leads to racial prejudice, but it becomes worse when it is backed by the discriminatory provision and legislation

the third article said as follows

- 2 The historical background cannot be the justification of racial discrimination is mentioned on this convention and it said.

“Racial prejudices, historically linked with inequalities in poor, reinforced by economic and social differences between individual and groups, and still seeking today to justify such inequalities, are totally with out justification”.

The UNESCO declaration on race and racial prejudice obliges a state to do all the means to eradicate racial discrimination for those state that are not a bide “It will be internationally responsible for the elimination of racism and racial prejudice.”⁷⁶

Under Article 9, it talks about the internationality of the principle of the equality in dignity and it said

- 1 The principle of the equality in dignity and right of all human being and all peoples, irrespective of race , color and origin, in a generally accepted and recognized principle of international law . Consequently any form of racial discrimination, practiced by the state constituted a violation of international law giving rise to its international responsibility” the main goal of international human right law i.e. exercising fundamental freedom and right ,can be achieved when it is only all races exercise their rights without any barrier
- 2 Special measures must be taken to ensure equality in dignity and right in individual and groups wherever necessary, while ensuring that they not such as to appear racially discriminatory, in this respect , particular attention should be paid to racial or ethnic groups which socially or economically disadvantaged so as to afford them , on a completely equal footing and with out discrimination or restriction, the protection of the law and regulation and advantages of the social measures in force , in particular in regard to housing , employment and health , to respect ,the authenticity of their culture and values and to facilitate their social and occupational advancement, especially , through education. These special measures also incorporated under convention of Elimination of racial discrimination and it has the same message,
- 3 existing disequilibria in international economic relation contribute to the exacerbation of racism and racial prejudice; all states should consequently, endeavored to contribute to the restructuring of the international economic on a more equal basis.⁷⁷ the writer

believes that the economic disparity can not be the ground for racial discrimination, since the very existence of being a human is suffice to have dignity and protection against discrimination.

Under Article 10 of UNESCO Declaration, it gives emphasis on all organization whether universal or regional, to cooperate and assist each other for effective implementation of this Declaration and it said that

“International organization, whether universal or regional, governmental or non governmental, are called upon to cooperate and assist so far as their respective field of competence and means allow in the full and complete implementation of the principles set out in this declaration , thus contributing to the legitimate struggle of all men born equal in dignity and right against tyranny and operation of racism , racial segregation , apartheid and genocide so that all the peoples of the world may be forever delivered from these scourges” The third chapter of the research the regional conversion on Elimination of Racial Discrimination i.e. the African peoples and human right will deal on the struggle of racism.

According to, UNESCO Declaration Of Race And Racial Prejudice, consideration of once its own identity based on his biological and physical characteristics would not be said to be racial discrimination, it agrees the writer of this research , as far as it doesn't prejudice the right of other racial group, by using this pretext ,institutionalizing and having a policy that purport this.

2.11. Declaration of the second world conference to combat racism and racial discrimination 1983

The declaration was adopted on 12 August 1983 by the second world conference to combat racism and racial discrimination, convened at the European office of the United Nations.⁷⁸

The second world conference, reaffirms the prior convention on elimination of racial discrimination, it affirms the principle of equality, it calls upon all the national, regional and international resources to promote mutual understanding among human races and any theory of superiority of one race jeopardizes friendly relations among human races.

The Second World Conference to Combat Racism and Racial Discrimination solemnly declares and reaffirms that:-

- 1, All human beings are born equal in dignity and rights
- 2, Racism and racial discrimination is a continuing scourge which must be eradicated throughout the world.
- 3, National, regional, international, educational, resource should be developed and used in any ways which will promote mutual understanding between all human beings and demonstrate and teach the scientific basis of ethnic or racial equality and the value of cultural diversity with a view to destroying the basis of racist attitudes and practices
- 4, all human groups and all peoples have contributed to the progress of civilization and cultures which constitute the common heritage of humanity.
- 5, all forms of discrimination are violations of fundamental human rights and governmental policies which are based on the theory of racial superiority, exclusiveness or hatred also jeopardize friendly

relations among peoples and cooperation between nations and thereby jeopardize international; peace and security.⁷⁹

2.12. Racial Discrimination National And local Resource

At its 1980 session the UN sub-commission on prevention of discrimination and protection of minorities requested the secretary General (resolution 4c (xxxlll)) to prepare report setting out measures which the sub-commission might recommend to governments with a view to enhancing and strengthening national and local recourse procedure available to victims of racial Discrimination.⁸⁰

In the report the secretary General enumerated (UN Doc. E/CN, 4 sub 2/1982/8) the form of national and local recourse procedure available evaluated their impact and effectiveness and indicated which had been found to be most effective, experts from the report are produced below.⁸¹

The 1980's session helps much for this research for the existing national local procedure, in what means if it provides, the people will able to exercise their fundamental human rights.

In the last chapter, considering the multifaceted aspect of Racial Discrimination the various and safe guarding mechanism a state should provide for its citizen which is discussed in this topic. In relation Ethiopia law, since it has got a direct influence to the research will be discussed, so the secretary General report on the setting out measured if the stare party provide under its legislation and the means for effective of this legislation.⁸² provided as follows

2.12.1. Forms of recourse procedure available

Although the principle of equality of all the enjoyment of rights and freedom is now generally accepted by the international community, and proclaimed under human rights and fundamental freedoms, in order to be meaningful, must be sanctioned by effective recourse procedures easily available to victims of racial discrimination.

The establishment of such procedures implies the determination of definition of at which constitute punishable offense, it is essential to examine carefully the various and subtle form that racial discrimination can take, in order to determine, the most opportune forms of procedure to deal with it since

Bearing in mind the multifaceted aspects of the problem of racial discrimination a wide range of measures have been envisaged by government with a view to providing relevant safe guards against the various forms of discrimination⁸³. The writer want to assert her the precise definition of what race mean , if provided under the local legislation will be much preferable , if not the subtle form that lead to equality should be provided.

2.12.1.1 leg islative procedure:- the constitutional and other legislative provisions of many countries includes recognition of the principle of non discrimination and legal means to combat all forms of racial discrimination, these provision bear upon various fields such as labor, family. Economic social and cultural life, many countries have adopted legislation which declares illegal racist propaganda and racist organization, more over, international instrument adopted in the field of racial discrimination have usually had an important impact on national legislation either by immediate effect at national level or by leading the adoption of special law in order to comply with the relevant provision of

such instruments.⁸⁴ as to me, when a state provides under its legislation the principle of equality, it implicitly recognized prohibition of racial discrimination ,because as it is one factor that barry the principle, other way it could be known , when it adopt the international instrument

2.12.1.2 judicial procedures: - protection against discrimination can be provided through penal codes and procedures, victim of racial discrimination can also find remedy in the procedures, before the civil courts, in some cases, public prosecutor can play an important role in acting against discrimination by making an investigation ex officio if reasonable grounds exists for believing that an offense has been committed even if no complaint has been lodged by the victim of racial discrimination, the public prosecutor decide not to institute such proceeding, the victims are according to the law, entitled to institute criminal proceeding on their own⁸⁵.here , the writer believes that , the penal code and procedure might not expressly provide prohibition of racial discrimination , but based on this ground the out come might be prohibited , for instance any factor that barry equality might be prohibited

2.12.1.3. Administrative procedures: - special procedures have been introduced by some countries for the implementation by the administrative authorities with a view to ensuring equality or treatment and access to public places and services.

Among such procedures, mention may be made of the role of institutions such as the ombudsman or similar official

“The ombudsman is a public official whose function is to represent the individual in cases where the rights of the individual under the law may have been infringed upon or abused by the state or another public authority”⁸⁶

In some countries, the ombudsman has authority to check and investigate inappropriate performance by the public officials, including discriminatory acts; he also devotes special attention to the problem of immigrants and helps them to become familiar with the legal system and legal remedies available to them,

Similar institutions exist in other countries for instance, in some cases "the chancellor of justice of the government performs the functions concerning the investigation of the claims of racial discrimination similar to those of ombudsman, while in other cases the procurator is entrusted with the safe guarding legality, in some developing countries, similar institutions have been established, with some modification to take account to their respective needs and experience, the office lokpa (Protector of the law) of India set up to inquire into the allegation of misconduct against public men, can be cited as example of this type and institution.⁸⁷

2.12.1.4. Other forms of procedure: - among other various other forms of recourse procedure reference may be made to the roles played by the following institutions.

A, national and local commission on human rights, it has been said, have an important role in the fight against discriminatory action, they can bring about rapid action particularly in urgent cases such as those relating to housing employment and similar situation, they can also play conciliatory role or make necessary arrangement for legal aid

B, trade union can initiate action to curtail discriminatory practices, such as discriminatory contracts or conditions for works, union management grievance procedures sometimes deal with complaints of racial discrimination,

C, in addition to legalistic procedures some countries have encouraged conciliation and informal procedures for the settlement of cases involving violation of human rights; these procedures have usually proved to be useful.

D, in some countries political parties can server as a means of focusing attention on violation of human rights, and provide an effective means of attacking racial practices.

E, in other countries, the church as played a valuable role as powerful means and providing assistance to the victim of racial discrimination.

F, finally, an important role can be played in supplementing national recourse procedures by means provided under the pertinent international legal instrument dealing with racial discrimination, in this regard, great importance is attached to the recognition of the individual rights to petition as an effective means of recourse,

When we see he effectiveness of the existing recourse procedure, the mere establishment of such institution is not suffice to insure their effectiveness'.⁸⁸ in addition to these, the writer believes that, it would be preferable, all the domestic legislation of the state have an express provision that prohibit racial discrimination, but if it is not, the promulgation of provision that declares equality of human being is suffice, since, it contains prohibition of racial discrimination

2.13. Disadvantage Of Human Right Covenants

International Human rights covenants are treaties and as such do have the force of international law but only for the parties to the treaties, that is those states that have voluntarily ratified or acceded to the treaties. The same is true of single issue treaties that round our the regime's

norms. It is perhaps possible that the norms of the covenants are coming to acquire the force of customary international law even for states that are not parties. ⁸⁹

The weakness of this international instrument on Human right, states are free to become parties or not entirely as they choose .It is no less true though of custom where the tests of state practice and opinion juries likewise assure that international legal obligation is only voluntarily acquired, in fact, a state that explicitly rejects a practice during the process of custom formation is exempt even form customary international legal obligation for example, Saudi Arabia's objection to the provisions on the equal right of women during the drafting of the universal declaration might be held to exempt it form such a norm even if the norm is accepted internationally customarily binding. ⁹⁰

The other weakness of international covenant on human right Acceptance of an obligation by states does not carry with it acceptance of any method of international enforcement, Quite the contrary, unless there is an explicit enforcement mechanism attached to the obligation, its enforcement rests simply on the good faith of the parties the universal Declaration contain no enforcement mechanisms of any sort, Even if the state accept it as having the force of international law its implementation is left entirely in the hands of individual states. The covenants do have some implementation machinery but machinery's practical weakness in perhaps its most striking feature.⁹¹

International covenant on civil and political Right, a human rights committee of independents experts was created in the United Nations to supervise the covenant's implementation. The committee's principal function however, is simply to review periodic reports submitted by the different states who are party to the covenant concerning their practices

with respect to the enumerated right while the reports of states are examined in public the most the committee can do is raise questions and request further information. It is powerless to compel more than pro-forma compliance with the requirement of periodic reporting and even that sometimes can not be achieved. Furthermore even this minimal international scrutiny applies only to the parties to the covenant, which numbered only eight-about half the countries of the world in 1985.⁹²

An optional protocol to the civil/political covenant permits the human right committee to receive and examine complainants from individual, the committee receives about two dozen complaints a year about half of which are admissible and receive substantive scrutiny. But even here the most that the committee can do is state its views on whether a violation has occurred in other words, even in this probably the strongest procedure in the international human rights regime there is only international monitoring of state practice enforcement remains⁹³ entirely national.

The procedure under the international covenant on economic, social and cultural rights are even weaker periodic reports are reviewed not by an independent committee of experts but by a working group of the UN Economic and social council (ECOSOC), a body of political delegates deprecating the view of their government.⁹⁴

Racial discrimination, single-issue treaties contain periodic reporting procedures as well as various complaint procedures but the coverage of this convention is narrow and their provisions not significantly stronger than those of the civil and political covenant, furthermore its system goes in voluntarily accepted monitoring of voluntarily accepted obligation. There is no real international enforcement of any sort.⁹⁵

At Last, at the international level there are comprehensive authoritative human right norms that are widely accepted as binding on all states implementation and enforcement of these norms; however, both in theory and in practice are left to states, the international context of national right practices certainly can not be ignored further more, international norms may have an important socializing effect on national leaders and be useful to national advocates improved domestic human rights practices. But the real work of implementing and enforcing human rights takes place on the national level.⁹⁶ Therefore when a state does not provide this right under its legislation on enforcement mechanism should be provided unless otherwise the mere declaration or convention will have no value.

International human right instrument, most of the time, then state become parties to it voluntarily, if not, it will not bind by the treaty, the international customary law that bind all the state will not have effect, if it is oppose at the formation stage, as to me, these treaties should have a means to obliges a state in accepting the treaties, even if she oppose at the formation stage.

The acceptance of international convention doesn't mean the acceptance of its enforcement mechanism, the writer, want to recommend that, there should be enforcement mechanism of those right, unless otherwise, it is powerless. The universal declaration of human right, even though its principle accepted in the international; and domestic law, it doesn't provide the means of enforcement.

The committee in the civil and political right has the duty to view the violation of human right in the domestic legislation of member state, but the periodic reports and review of legislation is weaker, the same applies to the economic and social right, the weak side of the committee goes

also the committee on elimination of racial discrimination. Under this convention, the periodic reporting is, even less than the two major covenants, as to me there should be a means to ensure the implementation of this convention under state legislation

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CHAPTER THREE

3. Racial Discrimination from African perspective

3.1. The African System Of Human And People's Right

3.1.1. Introduction

The conception of 'race' and racial difference have influenced our nation of the African past since these ideas which have usually contrasted the presumed inferiority of black peoples with the superiority of white it is originated when the western European colonizer and traveler came to the continent, in addition to these, missionaries preach the notion of the continent 'the inferiority of blacks'.¹

The African charter establishes a system for the protection and promotion of human rights, that is designed to function within the institutional framework of the OAU, the OAU is a regional inter governmental organization which came into being in 1963 and has a membership of 53 states, it operates through a permanent secretariat, various ministerial conference, a council of ministers and the assembly of heads of state and government, the assembly meets once a year and is the highest policy making body of the OAU.²

This is the fourth and most recent of the regional human rights treaties, it was adopted at meeting of heads of state and government of the organization of African unity OAU in Nairobi, Kenya, on 26 June 1981, it has not yet entered into force, but it is included in the present work in the expectation and the hope that it will not be too long before it does, until it has, reference to it here are distinguished, the charter

contains, 'civil and political' rights on 12 of its early articles. It continues with catalogue of "economic social and cultural rights in the following four articles (15-18), the next six articles (19-24) explain the set of what some commentator call "third generation 'or solidarity "rights that is, rights not vested in individual, but in collective groups of individual. Called 'peoples' in AFR from there, modes to duties , in two articles(25 and 26) for state parties and in three further articles 27-29 for individual follows UDHR and ADRD in drawing not distinction between the different categories of rights and duties which it enumerates, however, it breaks new ground in a treaty by imposing (in article 1) the identical state obligation, absolute and immediate in forms , for all of them.³ The African charter on human and peoples right adopt the universal declaration of human right categorization of right i.e. the civil and political rights in one hand and the social economic and cultural rights in the other hand.⁴

As in the case of other regional instrument creates an independent institution the African charter also creates commission on human and peoples rights([AFCM]), it interpret and apply , its provision, but [AFCM] differs from the European and inter-American institution in being the only organ of supervision for the charter that is , in having no associated court and several other respects , including a possible restriction on the jurisprudence it is allowed to take into account AFR will come into force according to article 63(3) three months after a simple majority (currently 26) of the OAU member states has ratified it.⁵

3.1.2. The Peculiar character of African charter

The regional convention on human right most of the time promulgated to abide, those state found in the region, they do have a peculiar character

The African charter differs from the European and American convention on human rights in a number of respect “the protection of human rights in Africa and the African charter on human and peoples rights; comparative analysis with the European and American system.”⁶

First, the African charter proclaims not only rights but also duties.⁷

Second, it codifies individual as well as peoples right.⁸

Third in addition to guarantying civil and political rights, it protects economic, social and cultural rights.⁹

Fourth the treaty is drafted in a form that permits the states parties to impose very extensive restriction and limitation on the exercise of the rights it proclaims.

The provision of the charter reflects the influence of human rights instruments of African traditions, thus, it bears a strongly resemblance to the international covenant of human rights than to the two other regional human rights treaties.¹⁰ the writer finds express provision on the charter, that is, the charter coming into being in consistent with the African tradition.

The emphasis the charter places on Africa tradition finds expression in its preamble as well as in the form in which many of its rights and duties are articulated, the preamble speaks of “the virtues of African tradition and values of African civilization which should inspire and characterize their reflection on the concept of human and peoples right”.¹¹ other principles that inform of the African charter are referred to the following provisions of the preamble.

Convinced that it is hence forth essential to pay particular attention to the rights to development and that civil and political rights can't be dissociated from the economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic , social and cultural rights is guaranteed for the enjoyment of civil and political rights .as to me the association of the civil and political right with the social and economic irtg is absolutlyly right, the reason is in order to be effective in the poitical right the social and economic right also must be respected ,it is preferable to see in line with the universal declaration of human right.

The emphasis on the right to development, which is a peoples right and the linking together of different categories of individual rights has its conceptual source in the standard –setting practice of the UN.¹²

the charter contains a broad non discrimination clause and an equal protection clause , it guarantees the right to life and it prohibits slavery as well as torture, cruel, inhuman or degrading treatment and punishment.

The charter recognizes the right to freedom of movement, the charter prohibit mass expulsion of non-nation “aimed at nationals, race, ethnic or religious groups”¹³. As to me, the inclusion of duties in addition to right and the consideration of African tradition, is encouragable character of this convention

3.1.3. Duties

A distinguished African jurist and former vice president of the international court of justice, who played an important role in drafting the African charter , points out that” in Africa, laws and duties are regarded as being two facts of the same reality ; two inseparable realities

may be suggested that it should therefore come as no surprise to any one that the African charter proclaims duties as well as rights, here it is with recalling that the American declaration on the rights and duties of men adopted the same approach, but that the drafter of the American convention did not follow the same course.¹⁴

The duties that the African charter proclaims fall into two broad categories in the first group are duties which can be characterized as correlation of rights the other category might be described as restriction on the employment of right disguised as duties art 27(2) for e.g. which declares that the right and freedom of each individual shall be exercised with due regard to the right of other, collective security morality and common interest “appear to codify both categories of duties, here it evident that the scope of this duties or their impact on the right guaranteed in the charter would differ significantly depending up on whether an individual rights where go to be limited by the right of others on by consideration of collective security¹⁵. The writer believes that, the duty categorized under African charter, that is the correlation of duties with right and restriction on misuse of duties, is the best tool for observance of member state under their domestic legislation, for instance, every individual has the right to exercise his right with out racial discrimination which is enumerated under the charter it is means a state has a duty to respect this, right with out disguised out duties.

3.2. African Charter on Human and People’s Right and Racial Discrimination

The universal Declaration of Human Right and the two international covenant used for the African charter on Human and people’s Right for the derivation of human right list. From the preamble of the African

charter which consider “the charter of the organization of African unity which stipulates that

“freedom equality justice and dignity are essential objectives for the achievement of the legitimate aspiration of the African peoples,”

it has a parallel provision that gives the inviolability of human dignity in universal Declaration of human right it says where as the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family in the foundation of freedom justice and peace in the world”.¹⁶

Universal Declaration as mentioned in the second chapter of the research it include racial Discrimination in core rights i.e. indispensable for an existence in human dignity and ,therefore needs absolute protection.¹⁷ this principle of universal Declaration even though it is not expressly provided. The African Human and peoples right pledged to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa to promote international cooperation having due regard to the charter of the united Nation and the universal Declaration of Human rights.¹⁸

The most important duty on the African charter, most of the time manifested with its historical background are listed under the preamble and obliges or undertaken by the state party i.e.

“Conscious of their duty to achieve the total liberation of Africa the peoples of which are still struggling for their dignity and genuine independence and undertaking to eliminate colonialism neo-colonialism apartheid Zionism and to dismantle aggressive foreign military bases and all forms

of discrimination particularly those based on race, ethnic group colour sex language religion or political opinion”.¹⁹

The state party, I will have a special attention on Ethiopia in the last chapter have pledge them selves to incorporate all the rights enshrined in this African human and peoples charter it says

“The member states of the organization of African unity shall recognize the rights duties and freedoms enshrined in this chapter and shall undertaken to adopt legislative or other measures to give effect to them”.²⁰

The obligation of the state to adopt in the legislation is one part of the means to guarantee the equality of people with out discrimination of race but it is not only suffice without let know the individual that in why in the Africa charter for the individuals also “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter with out distinction of any kind such as race ethnic group”.²¹

The state obligation to adopt in legislative or other measures to give effect to the rights duties and freedom in this chapter.²² as the charter provide under its early articles civil and political rights, and the catalogue economic social and cultural rights in the following four a articles(15-18) and the third generation rights on the next six articles.²³ these all rights should be protected without discrimination of race and should be provided thought legislation since as I briefly discuss in the second chapter, racial discrimination means exclusion and deprivation of exercising right on the socio-economic, cultural and civil rights between human nation based on race.²⁴ for this right to be meaningful state should incorporate under it’s legislation is one of the obligation this

charter impose. For protection of human rights including racial-discrimination the commission is established based on the charter let me have a detail discussion on it

3.3. The African Commission Of Human And Peoples' Rights

The charter provides for a commission, established within the institutional framework of the OAU" to promote human and peoples' right and ensure their protection in Africa " the African charter on human and peoples rights " an effective weapon for human rights, the commission is composed of 11 members, elected by the OAU assembly of heads of states and governments from a list of names presented by the states parties , since all OAU member states are represented in the assembly, states not parties to the charter also have a vote in selecting the commission, although only state parties may nominate the candidates , the members of the commission are elected in six year terms and serve in their individual capacities rather than as governmental representatives.²⁵

The commission has promotional quasi-judicial function.²⁶ its promotional mandates is very broad and includes the power to undertake studies, convene conference, initiate publication programs, assimilate information and collaborate with national and local institutions concerned with human and peoples right, as part of this promotional effort , the commission may give its views or make recommendation to governments.²⁷ As to me the commission has similar function as the committee and sub-commission on elimination of Racial discrimination. Since both undertake studies, convene conference, initiate publication programme.

This power should enable the commission to bring to the attention of individual governments problem area revealed by its studies, here it should be recalled that system of "country studies" utilized by the inter-American commission on human rights evolved out of a grant of promotional power that was weaker than that conferred by the African charter.²⁸

The quasi-judicial power of the African commission may be divided into two parts, so called interpretative powers and powers applicable to the resolution of disputes involving allegation of human rights violation, the commission's interpretative powers are quite extensive and resemble the advisory jurisdiction of some international courts.²⁹

The commission has jurisdiction to interpret the provisions of the present charter at the request of a state party, an institution of the OAU or an African organization recognized by the OAU.³⁰ The commission is also empowered, in the context of its promotional activities "to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples rights and fundamental freedoms upon which African governments may base their legislation."³¹ This grant of power combines quasi-legislative and quasi-judicial aspects for it seems to permit the commission to prepare draft legislation, to propose legal solutions to disputes and to articulate, by means of codification and interpretation, human rights standards. The commission's other quasi-judicial powers, those dealing with complaints charging violation of human rights will be discussed.³² The commission shall draw inspiration from the international law on human and peoples rights, it then lists by way of illustration the normative source of that law making specifically mention in the UN, the provision is amplified by art 61 "the commission" to take into consideration subsidiary measures to determine the principle of law" various other human rights agreements to which the

member states of the OAU are parties , together with” African practices consistent with international norms on human and peoples’ right, custom generally accepted as law , general principle of law recognized by Africa states as well s legal precedent and doctrines.³³’ and since the Africa governments explicitly state their adherence to the universal Declaration when they ratified the chart of the organization of African unite.³⁴ they will a bide by all the rules provided under it

Consequently in interpreting and applying the African charter, the commission has a broad mandate to draw on a vast body of law which article 60 and 61 incorporate by reference into the African charter, these provision grant the commission an invaluable tool capable of ensuring that the interpretation of the charter will keep up with the growth of general international law of human and peoples rights.³⁵

The Africa commission on peoples and right, although it has got promotional and guise judicial function, the problem manifested in the major and subsidiary treaties found also in this charter that is, no enforcement mechanism to ensure the incorporation under domestic legislation. As to me, there should be device to insure the respect of this right, for instance, A legislation of racial discrimination may a state incorporate under its domestic law , the commission can’t enforce the state to change its the legislation, but if there would have been an enforcement mechanism, the situation might be changed.

CHAPTER THREE

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CHAPTER FOUR

4 Racial Discrimination From Ethiopian Perspective

4.1. History of International Human Right Convention In Ethiopian

Ethiopia's history of participation in the sphere of international human rights and humanitarian convention could only be traced as far back as the time when it joined the league of nation. Ethiopia was admitted to the league on September 23, 1923, as a member, it endorsed several international human right and humanitarian convention, it endorsed the convention prohibiting the practice of slavery, on September 25, 1926, the 1907. Hague convention on the laws of war, on October 4, 1935, and the Geneva convention on the amelioration of the conditions of the wounded and sick in the field, on January 15, 1936. Ethiopia also ratified or acceded to the various convention of the international labor organization, Ethiopia joined the organization in 1923.

Ethiopia role in the development of international human right convention began to take a new chapter with the adoption of the united nation charter on October 24, 1945. Ethiopia was the founder of the united nation organization, it was one of those 46 countries that were invited by the united states to attend the discussion on the draft constitution which has come to be known as the Dumbarton oaks proposals, Ethiopia participated in the san Francisco conference that led to the establishment of the organization on October 24, 1945

Ethiopia was also one of those countries that played an important role in the adoption of the universal declaration of human right on December

10, 1948. The universal declaration of human right is regarded as the foundation of modern international human right law. Although the declaration was not intended to be legally binding document, its preamble proclaims that it is a common standard for the achievement of all peoples and nations, the declaration has therefore played a decisive role in influencing Ethiopian's law right from the early days. The 1955 revised constitution of Ethiopia was one of those law in which the impact of the declaration was highly felt, although the declaration was then not part of Ethiopian law, the drafter of the constitution had heavily relied on it as a major source for drafting the Human rights and freedoms provisions of the constitution,¹ in the time of codification that roughly took place from the mid 1950 penal code, the 1960's development of Ethiopian laws, and in particular the 1957 penal code, the 1961 criminal procedure code and the 1960 civil code were enormously influenced by the declaration, further, for instance, the 1957 penal code of Ethiopia has inter alias, included articles 281 and 282 from the genocide convention and the four Geneva conventions of August 12,1949 respectively, Ethiopia has been a party to the genocide convention and the four Geneva conventions right from the early days interestingly, Ethiopia, openly endorsed the universal declaration of human rights as an integral part of the country's domestic law in June 1991; this was done through the adoption of the transitional period charter of Ethiopia.²

4.2. The Main Obligation Of Ethiopia Under International Convention On Racial Discrimination

Under united nation Declaration on elimination of all forms of racial discrimination, as Ethiopia was one of the member state of united nation, it under take the obligation laid down under this international convention, And united Nation press release in 19 February 2004 lists

member states in the international convention on the Elimination of all forms of Racial Discrimination Ethiopia was one of the state under this list but Ethiopian membership in this convention back 23 June 1976 when it receive of the instrument by ratification and the convention came in to force in July 23 1976.³

“Ethiopia, together with those states that offered on these declaration on elimination of racial discrimination of pursue by all appropriate means and without delay a policy of Eliminating local discrimination in all its form of promoting understanding among all races to this end.”⁴ the emphasis that Ethiopia should give under this convention, it is not only providing a policy of eliminating racial discrimination. But they should “undertakes to engage in no act or practice of racial discrimination against persons groups of peoples or institution of to pressure the all public action of public institution notion of local that act in conformity with this obstacle.”⁵

It is undeniable fact that, the mere adoption of the instrument with out guaranteeing incorporation in the national resource is meaningless, that is why under, the 1965 declaration on elimination racial discrimination it expressly mention that “Each state pate shall take effective measures to review governmental, national and local polices and to amend, rescind or nullity any laws and regulation which have the effect of creating a racial discrimination wherever it exists.”⁶

Here it is worth to remember that in the first chapter, it is mandatory for Ethiopia. To take affective measures, not only that have the effect of discriminating in government, national and local polices but also “those having this intent or purpose which wholly nullify, as well as, those which only partially impair the recognition, enjoyment or exercise of human right and fundamental freedom.”⁷ when there exist under its

local, national and governmental policies, it will nullify the principle of equality. It should bring to an end.

When we come to any kind of organization first, Ethiopia shouldn't sponsor defend or support racial discrimination and if it exists, it should prohibit and bring to an end by all appropriate means including legislation as required by circumstances.⁸

When there exists an organization that intensified the superiority of one race or group of person, Ethiopia should condemn such an activity.⁹

Second, when there exist any organization that intensified or encourage appropriate integrationist multi racial movement, other means of elimination barriers between races and which discourage anything which tends to strengthen racial division, Ethiopia should make all appropriate means to encourage such an organization.¹⁰

Ethiopia also undertakes to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, with out distinctions to race, color, or national origin, to equality before the law, notably in the enjoyment of the following rights.¹¹

- a. "The right to equal treatment before the tribunal and all other organ administering justice".¹²
- b. "The right to security of person and protection by the state against violence or bodily harm where inflicted by governmental official or by any individual group or institution".¹³
- c. "Political right to participate in election to vote and to stand for election on the basis of universal and equal suffrage, to take part in the governmental as well as in the conduct of public affair at any level and to have equal access to public service".¹⁴

Ethiopia government also undertaken on the united Nation Declaration on elimination of racial discrimination to adopt its national and local governments legislation, and for those not abide by those laws and regulation has committed a crime it is declared under international instrument that “the state particles to united nation on declaration on elimination of racial discrimination shall declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred, incitement or racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin and also the provision of any assistance to racist activities, including the financing thereof”.¹⁵ it is true for an organization too i.e. Ethiopia “shall declare and prohibit organization that organize and promote or incite racial discrimination, and participant of such an organization shall be recognized as offender”.¹⁶

There are exceptional cases, equal enjoyment with out discrimination of race, special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic group or individual requiring such protection as may be necessary in order to such a group or individual equal enjoyment or exercise of human right and freedom shall not be said as racial discrimination, take, in social economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individual belong to them to them for purpose of guarantying them full and equal enjoyment of human rights and fundamental freedom, these measures shall in no case entail as a consequence the maintenance of unequal or separate right for different racial groups often the objectives for which they were taken have been achieved.¹⁷ the main clue, I have got here the special measures given for a certain individual or group of people, due to socially and economically disadvantageous, and in order to maintain this group as equal footing for exercising their fundamental freedom and

human right will be considered as racial discrimination especially with regard to housing, employment and health.¹⁸

4.3. Elimination of Racial Discrimination under FDRE Constitution

The supreme law of the land, the constitution, it has a lot to say, when the international declaration, like racial discrimination included under its provision, all-ordinary law will have an effect it is only recognized by the constitution

For implementing the principles of equality and the dignity of human that are inherent to all, different international and regional convention where held on, Ethiopia as one member state of international and regional conventions, it undertakes to promote and encourage universal respect for observance of human rights and fundamental freedom for all with out distinction as to race, sex. Language or religion.¹⁹

The first human right instrument adopted by united Nation, international convention on the elimination all forms of Racial discrimination, obliges all the member states to promote and encourage universal respect for and observance of human rights and fundamental freedom for all, without distinction as to race, sex language or religion.

Ethiopia as one of member state, in the convention, it also “Condemn racial discrimination and undertake to pursue by all appropriate means with out delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races and to this end.²⁰ one of the mechanism, Ethiopia can provide under its policy and eliminating racial discrimination is through the constitution.

Under FDRE Constitution

“All persons are equal before the law and are entitled with out any discrimination to equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection with out discrimination on grounds of race, nation, nationality or social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.²¹

When we see in detail the provision provided under Declaration on the Elimination of All forms of racial discrimination with the FDRE constitution, I found a lot of similarity between them. As I am trying to express the obligation of Ethiopia “ to take effective measures, to review governmental, national and local policies, and to amend, Rescind or nullify any laws and regulation which have the effect or nullify.²²” the equality of human being incorporated under the constitution. Which is also provided on the constitution according to take effective measure under its law.

The main reason of establishing international and regional instrument on human right, the equality of all human being in their participation of socio, economic and political aspect, the Ethiopian constitution go in conformity with these international instrument. I can affirm this position on the FDRE constitution.

“The fundamental rights and freedoms specified in this chapter shall be interpreted in a manner conforming to the principles of the universal Declaration of Human rights, International covenants on Human Rights and International instruments adopted by Ethiopian.²³” Since Ethiopia declares under its constitution the adoption of the objectives these organization want to reach is also adopted by FDRE constitution.

The grounds up on which racial discrimination can be manifested in both legislation provide under declaration on elimination of racial Discrimination “race, colour descent and national or ethnic origin.”²⁴ enumerated in FDRE constitution it broadened more and includes “sex, nation nationality or other social origin colour, sex language religion political or other opinion, property birth or other status”.²⁵

The restriction provided under Declaration on Elimination of Racial Discrimination’ The convention shall not apply to distinction exclusion and restrictions or preference made by a state party to this convention between citizen and non-citizen’.²⁶,under the same declaration, I found out also that “Noting in this convention may be interpreted as affecting any way the legal provision of states parties concerning nationality citizenship or naturalization, provided that such provision do not discriminate against any particular nationality”.²⁷ the same provision is incorporated under FDRE constitution “Ethiopia has the right to have its own legislations on providing citizenship but it can not be possible against any particular nationality”.²⁸

The FDRE constitution since it 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 no effect.”²⁹ all public authorities and all laws should go in consistent with the supreme law of the land and it is true that Ethiopia undertakes to “ not engage in act or practice of racial discrimination against persons group of persons or institution to ensure that all public authorities of public institution, national and local shall act in conformity with this obligation.”³⁰ the law incorporates under FDRE constitution, for exercising fundamental freedom and right, is a must to include elimination of racial discrimination under the law, and it provided “All persons are equal before the law and is entitled with out any discrimination to the equal

protection of the law.³¹ public authorities and public institution national or local even if they are not exhaustively listed under the FDRE constitution, it is a fact that this provision includes them too.

“-The law shall guarantee to all persons equal and effective protection”.³² the assurance the law promise to give include not only on its legislation on racial discrimination but it includes also in practice or racial discrimination against person, group of persons or institution to ensure that all public authorities of public institution, national and local shall act in conformity with this obligation”.³³

International and regional convention on racial discrimination ,most of the time they establish for the purpose of exercising fundamental human right and freedoms in the political ,economical ,social ,cultural or any other field of public life ,The1969 the declaration on the Elimination of all forms of Racial Discrimination declares, states parties to undertake to guarantee the right of every one with out distance as to race colour or national or ethic origin to equality before the law, notably in the enjoyment of the following rights”.³⁴

- a. Equal treatment before the tribunal.³⁵
- b. The right to security to person.³⁶
- c. Political rights.³⁷
- d. Other civil right.³⁸

I will discuss all of them exhaustively and their place under FDRE constitution.

“The right to equal treatment before the tribunal and all other organs administrating justice”.³⁹ which is provided under Declaration on Elimination of all forms of Racial Discrimination under the right to equal

treatment before the tribunal is also incorporated under the FDRE constitution “Everyone has the right to bring a justicable matter to and to obtain a decision or Judgment by a court of law or any other competent body with the judicial power”.⁴⁰

Member states under the 1969, Declaration on Elimination of All forms of Racial Discrimination including Ethiopia undertakes to abide in the socio-economic ,cultural and other field special and concrete measures to ensure that adequate development and protection of certain racial groups or individual belonging to them for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms .Such measures shall in no case entail as a consequence the maintenance of unequal or separate right for different racial groups often the objectives for which they were taken have been achieved”.⁴¹

The similar provision exist in FDRE constitution, and it has the message of “Every Ethiopian has the right to engage freely in economic activity and to pursue a lively hood of his choice any where with in the national territory”.⁴²

“Every Ethiopian has the right to choose his or her means of lively-hood, occupation and profession”.⁴³

“Every Ethiopia national has the right to equal access to publicly funded social services”.⁴⁴

This provision indicates that the adoption of Declaration on Elimination of racial Discrimination on an equal distribution of social economic and cultural field among all human races and the special and concrete measures to ensure adequate development and protection of certain racial groups or individual belonging to them.⁴⁵ mentioned also under the Ethiopian constitution.

“The state has the obligation to allocate every increasing resource to provide to the public health education and other social service”.⁴⁶

“The state shall with in available means allocate resource to provide rehabilitation and assistance the physically and mentally disabled the aged and the children who are left with out parent or guardian”.⁴⁷

Government has the duty to ensure that all Ethiopian get equal opportunity to import the economic conations and to promo equitable distribution of wealth among them.⁴⁸ “The state shall undertake all measure necessary to increase opportunities for citizens to find gainful employment”.⁴⁹

“To the extent the country’s resources permit policies shall aim to provide all Ethiopian access to public health and education, clean water ,housing food and social security”.⁵⁰

These all action the state undertakes to provide even though it is not directly pointed to certain racial group it indirectly may have an effect to racial discrimination since any special measures takes for certain part of society will lead to racial discrimination but the special and concrete measure for certain racial group is, for maintenance or purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedom in the field of social economic and cultural fields. it will not be said racial discrimination

My opinion on states action for certain racial group is that it will not be considered as deprivation of the principle of equality .The 1969 Declaration on Elimination of all forms of Racial discrimination said also “special, measure take for certain racial group shall not be considered as discrimination however such measure don’t as a consequence lead to maintenance of separate rights for different racial groups”.⁵¹ in addition

to this in cultural objective of the courtly “government shall have the duty to support on the basis of equality the growth the enrichment of cultures and traditions that are compatible with fundamental right, human dignity, democratic norms and ideals and the provisions of the constitution.⁵² the term “ compatible with fundamental rights and human dignity includes the racial discrimination. Ethiopia’s second obligation according to the Declaration of Elimination of all forms of racial discrimination classification of right that human being should exercise with out racial discrimination.

“The right to security of person and protection by the state against violence or bodily harm, whether inflicted by government official or by any individual group or institution.”⁵³ this provision of Declaration on elimination all forms of racial Discrimination incorporate under FDRE constitution “Every person has the inviolable and inalienable right to life the security of person and liberty”.⁵⁴ the prohibition on every race against body harm also “Every one has the right to protection against bodily harm”.⁵⁵

The third right, that all human race can exercise without discrimination and provided under the third position of the declaration the political right this right in particular mention, the right to “participate in elections to vote and to stand for election on the basis of universal and equal suffrage to take part in the government as well as in the conduct of public affair at any level and to have equal access to public service”.⁵⁶

For political right that specifically refers to the right in participating election to vote and to stand for election, there is a parallel provision under FDER constitution

“Every Ethiopian national, with out any discrimination based on colour, race nation, nationality sex language, religion, political or other opinion or other has the right to

- a. To take part in the conduct of public affairs, directly and through freely choose representatives
- b. On the attainment of 1-18 years of age to vote in accordance with law.
- c. To vote and to be elected at periodic elections to any office at any level of government elections shall be universal and equal suffrage and shall be held by secret ballot guaranteeing the free expression of the will of the electors”.⁵⁷

In addition to the right to elect and vole, the right in respect to “to take part in the government as well as in the conduct of public affair”.⁵⁸ which is provided under Declaration of Elimination on all forms of racial Discrimination is also incorporated under FDRE constitution on “The right of every one to be a member of his own will in a political organization or professional association”.⁵⁹

The last Right on political, that undertaken by Ethiopian to have an effect, on its legislation and every human race can exercise “to have equal access to public service”.⁶⁰

FDRE constitution expressly enumerate those instances, these right can be can be exercised by all human race

“Every Ethiopian national has the right to equal access to publicly funded social services”.⁶¹ The political rights that mentioned on the Declaration on elimination of all forms of racial discrimination have given under Ethiopian constitution a significant place as it can be seen from the previous discussion.

When I put my emphasis on the incorporation of the third right i.e. the civil right, Ethiopia undertakes to guarantee the right of every one and treats all with out distinction as to race colour or national in the civil right field. The rights that deal with civil, provided exhaustively in Declaration on elimination of Racial Discrimination, when I see their incorporation under Ethiopian law

“The right to freedom of movement and residence with in the border of the state”.⁶² which is provided under the convention is also incorporated under FDRE constitution

“Any Ethiopian or foreign national lawfully in Ethiopia has with in the national territory, the right to liberty of movement and freedom to choose his residence as well as the freedom to leave the country at any time he wishes to”.⁶³

The term “Any Ethiopian”.⁶⁴ under FDRE constitution indicates “the right to movement”.⁶⁵ can be exercised by any Ethiopian with out discrimination on race the civil right that can be spelled hand in hand to this provision “Any Ethiopian national has the right to return to his country”.⁶⁶

The civil right mentioned under Declaration on elimination of racial discrimination deal also, “the right of nationally”.⁶⁷ These provision incorporated under FDRE constitution

“No Ethiopian National shall be deprived of his or her Ethiopian Nationality against his or her will”.⁶⁸

“Any person of either sex shall be an Ethiopian where both or either parent in Ethiopian”.⁶⁹

Having specific view on such provision is important the way of acquiring and losing nationality may be different for different states but it obliges the state to give nationality in the mode provided under international law, Ethiopia providing the way in which it endorse nationality to its citizen but through these means it should give nationality and it is expressly provided under its law.

Other civil rights provided under Declaration on Elimination of racial Discrimination

“The right to marriage and choice of spouse”.⁷⁰ This rights under FDRE constitution are provided as follows

“Men and women with out any distinction to race nation, nationality or religion, who have attained marriageable age defined by law have the right to marry and found family”.⁷¹

The right of marriage under FDRE constitution goes together with the right of nationality that means “Marriage of an Ethiopian national of either sex to a foreign national shall not annul his or her Ethiopian nationality”.⁷²

“The right to own property alone as well as in a association with others”.⁷³ is also the civil rights that enumerated under Declaration on Elimination of Racial Discrimination. This provision is partially incorporated under Ethiopian law as:

“Every Ethiopian citizen has the right to the ownership of private property”.⁷⁴ The UN Declaration on Elimination of Racial Discrimination provides “It is a right to own property alone as well as in association”.⁷⁵ but I couldn't find under Ethiopian constitution that allow the right to own property in association, In fact it is true “everyone can be a member

of political organization, trade organization and labor union on his will⁷⁶
but to own, I have no any clue

Ethiopia as one of the parties to this convention, it undertakes to eliminate racial discrimination in all its forms and to guarantee, the civil rights that deal on freedom of thought, conscience and religion too. There are similar provision in both that deal on this civil right under Elimination of racial Discrimination convention

“with out distinction on race, colour, national or ethnic origin everyone has the right to freedom of thought conscience and religion”.⁷⁷

The same provision under FDRE continuation says as “Every one has the right to freedom of thought conscience and religion”.⁷⁸

The Rights that dealt on Economic social and cultural rights which is listed under Declaration on elimination of racial Discrimination last part and gives a right that exercised with out discrimination on race colour nationality everyone has the “right to work to free choice of employment to just and favorable condition of work, to protection against unemployment, to equal pay for work ,to just and favorable remuneration”.⁷⁹ These provision of the Declaration on Elimination of racial Discrimination found in FDRE continuation

“Every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice any where with the national territory”.⁸⁰ for protection against unemployment I find out that

“The state shall undertake all measures necessary to increase opportunities for citizens to find gainful employment”.⁸¹

The Declaration of elimination on all forms of racial declaration obliges Ethiopia to “equal pay for equal work”.⁸² this obligation does not spelled

directly under FDRE continuation, but the similar concept of this articulated as

“Ethiopian farmers and pastoralists have the right to receive fair prices for their products that would lead to improvement in their conditions of life and to enable them to obtain an equitable share of the national wealth commensurate with their contribution.”⁸³ Here with out discrimination on race, both the declaration on Elimination of all forms Racial discrimination and the Ethiopian constitution orders equal pay for equal work

“The right to form and join union”.⁸⁴ which is provided under Declaration on Elimination of Racial Discrimination, and obliges members state to undertake is incorporate under FDRE constitution as

“The right of every one to be a member of his own will in a political organization, labor union and trade organization”.⁸⁵

Economic, social and cultural rights that should be exercised without discrimination on race refer also “The right to public health ,medical care, social security and social service”.⁸⁶ “This right is incorporated under FDRE constitution as “Every Ethiopian national has the right to equal access to publicly funded social services”.⁸⁷

The state has the obligation to allocate every increasing resources to provide to the public health ,education and other social services”.⁸⁸

The principle, the equality in dignity and rights of all human being and all peoples, irrespective of race colour and origin is a general accepted and recognized principle of international human right law, consequently any form of racial discrimination practiced by a state constitutes a

violation of international law giving rise to its international responsibility.⁸⁹

United Nation Educational, scientific and cultural organization in collaboration with united nation undertaken a number of studies designed to expose the unscientific foundation of racism The General conference by acclamation in 1978 adopted in its declaration.

The Declaration on Race and racial prejudice lays down that fundamental principle of the equality of all human being and hence of the unity of human race condemn all theories that postulated inequality in the endowment of calling of different peoples, it affirms the right of men and groups to lay claim to their own identity To consider them selves as different to be regarded as such as the same time.

It provides that this right can't be invoked by any one seeking to justify a discriminatory practice on the basis of difference in ethnic origin, colour or religion for the purpose of establishing inequality among those disputing difference. It consequently calls into question policies of forced assimilation that seek to destroy the specific character of a peoples as well as policies of segregation that are arbitrary because they conflict with the right of nations and the right of peoples linking the practice attitudes and prejudice stemming from racism and inequalities in power which in varying degrees facilitate their development.⁹⁰

The Declaration has a lot to mean for united Nation Declaration on Elimination of racial discrimination form, its foundation to the reference it modes to the fallacy of superior of one race.

The Regional instrument i.e. The African charter also goes in conformity with the UNESCO declaration on race. Under UNESCO declaration on

race “international organization whether universal or regional governmental or non-governmental, are called up on to cooperate and assist, so far as their respective field of competence and means allow in the full and complete implementation of the principles set out in this declaration”.⁹¹

The African charter on human and peoples right that entered in to force, on Oct 21, 1986, was adopted by the organization of African unity (OAU) in 1981.⁹¹ since Ethiopia is one of the state that founded OAU, it also adopts all the obligation that laid down under this inter governmental organization.

The foundation of this inter governmental organization has similar reason with the international instrument, it obliges the state to undertake all the obligation that laid down under this convention, the provision of the charter reflects the influence of United Nation human right system and African tradition, it bears a strong resemblance to international covenant of human right than the two other regional human rights.

The main obligation Ethiopia undertaken under this charter is that “Ethiopia shall recognize the rights, duties, freedom enshrined in this charter and shall undertake to adopt legislative or other measures to give effect to them”.⁹³ This obligation is complemented by Art 62 which requires the state parties to report biennially “on the legislative or other measures” they have adopted to give effect to the rights the charter guarantees I found the FDRE constitution in line with the obligation that laid down by the charter under its provision.

The other obligation “every individual shall be entitled to the enjoyment of the right and freedom recognized and guaranteed in the present

charter with out distinction of any kind such as race, ethnic group colour sex language religion political or any other opinion, national and social origin. Fortune birth or other states".⁹⁴

Since Ethiopia is a member state its national with out discrimination have the right to exercise those rights enumerated under this charter.

The civil and political rights which is enumerated from Article 2-12 of the African charter, the economic social and cultural rights which is also mentioned from Article 15-18.⁹⁵ are incorporated under FDRE constitution ,Both the Africa charter and FDRE constitution on such field express as every individual has the right to exercise his rights without discrimination of race.

At its 1980's session the UN-sub-commission on prevention of discrimination prepare a report on the available recourse procedure and recommend a measures to enhancing and strengthening a national recourse that are available, One of the recommendation in this session is the establishment of ombudsman which function to represent the individual in cases where the rights of the individual under the law may have been infringed open or abused by the state or another authority.⁹⁶ Racial Discrimination when the public official under his authority exercise, they have the right to check and investigate under the Ethiopian constitution the establishment of such organ recognized that is the power and function of the House of peoples representative the "establishment of the institution of the ombudsman, and select and appoint its members, it shall determine by law the power and function of the institution".⁹⁷ In addition to the constitution provision, a proclamation No 21 1/2000, a proclamation for the establishment of ombudsman enacted.

The other forms of suggested in the 1980's session, a national and local commission on human rights, that plays a rapid action particularly in the urgent cases, such as those relating to housing employment and similar situation.⁹⁸ that should be exercised without discrimination incorporated under the FDRE constitution it said

The House of peoples representative shall establish Human Right commission and determine by law its powers and function.⁹⁹ for the establishment of the commission on human right proclamation 210/2000 enacted the main objective of these law "the goal to jointly build one political community founded on the rule of law, as one of the basic objectives of the nations/nationalities and peoples of Ethiopia is to be achieved by guaranteeing respect for the fundamental right and freedoms of the individual and of nations/nationalities and peoples.¹⁰⁰ racial discrimination is one of the barrier in order not to exercise once fundamental right and freedoms. So the commission has the function to protect this right.

4.4 Elimination of Racial Discrimination on Other Legislation

The incorporation of Elimination of Racial Discrimination under FDRE constitution direct relate with the incorporation under states constitution since this constitution are a direct replica of the federal constitution, The reason I say confidently about this is because a glance look at the provision of both testifies the truth for instance. The Revised constitution of the southern Nationalities and peoples under its 25 Article it said.

All persons are equal before the law ,All persons are entitled without any discrimination to equal protection of the law ,According, all persons have the equal and effective protection of the low with out

discrimination on grounds of race, nation, nationality, colour ,sex ,language, religion ,political opinion, social origin, wealth birth or other status.

The same provision provided under the FDRE constitution, even the article placed at the same manner, it is not only the right to equalize provided in this manner but also on other human rights field both constitution allowed for equal exercise with out racial Discrimination.

It is also undeniable fact that the state and federal constitution have coordination relation, because when there exists areas not covered by the Federal constitution, it is the state constitution that comes to picture, it expressly provided about racial discrimination, there is no reason to see the Federal constitution, but if it would have been exist it would be possible to see the Federal constitution.

A law is a system of rules and princes used for the just regulation of human conduct, as racial discrimination discussed in the previous chapter, it denies an existence in human dignity, consequently, I can infer that with out incorporation of provision that prohibit this barrier we can't achieve the basic goal of law.

The Ethiopian legislation promulgated for the purpose of achieving the modernization of legal frame work, that are achieved by most developed country, the civil code of Ethiopia, for instance, 'the rule contained in this code are in harmony with the well-established legal tradition of Ethiopia and the principles enshrined in the revised constitution granted by US.'¹⁰¹ the US constitution as it is a symbol for the modern democracy principle, it recognized the principle of equality that is prohibition of Racial Discrimination, the incorporation this right under civil code is clear based on this fact.

Some legislation of Ethiopia expressly provided, the promulgation of this legislation goes in conformity with Ethiopia participated international instrument. For instance the labour proclamation No 377/2003 “in conformity with the international convention and other legal commitments to which Ethiopia is a party a with to translating in to practice”.¹⁰² it indicates, the international instrument that Ethiopia has been participated has given an effect on its legislation.

It will be wise to see this provision in relation to the 1965 convention on elimination of racial Discrimination, since this convention come in to being by considering ‘discrimination in respect of employment and occupation adopted by the international labour organization of 1958,¹⁰³ it obliges member state to recognize all worker are equal and should be treated equally with out racial discrimination, the write referred all the domestic legislation; preamble and preface and found that the principle of equality is the dominate figure that comes first.

Taking account in to the above fact, the drafter of Ethiopia legislation, heavily relied on international human right and freedom provision for instance “the 1957 penal code ,the 1961 criminal procedure code and the 1960 civil code, were enormously influenced by the declaration.”¹⁰⁴

The drafter incorporation of such international instrument implicitly refer that, the basic principle of equity in human dignity especially prohibition of racial discrimination is incorporated under Ethiopia domestic legislation. I need to emphasis the above statement in relation to the universal declaration of Human right since this declaration is used as principle in most human right instrument. I suppose. The drafter of the Ethiopia legislation also much relied on such instrument.

The drafter of Ethiopia legislation relies on international human instrument manifested through in each of the legislation, since all provision talks about right with out granting to certain racial group, it could be said crimination of racial discriminated incorporated under each of it, in addition to this all provision grant the right by referring to 'any person'. For instance, under the criminal code of Ethiopia.

Criminal law applies to all alike without discrimination as regards person, social origin, colour, sex, language, religion, and political or other property.¹⁰⁵

The same concept flows to other legislation to, to let me have a look at the criminal procedure code, in setting motion to prosecution and inquiry, 'any person' has the right complain or accuse, there is no special privilege provided for certain racial group and not for other being a human is suffice to exercise to exercise there right provided under there legislation.

Ethiopia under the 1965 convention on elimination of racial discrimination, pledged to undertake ' declare an offense punishable by law on dissemination of ideas based on racial superiority or hatred, incitement or racial discrimination' ¹⁰⁶, racial discrimination deprive one's dignity and indispensable right , therefore , when there exist any kind of dissemination of racial superiority , instable obviously instability considering this fact , the criminal code of Ethiopia provided that 'by what ever accusation or any other means foments , dissemination , arouse hatred , or stir up acts of violence or political , racial or religious disturbance...." it is unquestionable that Ethiopia clearly incorporated under its criminal law

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CHAPTER FOUR

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5. Conclusion and recommendation

The principle of the dignity and equality inherent in all human being to be insured successfully, the role played by prohibition of racial discrimination is immeasurable, by taking to account this fact the international and regional human right instrument device different mechanism , among such incorporation of prohibition of elimination of racial discrimination under member state legislation is one of it.

Elimination of racial discrimination under international human right incorporated into two ways , that is, global and subsidiary, the former deal about racial discrimination in general term , that means for exercising other right, the principle of equality comes first for instance UN and the African charter , the later in detail and specific deal up on racial discrimination , for instance Convention on Elimination of Racial Discrimination.

Ethiopia has got spectacular picture in these international human right instrument, it is well known not only as member , but also as a founder , through all international human right instrument the research touches upon, Ethiopia was a member state this parrally means the obligation levied on member state has got direct impact also under the Ethiopia legislation.

The writer enumerates the incorporation of international human right law on elimination of racial discrimination under Ethiopia legislation in two ways , these are under the constitution and other domestic legislation, the former expressly provided under its provision, I dare to say so by two reasons, first the universal declaration of human right, which declared the principle of equality in human dignity, incorporated under the Ethiopian constitution declaring that any interpretation of fundamental human right and freedom go in conformity with this principles of the universal declaration of human right and international covenant on human right, and this instrument

to have an immediate legal effect at national level, second, in enjoying in the social, economic, cultural, civil and political field everyone has the right to exercise without any discrimination of race these indicate Ethiopian's incorporation under the constitution is effective. Above these, under its express provision on principle of equality, it recognized the equality of all persons before the law without factors, like racial discrimination.

Concerning, incorporation of elimination of racial discrimination under other domestic legislation, we have to see factors for coming being of these legislation, first the pioneer legislation like the civil code and penal code adopted for changing the undeveloped picture of the state to one step up, therefore they promulgated basic principle of equality as of the developed state, second the basic essence of the law to be effective all nation should exercise the right without barriers by considering these fact, the drafter declared all laws by providing in the first clause of their provision 'all persons', third, some legislation incorporate their means of interpretation, that is in faith with international human right instrument, for instance the labor proclamation

UNESCO declaration on race and racial prejudice and convention on elimination of racial discrimination, in order to reduce the manifestation of racial discrimination state should penalize those who destructs the principle of equality, the Ethiopian criminal code by considering this promulgated prohibition of illegal racist propaganda and racist organization, that destruct the countries security.

The constraint of the international human right treaties, as I discussed in the second chapter, even though they expressly discuss about the principle of equality, emphasizing on racial discrimination, there is no enforcement mechanism to enforce the incorporation under state legislation, so I recommend the international law to have enforcing mechanism. i.e all organ should enforce the state to

incorporate under its legislation

Racial discrimination nullify the indispensable dignity of human being that, he inherently acquires, by considering this fact the special promulgation that comply with prohibition of racial discrimination independently from other right, would be good if declared under ethiopia law.like convention on elimination of racial discrimination under UN.

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