

JIMMA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE

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HUMAN RIGHTS AND CRIMINAL LAW PROGRAMME

**PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF POLICING
DEMONSTRATIONS IN ETHIOPIA**

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Declaration

I hereby declare that, this thesis prepared for the partial fulfillment of the requirements for LL.M Degree in Human Rights and Criminal Law entitled 'Protection of Human Rights in the Context of Policing Demonstrations' is my own work and that it has not previously been submitted for assessment to another University or another qualification. I also declare that any source used in the paper has been duly acknowledged.

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The undersigned certify that they have read and hereby recommend to the Jimma University to accept the Thesis submitted by Edossa Etefa entitled ‘Protection of Human Rights in the Context of Policing Demonstrations’ in partial fulfillment for the award of the Master degree in Human Rights and Criminal Law.

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Dedication

I dedicate this thesis to the memory of those who were fallen in exercise of their fundamental freedoms and human rights; their right to assemble or to demonstrate. They are fallen but laid foundations for the bright future of our country, Ethiopia!

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Abstract

The right to demonstrate peacefully is a human right recognized and protected under human rights laws, at domestic and international level alike. This right is recognized and protected as one type of the right to freedom of peaceful assembly and as an essential form of exercising fundamental freedoms and all human rights. The right to peaceful demonstration is instrumental for exercising political, economic and social rights. It is an essential component of democracy and also helps to address and resolve challenges and issues of the society like the environment, sustainable development, crime prevention, human trafficking, empowering women, social justice, consumer protection and the realization of all human rights. States Parties which ratify international human rights instruments recognizing the right to peaceful demonstration assume duties of ensuring the exercising of the right. The duties include coining of policy and legal frameworks domestically that regulate the right to peaceful demonstration, the use of force and firearms in policing demonstrations, control and oversight and effective remedy and redress for victims of human rights violations that conforms to international human rights standards.. Ethiopia owes obligations to protect the right to peaceful demonstration and human rights in policing demonstrations emanating from its commitment to major human rights instruments recognizing the right, most notably the ICCPR and ACHPR. However, in this study, the researcher has found that the government of Ethiopia has not taken adequate measures necessary for giving effect to the right to peaceful demonstration and protecting human rights during policing demonstration. The country has not adopted policy of policing peaceful demonstrations. Also, the protection extended to the right to peaceful demonstration by the FDRE Constitution is inadequate as it fails to contain fundamental principles of guarantees against arbitrary actions and decisions of authorities. The implementing law of the right also many gaps and loopholes. In practice also the country's response to peaceful demonstration has been characterized by use of excessive force; killing, injury and detentions of demonstrators. Thus the country's experience of human rights protection during policing demonstration is against the human rights obligations of the country, both under international and domestic laws.

Key Words: - Peaceful Demonstration, Policing, Use of Force, Control and Oversight, Effective Remedy, Accountability, Legality, Proportionality

List of Acronyms and Abbreviations

ACHPR	African Charter of Human and Peoples' Rights
BPUFFLE	Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
CCLEO	Code of Conduct for Law Enforcement Officials
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
EEHRC	Ethiopian Human Rights Commission
FDRE	Federal Democratic Republic of Ethiopia
HPR	House of People Representatives
HRW	Human Rights Watch
IAmCtHR	Inter American Court of Human Rights
IACmnHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICEAFRD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
UDHR	Universal Declaration of Human Right
UN	United Nations
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime

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CHAPTER ONE

1. INTRODUCTION

1.1. Background to the Study

The right to freedom of peaceful assembly is one of the fundamental human rights widely recognized and guaranteed in many global and regional human rights instruments as well as domestic legislations. Under global human rights instruments, the prominent instruments that recognize and protect the right to freedom of peaceful assembly are; the UDHR,¹ ICCPR,² ICEAFRD³ and CRC.⁴ Among the regional instruments it is possible to mention the ACHPR⁵ and ECHR.⁶ These instruments, despite they recognize and protect the right to freedom of peaceful assembly, they do not define the right or identify the contents of the right. To fill this gap, different experts in the field have tried to define what the right is and its contents. Among these experts, the ODIHR/OSCE panel of experts on the right to freedom of peaceful assembly defined assembly as “the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose”.⁷ In a similar vein, the special rapporteur on freedom of peaceful assembly and association defined assembly as “an intentional and temporary gathering of people in a private or public space for a specific purpose”.⁸ Further, the special rapporteur on extrajudicial, summary or arbitrary executions defined assembly in the same words except the objective of the assembly “making political statements mostly” he added.⁹ In addition to defining assembly, these experts have identified the types and forms of assembly. Accordingly, under the right to freedom of peaceful assembly, static assemblies like meetings,

1. The Universal Declaration of Human Rights, 217A (III) (1948), Art-20(1) provides “everyone has the right to freedom of peaceful assembly and association”

2. The International Covenant on Civil and Political Rights, Treaty Series vol. 999 (1966), Art- 21(1) provides “the right to peaceful assembly shall be recognized”

3. The Convention on Elimination of All Forms of Racial Discrimination, A/RES/2142 (1966) Art-5(d)(ix)

4. The Convention on the Rights of the Child, United Nations, Treaty Series, vol. 1577 (1989) Art-15

5. The African Charter on Human and Peoples' Rights ("Banjul Charter") CAB/LEG/67/3rev.5, I.L.M. 58 (1981), Art-11 provides ‘ every individual shall have the right to assemble freely with others freely’

6. The European Convention for the Protection of Human Rights and Fundamental Freedoms, as Amended by Protocols Nos. 11 and 14, ETS 5 (1950) Article -11

7. OSCE/ODIHR Panel of Experts, *Guidelines on Freedom of Peaceful Assembly*, 2nd Edn (2010), p-15

8. Kiai, M The Right to Freedom of Peaceful Assembly and of Association, A/HRC/26/29 (2014), p-7

9. Heyns, Ch Extrajudicial, Summary or Arbitrary Executions, A/HRC/26/36(2014)p-5

mass actions, demonstrations, rallies, sit-ins and pickets as well as moving assemblies like parades, funerals, weddings, pilgrimages and convoys are included.¹⁰

The right to freedom of peaceful assembly protects different types of assemblies, demonstrations being one type.¹¹ Thus, the right to peaceful demonstrations is included and protected under the right to freedom of peaceful assembly.¹² The ODIHR/OSCE panel of experts and special procedures of the UN take this stand that the right to peaceful demonstration is recognized and protected as one type of the right to freedom of peaceful demonstration. On the other hand, others trace the protection of the right to peaceful demonstration through the right to peaceful protest which is recognized and protected itself under the right to freedom of peaceful assembly.¹³ For these experts, ‘protest’ encompasses a variety of expressive conducts characterized by the individual or collective expression of oppositional or reactive views, values or interests through some manifested action, and is not necessarily interchangeable with assembly, as assembly is mostly content neutral while protests are not.¹⁴ Demonstration is one form manifestation or expression of protest and as such it takes form of collective expression in a public or private places by individuals united by shared objectives and it imply an element of dissent, opposition, response or reaction to something.¹⁵ To express reactive or oppositional views or contents, demonstrations could be used as one channel.

In both constructs, however, the right to demonstration is accorded protection within the framework of the right to freedom of peaceful assembly. It has to be underscored that whether protest or demonstration, or other gatherings, are used as a channel or way of manifest or exercise of fundamental freedom and human rights, including the rights of peaceful assembly and freedom of expression¹⁶ though they are not independently protected and recognized themselves. Therefore, any protection and recognition given to the right to freedom of peaceful

10. OSCE/ODIHR, *Handbook on Monitoring Freedom of Peaceful Assembly* (2011) p-11, see also A/HRC/22/28(2013)

11. Guidelines on Freedom of Peaceful Assembly, 2nd Edn (2010), pp-11, 30, see also this guideline on page 11, mentions different types of assemblies as deserving protection despite their difference in types.

12. Ibid, p-15, see also, A/HRC/22/28(2013) para-10.

13. This line of construct is made by Article 19: Global Campaign for Freedom of Expression in its report on the “Right to Protest”: Background paper.(2016)

14. Ibid,7

15. Ibid,7

16. The United Nations Office on Drugs and Crime and the Office of the United Nations High Commissioner for Human Rights, *Resource Book on the Use of Force and Firearms in Law Enforcement* (2017) p-7

assembly applies mutatis mutandis to peaceful demonstration and other forms of gathering of peoples who intend to express their views, with necessary regulatory framework required according to the natures of the gatherings, whether static or moving or whether it takes place on public or private places, it deserves protection.¹⁷ Peaceful demonstration is thus accorded protection under the right to freedom of peaceful assembly, as one form of gathering i.e. intentional and temporary gathering of peoples in public or private places to express their views or interests to audiences, and as such it is a form of exercise of the right to freedom of assembly as protected under human rights instruments. Therefore, the researcher uses the term “demonstration” in the spirit of the above definitions. As such, demonstration is an intentional and temporary gathering of people in a public or private space with the objective of making collective expression on matters of common concern to the government and the external audiences. The themes of the study is therefore, how to police such gatherings of people without interfering in exercise of their protected rights and without infringing or violating their human right as well as maintaining public order, peace and security.

Ethiopia has ratified major international human rights treaties acknowledging the right to peaceful demonstration.¹⁸ Therefore, Ethiopia bears international obligation to respect, protect and fulfill the right to peaceful demonstrations.¹⁹ The right to peaceful demonstration is also recognized and protected under Ethiopian domestic laws. The FDRE Constitution provides; “Everyone has the right to assemble and to demonstrate together with others peaceably and unarmed. ...”.²⁰

The right is further recognized by subsidiary legislation.²¹

The right to peaceful demonstration is not an absolute right. It could be restricted under certain limited circumstances. The ICCPR provides;

17. Guideline on Freedom of Peaceful Assembly(2010) supra n-7, p-15, para-1.2

18. Ethiopia became party to the ICCPR on 11 June 1993; see United Nations ‘Treaty Collections’ available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en , and to ACHPR on 15 June 1998; see OAU/AU Treaties, ‘Conventions, Protocols and Charters’ available at <http://www.au.int/en/treaties> [accessed on 12 May 2018]

19. The International Covenant on Civil and Political Rights, Treaty Series vol. 999 (1966), Art- 2

20. The Federal Democratic Republic of Ethiopia Constitution, Proclamation No. 1 of 1995, Art -30(1), Hereafter FDRE Const.

21. A Proclamation to Establish the Procedures for Peaceful Demonstration and Public Political Meeting, Proclamation No 3 of 1991, Art-3, hereafter, Peaceful Demonstration Proclamation.

“no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others”.²²

Also the ACHPR provides the limitation stating that;

“The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others”.²³

These instruments commonly recognize that the right could be restricted. However, they require the restriction to be imposed by enactment of law and for the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others only. Under the FDRE Constitution, the grounds for limitations of the right are;

“Public convenience, the protection of democratic rights, public morality and peace, the well-being of youth, or the honor and reputation of individuals, propaganda of war and human dignity”.²⁴

The ground of limitation provided under the FDRE Constitution is unique when seen in relation to the grounds of limitation provided by the international instruments mentioned above. Some of the grounds are even vague and ambiguous, thus not in line with international instruments pointed. The limitations provided under these instruments refer to limitations upon the right to freedom of peaceful assembly which also applies to the right to peaceful demonstration equally, as demonstration is one type of assembly.

The right to peaceful demonstration plays important and significant roles in the economic, social and political life of groups and individuals that justifies its recognition and protection. The right to peaceful demonstration is a means to exercise other rights; civil, political, economic and social rights.²⁵ It positively impacts development and can enhance the strengthening and effectiveness

22. ICCPR(1966), supra n-2, Art 21(2)

23. ACHPR(1981) supra n-5, Art.11(2)

24. FDRE Cons (1995) supra n-21, Art. 30(1 and 2)

25. United Nations Human Rights Council, The Promotion and Protection of Human Rights in the Context of Peaceful Protests, A/HRC/RES/25/38 (2014)

of democratic systems and democratic processes, including elections and referendums.²⁶ This is because, it empowers individuals and groups to express themselves and their views and helps them to elect representatives and hold them accountable. Peaceful demonstrations have brought historical changes to the world community, inter alia, human rights movements, change in political landscape and democracy in many countries of the world and many more.²⁷ The right to peaceful demonstration could be used to address and resolve challenges and issues of society like the environment, sustainable development, crime prevention, human trafficking, empowering women, social justice, consumer protection and as such an engine for the realization of all human rights.²⁸ From these discussions it is clear that the right to freedom of peaceful demonstration if recognized, protected and managed wisely could contribute multitude of utilities of human development, nurturing democracies and good governances of a country.

Protection is extended to demonstrations that are peaceful. But, the peacefulness of the demonstration is to be considered in contexts, as absolute peacefulness is impossible to achieve, particularly in the context of expression of dissents and concerns intended to expose flaws in laws, policies and practices of administrations or expressions that are of minority or marginalized groups. Thus, the maximum requirement of peacefulness is the peaceful intentions of the organizers and non violent conduct of the demonstration.²⁹ This includes even conducts that may annoy or offend, and that temporarily hinders or obstructs the activities of third parties. Peacefulness nature is not lost for merely obstructing activities of third parties³⁰ or for violent acts of isolated individuals.³¹

States bear duty to respect, protect and fulfill the right to peaceful demonstrations without any adverse distinction, upon ratification of human rights instruments recognizing and protecting the right, as international human rights laws impose obligation such on states.³² Law enforcement

26. Ibid

27. Heyns, Ch Extrajudicial, Summary or Arbitrary Executions, A/HRC/17/28 (2011)

28. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7,p-24, Paras-4-7

29. Ibid, p-15, see also A/HRC/22/28(2013) para-10

30. Ibid, p-15

31. Handbook on Monitoring Freedom of Peaceful Assembly(2011) supra n-10,p-14

32. The International Committee of the Red Cross, *To Serve and to Protect; Human Rights and Humanitarian Law for Police and Security Forces*, 2nd Edn.(2014)pp-133-134, see also States Human Rights Obligations, 'Obligations are generally of three kinds: to respect, to protect and to fulfill human rights' available at <http://hrbaportal.org/faq/what-kinds-of-human-rights-obligations-are-there>, [accessed on 16 May 2018]

officials, as an organ of state, represent and manifest government authority, thus have duty and paramount roles in facilitating demonstrations and manifest government's commitment of upholding the rule of law and protecting fundamental human rights and freedoms.³³ They are expected to facilitate all peaceful demonstrations and protect participants in demonstrations, allowing them to express their views freely within sight and sound of the intended audience.³⁴ Thus, law enforcement officials, when policing demonstrations must fully understand the right and the strict conditions under which it can be limited and assess the appropriateness of using force in such events by considering the rights of those participating in such events.³⁵ In general, policing demonstrations encompass various activities starting from preparatory measures before the event; measures to be taken to avoid use of force and firearms, identifying applicable principles of use of force and firearms, appropriate management of the demonstration and includes appropriate accountability measures.³⁶ These are measures intended to facilitate the exercise of the right of peaceful demonstration, to prevent the outbreak of violence and thus to avoid the need to resort to force and it is associated with factors such as communication, facilitation and protection, decisions about equipment, and the use of police discretion.³⁷ To this end, states may develop policies that further develop and enhance the general framework for the use of force laid out in laws, for particular policing situations like demonstrations and issues like the general principles governing any use of force; the principles of legality, necessity, proportionality and non-discrimination, the thresholds for the use of force, rules on accountability and the rights of victims of unlawful, excessive or arbitrary use of force and control and oversight mechanisms needs to be regulated by laws.³⁸ Therefore, in policing demonstrations, "law enforcement agencies and officials are required to achieve balance between respect for human rights of individuals and groups on one hand and the states' obligation to maintain public order and safety as well as to protect the rights of others, that requires law enforcement agencies and officials individually and collectively, to act at all times in a professional and disciplined manner consistent with the high degree of responsibility of their

33. Ibid, pp-133-134

34. OSCE/ ODIHR, *Human Rights Handbook on Policing Assemblies* (2016)p-7

35. Resource Book on the Use of Force and Firearms in Law Enforcement(n-16)pp-13,14

36. Ibid, p-106

37. Amnesty International, Police and Human Rights Program, Dutch section, Policing Assemblies, Short paper series No. 1 (2013)p-6

38. Ibid, p-12

function”³⁹ Thus, policing demonstrations among others requires framing policy and drafting of legal frameworks to govern the use of force and firearms, control and oversight mechanisms and enhancing institutional capacities of law enforcement institutions through trainings on relevant human rights issues and through ensuring independence of law enforcement institutions and oversight bodies both intuitionally and financially.

When the researcher considers the case of Ethiopia in light of the above discussions, the country does not have policy frame work that regulates and guides the activities, roles and responsibilities of stake holders in the peaceful demonstrations; particularly it does not have policy on use of force and firearms. Also, the country has no single, adequate and comprehensive law or regulation for the regulation of policing demonstrations, rather scattered laws like the peaceful demonstration proclamation, the Federal Police Commission establishment proclamation, proclamation No-720/2011 and Council Ministers Federal Police administration regulation, regulation No-286/2012. These laws are not comprehensive and adequate to regulate all aspects of activities of policing demonstrations, as required under human rights laws, as they do not address issues use of force, accountability of law enforcement officials, oversight and control and effective remedy and redress for victims. The inadequacy of the Ethiopian laws of the right to peaceful demonstration has also been observed in practice in the incidents of demonstrations in the country. For example, in relation to the demonstrations undertaken in the country following the 2005 general election, there were various allegations of human rights violations against the government of Ethiopia; that the government reacted to these demonstrations with excessive forces; that it killed hundreds, arrested thousands for participating in the demonstrations.⁴⁰ There were numerous instances of harassment, detentions, torture, killing and injuring demonstrators, members of the political opposition and even bystanders.⁴¹ The worrying issue is the absence of accountability for the violations and impunity of law enforcement officials and the loose oversight mechanisms, the reports indicated.⁴² Another example where such inadequacy of the laws could be observed is in demonstrations in

39. Ibid, p-5

40. The Guardian, Security Forces Opened Fire on Stone Throwing Protesters, (2005) available at <https://www.theguardian.com/world/2005/jun/08/sarahleft> report say the Associated Press reporter saw 11 bodies’ dead, at least 4 of them with gunshot at the head. [accessed on 15 May 2018]

41. USD Country Report, Ethiopia (2005) available at <https://www.hrw.org/world-report/2005/country-chapters/ethiopia>, [accessed on 15 May 2018]

42. Ibid

the country from 2015 onwards in the country. There were instances where the security services beat hundreds of people, during and after the demonstrations, including demonstrators, bystanders and parents of protestors for failing to ‘control’ their children, resulting in scores of injuries and other human rights violations in various locations across Oromia region.⁴³ The government did not respect the right to peaceful demonstration and killed, injured and detained numerous demonstrators that the death toll estimated to ceil above 500.⁴⁴ Security forces used excessive lethal force and killed hundreds of demonstrators and injured many more, arbitrarily arrested a number of peaceful demonstrators, journalists and opposition party leaders and those arrested are at risk of torture and other ill-treatment.⁴⁵ Ethiopian Human Rights Commission also has investigated the situation and found that 572 civilians and 63 security forces were killed, and confirmed there were instances of use of excessive and disproportionate use of force and firearms.⁴⁶ Thus, these discussions reveal that the laws which regulate the right to peaceful demonstration in the country are not adequate and comprehensive to address major issues to be regulated under it and there were experiences of human rights violations, impunity for violations of human rights in the course of policing demonstrations and investigations which are not credible that needs thorough investigation and research which this research aims to achieve.

1.2.Problem Statement

The right to peaceful demonstration is recognized and protected in Ethiopia. The right is recognized and protected under international human rights instruments to which Ethiopia is a party, mainly the ICCPR and ACHPR.⁴⁷ Also, the FDRE Constitution recognizes and protects the right.⁴⁸ Further, the right to peaceful demonstration is recognized and protected by subsidiary law.⁴⁹ However, the protections extended to the right to peaceful demonstration under the FDRE Constitution and the peaceful demonstration proclamation is inadequate. The constitution

43. Amnesty International, Because I am Oromo (2014), https://www.amnesty.org.uk/files/webfm/Documents/issues/repression_in_omoria_-_amnesty_international_report_-_28_oct_14.pdf, [accessed on 12 May 2018]

44. US Department of State, Country Report on Human Rights Practices for 2016 Ethiopia (2017)

45. European Parliament Resolution on the Situation in Ethiopia (2016/2520(RSP)) (2016)

46. Fana Broadcast Corporate, Violence in Oromia (2016) <http://www.fanabc.com/english/index.php/news/item/8701-violence-in-omoria,-amhara-and-snnp-regions-claims-669-lives-commission>, [accessed on 12 May 2018]

47. ICCPR (1966), supra n-2, Art- 21(1) and ACHPR (1981), supra-5, Art-11

48. FDRE Const., supra n-20, Art -30(1)

49. Peaceful Demonstration Proclamation, supra n-21, Art-3

provides only positive statement of recognition of the right but not guarantees against arbitrary decisions and actions of the regulatory bodies, like the principles of legality, proportionality and necessity of decisions of these regulatory bodies.⁵⁰ Again the protection extended to the right by the peaceful demonstration proclamation is inadequate as it does not address issues of the use of force and firearms by law enforcement officials during policing demonstrations, the issues of control and oversight of policing, accountability of law enforcement and effective remedy for victims of human rights violations during policing demonstrations.⁵¹ The inadequacy and incomplete protection of the right to peaceful demonstration under these laws has been observed in practice also in the past years in the country.

In 2005 the country undertook general election in which opposition parties participated in widely. The release of the election result on 1 November 2005 and disagreement on election result between the government and opposition parties triggered demonstrations in many parts of the country. In relation with incidents of demonstrations in the country, there were various allegations of human rights violations against the government of the country. The government reacted to these demonstrations with excessive forces; that it killed hundreds, arrested thousands for participating in the demonstrations.⁵² There were numerous instances of harassment, detentions, torture, killing and injuring demonstrators, members of the political opposition and even bystanders.⁵³ The worrying issue is the absence of accountability for the violations and impunity of law enforcement officials and the loose oversight mechanisms, reports indicated.⁵⁴ Resolutions of human rights supervisory bodies and donors also corroborate this human rights situation of the country at the time. For example, the AComHPR resolution points the existence of arbitrary killing, injury, arrests and other serious human rights violations of demonstrators

50. FDRE Const., supra n-20, Art -30 (1and 2)

51. Peaceful Demonstration Proclamation, supra-n-21, Arts-6 and 10 respectively provide “The municipal or woreda administrative, where it is of the opinion that the peaceful demonstration be held at some other place or time, it shall so notify the organizers giving reasons, in writing, within 12 hours of the submission of the notice. Here the proclamation does not provide the procedure and institution where to challenge such decisions of the authorities. The only security officers’ responsibility provided by the proclamation is they by their in any peaceful demonstrations, have the responsibility to safeguard the peoples’ rights and peace and security”.

52.The Guardian, (2005), supra n-40, the report say the Associated Press reporter saw 11 bodies’ dead, at least 4 of them with gunshot at the head.

53.USD Country Report, Ethiopia (2005) , supra n-41

54.Ibid

during demonstrations.⁵⁵ The commission urged the country to undertake an impartial investigation into the situation and ensure accountability in line with international obligations of the country, notably compliant with the ACHPR, the ICCPR and the ICESCR.⁵⁶

Another wave of incidents of demonstration started in the country early in 2015, when the integrated regional development plan for Addis Ababa and the surrounding Oromia region shortly the “Master Plan” was publicized, as it raised concerns among peoples in the region, that it was produced without meaningful consultations, adequate compensations for evictees and other administrative issues.⁵⁷ This time also there were various allegations human rights violations against the government of Ethiopia. There were instances where the security forces beat peoples, during and after the demonstrations, including demonstrators, bystanders and parents of demonstrators for failing to ‘control’ their children, resulting in scores of injuries and other human rights violations in various locations across Oromia region.⁵⁸ From July 2017 onwards also the Amhara region was hit by wave of demonstrations.

The human rights situation, particularly as related with demonstrations in the country from 2015 to 2017 was worrying. The government did not respect the right to peaceful demonstration and killed, injured and detained numerous demonstrators, which the death toll estimated to reach above 500.⁵⁹ Again human rights supervisory bodies and donors reacted by adopting resolution on the human rights situations in the country at this time. The resolutions describe the human rights situation as use of excessive and disproportionate force to disperse demonstrators, resulting in the deaths and injuries of several demonstrators, as well as the arbitrary arrest and detention of many others.⁶⁰ The European Parliament resolution describes the situation as ‘security forces used excessive lethal force and killed at least 140 demonstrators and injured many more, arbitrarily arrested a number of peaceful demonstrators, journalists and opposition party leaders

55. African Commission on Human and Peoples Rights <http://www.achpr.org/sessions/38th/resolutions/92/>, [accessed on 12 May 2018]

56. Ibid

57. IPI Global Observatory, Data Analysis: The Roots of Popular Mobilization in Ethiopia, (2017) <https://theglobalobservatory.org/2017/06/ethiopia-protests-oromo-addis-ababa-master-plan/> [accessed on 12 May 2018]

58. Amnesty International, Because I am Oromo (2014), supra n-43

59. US Department of State, Country Report on Human Rights Practices for 2016 Ethiopia (2017) supra n-44

60. African Commission on Human and Peoples' Rights, Res. 356: Resolution on the Human Rights Situation in the Federal Democratic Republic of Ethiopia (2016)

and those arrested are at risk of torture and other ill-treatment.⁶¹ Ethiopian Human Rights Commission also has investigated the situation and found that 572 civilians and 63 security forces were killed, and confirmed there were instances of excessive and disproportionate use of force and firearms.⁶²

1.3.Objective of the Research

1.3.1. General Objectives

The general objective of this research is to explore whether Ethiopia has adequate and comprehensive policy and legal framework for policing demonstrations which enables to ensure human rights protection during policing demonstrations.

1.3.2. Specific Objectives

- I. To identify whether there are policy guidelines for policing demonstrations, in particular on use of force, to achieve the human rights protection in the context of policing demonstrations in Ethiopia.
- II. To explore the existence of adequate and comprehensive legal frame work that governs policing demonstrations that can ensure the protection of human rights in the context of policing demonstrations in Ethiopia.
- III. To explore how the accountability of law enforcement officials are addressed in Ethiopian laws of policing demonstrations.
- IV. To explore how the control and oversight of activities of law enforcement officials and effective remedy and redress for victims of human rights in relation to policing demonstrations are addressed under Ethiopian laws of policing demonstrations.

1.4.Research Questions

1. Does Ethiopia has policy guideline for policing demonstrations which can guide activities, roles and responsibilities of law enforcement agencies and officials to ensure the protection of human rights in the context of policing demonstrations?

61. European Parliament Resolution on the Situation in Ethiopia, (2016), supra n-45

62.Fana Broadcast Corporate, Violence in Oromia (2016) , supra n-46

2. Does Ethiopia has adequate and comprehensive legal frameworks policing demonstrations that enable to ensure protection of human rights in the context of policing demonstrations?
3. What were the laws governing the use of force, accountability of law enforcement agencies and officials and control and oversight mechanisms and effective remedies and redress for victims of human rights violations in policing demonstrations, in the experiences of policing demonstrations during the past events of demonstrations?

1.5.Literature Review

There is scarcity of research conducted in the area of the right to demonstration in general and protection of human rights in the context of policing demonstrations in Ethiopia. As to the researcher's knowledge, there is no research conducted directly in the area of protection of human rights in the context of policing demonstrations in Ethiopia. But, indirectly, there are some research conducted in the area. For instance, Andualem T. Gelaye, in his article entitled "Protection of the Right to Freedom of Assembly under Ethiopian Law: Gaps and the Way Forward"⁶³, as the title of the article indicates have dealt with how the right to freedom of assembly is protected by the constitution and ordinary law of the country. In doing so, he identified that the constitutional protection of the right in Ethiopia is inadequate because the constitution, listing the grounds of limiting the right, fails to contain guarantees for prevention of arbitrary restrictions. He added that the problem is worsened by legal gaps in the proclamation of the peaceful demonstration and public political meetings and the absence of fair hearings; administrative and judicial reviews procedures. Thus, though the gaps of the constitution and ordinary laws of the country in protection of the right to freedom of assembly contribute to problems of protection of human rights in the exercise the right including through peaceful demonstrations, protection of human rights in the context policing demonstrations is not dealt with in that article. Beside this article, the researcher did not find any literature that deals with the issue of the right to peaceful demonstration in general and the issue of protection of human rights in the context of policing demonstrations in Ethiopia. Thus, this thesis will try to contribute its own share to fill this gap.

1.6.Scope of the Study

63.Andualem,T 'Protection of the Right to Freedom of Assembly under Ethiopian Law: Gaps and the Way Forward' *Mizan Law Review*, Vol. 10, No.2 (2016)

For the realization of the right to peaceful demonstration and the protection of human rights in the context of policing demonstrations, various factors come in to play including, but not limited only to, the legal framework and political environment for the exercise of the recognized and protected right. The ambit of this research thus is limited to the exploration of the Ethiopian legal frameworks governing the right to peaceful demonstrations and protection of human rights in the context of policing demonstrations to the exclusion of other factors. Also, the scope of the study is limited to the legal frameworks of the right under the 1995 FDRE constitution. The incidents of demonstrations focused are also those happened since the coming into force of the constitution, though the study does not catch each and every incidents of the demonstrations happened since then. As one type of assembly, demonstration needs specific regulation based on its distinctive nature. As such this research focuses only on the regulations of the right to peaceful demonstration to the exclusion of other types of assembly. The research will discuss instances of practical demonstrations to substantiate the discussion of inadequacy of protection of the right under Ethiopian laws. Further, it will discuss better experiences of other jurisdictions in relation protections human rights while policing demonstrations so as to enable our country draw lessons and experiences from them.

1.7. Limitation of the Study

Researching the issues of protection of the right to freedom of assembly thereby identifying experiences of protection of human rights in the exercise of this right touches upon study of different rights and also could be done from different perspectives. This makes it complex to research it comprehensively and exhaustively within the available short period of time and resources, to explore it from each and every aspect of the problem. The other limitation is, as discussed in the literature review part, there is shortage of literatures and previously conducted researches under this theme, particularly in the Ethiopian context. This has hindered this study from being nurtured and supplemented by the insights from other literatures.

1.8. Significance of the Research

The study explores the legal frameworks applicable for the protection of the right to peaceful demonstration and the protection of human rights in context of policing demonstrations. To this end, the research will identify the gaps and loopholes in the Ethiopian legal regime governing the right to peaceful demonstration and the protection of the human rights in the operations of policing demonstrations in light of international, regional and other jurisdictions' laws and best

practices and recommends for incorporations of the better laws and practices. From this perspective, the study's significance would be to expose the deficiencies of our laws to inform the policy and law makers for adopting new or amending existing laws in line with these international, regional and other jurisdictions laws and best practices.

The study could help practitioners (police, prosecutors and judges) to understand the contents and justified limitations of the right to freedom of assembly thus make informed decisions in the executions of their duties. The study further can contribute for initiating academicians to undertake further researches, as the area is least investigated in academics, particularly in Ethiopian context.

1.9. Research Methodology

In order to attain the objective of the research and address all the research questions, this research is conducted with doctrinal research methods. It relies on qualitative analysis of relevant theoretical concepts, international and regional human rights instruments and Ethiopian legal frameworks. The study seeks to shed light on how the country has been discharging its obligations of human rights protection in policing demonstrations by adopting necessary laws and constituting necessary institutions and the extent to which law enforcement officers respect the laws of the right to peaceful demonstration and protections of human rights in practice, based on information gathered from interviews, reports of human rights organizations and resolutions adopted by human rights supervisory institutions and donor countries. Thus, to accomplish this research, both primary and secondary data are analyzed and used. Primary data like interviews with personnel of the Federal Police Commission, HPR and EHRC, international and regional human rights instruments, constitutions, laws, court cases and secondary data like books, journals, articles, websites, magazines, reports and unpublished thesis could be consulted. Also, experiences of some jurisdictions with better legislative and institutional set up for protection of human rights while policing demonstrations is considered for comparison and experience sharing purposes.

1.10. Structure of the Study

In order to systematically address all the questions rose in the research questions, this research contains four chapters, each addressing relevant sub contents beneath them, are organized as follows:

In chapter one, the research is contains mainly contains background to the study, problem statement, research objectives, research questions, relevance of the study and methodology of the study among others.

In chapter two an introductory note and exploration of literatures on the right to peaceful demonstrations, the concepts and contents of the right under international, regional and national legal regimes, its significance and limitations are addressed. It then discusses the state duty of protection of the right to peaceful demonstration and human rights in the context of policing demonstration. Under this sub section, the content of the duties of state as related with policing demonstration is investigated.

Chapter three of the research discusses the protection of the right to peaceful demonstrations in Ethiopia. It explores the duties of Ethiopian in policing demonstrations and identifies Ethiopian experiences of protection of human rights in policing demonstrations. It investigates whether the country has adopted necessary measures; adequate and comprehensive policy and legal frameworks that govern policing demonstrations which can ensure the protection of human rights in the context policing demonstrations. Here it tries to identify loopholes and gaps in the laws and policies and relate the implications of these gaps and loopholes to the Ethiopian experiences of protection of human rights in the context of policing demonstrations. This discussion is substantiated by different incidents of demonstrations, police and security force responses to such demonstrations and human rights violations during policing of these demonstrations.

The last chapter, chapter four of the research, draws conclusions from the issues discussed in the preceding chapters and recommend on important major issues and findings to be identified in the course of investigations in the research.

CHAPTER TWO

2. THE RIGHT TO PEACEFUL DEMONSTRATION AND THE STATE RESPONSIBILITY IN POLICING DEMONSTRATIONS

2.1.Introduction

Under international human rights laws, there is no independent and distinct right that is recognized and protected as ‘the right to peaceful demonstration’. Rather, it is recognized and protected as a type of the right to freedom of peaceful assembly. Then, if the right to peaceful demonstration falls within the right to freedom of assembly, their relation needs to be identified. To do so, identifying the sources of and defining the right to freedom of peaceful assembly and identifying the contents of the right is essential. After sketching the place of the right and the protections extended to it under human rights laws both at domestic and international level, the next discussions make an effort to explore the human rights obligations imposed on states to protect the right to peaceful demonstration and other human rights in their activities of policing demonstrations. To this end, in this chapter, the researcher discusses major issue to be addressed as a minimum requirement for the protection of the right to peaceful demonstration which could enhance the protection of human rights during policing demonstrations.

2.2.Normative Frameworks of the Right to Peaceful Demonstration

The right to freedom of peaceful assembly is one of the fundamental human rights widely recognized and guaranteed in many human rights instruments at global, regional and domestic levels. Under global human rights instruments the right to freedom of peaceful assembly is recognized and protected under the UDHR⁶⁴, ICCPR⁶⁵, ICEAFRD⁶⁶ and CRC⁶⁷ and regionally under the ACHPR⁶⁸ and ECHR⁶⁹. Ethiopia has ratified all the global instruments and regionally the African continent treaties acknowledging the right to freedom of peaceful assembly.⁷⁰

64.UDHR (1948) supra n-1, Art.20(1) it provides “everyone has the right to freedom of peaceful assembly and association”

65.ICCPR(1966) supra n-2, Art 21(1) it provides “the right to peaceful assembly shall be recognized” see also, Article 15 of the UN Convention on the Rights of the Child (1989)

66. Elimination of all forms of racial discrimination(1966) supra n-3, Art-5(d)(ix)

67.Convention on the Rights of the Child(n4) Art-15

68.ACHPR (1981) supra n-5, Art.11 (1) provides “every individual shall have the right to assemble freely with others”

69. ECHR (1950) supra n-6, Art-11

70. Ethiopia became party to the ICCPR on 11 June 1993 and to ACHPR on 15 June 1998, supra n-18

Domestically Ethiopia has recognized and given protection to the right under the Constitution, which provides;

“Everyone has the right to...demonstrate together with others peaceably and unarmed”⁷¹

The right is also recognized and protected under subsidiary legislation, which provides;

“Any individual has the right to organize and participate in peaceful demonstration”⁷²

However, this subsidiary law predates the FDRE Constitution⁷³ and it was enacted with the objective of facilitating implementation of the right to peaceful demonstration and public political meetings by then.⁷⁴

2.3.The Right to Peaceful Demonstration as a Type of the Right to Freedom of Peaceful Assembly

2.3.1. Definition

The human rights instruments, despite recognizing and protecting the right to freedom of peaceful assembly, do not define what the right is. Also they do not provide the contents of the right to freedom of peaceful assembly. People gather together for various purposes in different places and times for numerous social, economic and political reasons and all such gatherings would not constitute assembly and not protected under the right to freedom of peaceful assembly. This calls us to delineate between the gatherings of people that is protected by the right to freedom of peaceful assembly and other gatherings that are outside of the ambit of protection.

Experts in the field of the right to freedom of peaceful assembly have tried to define the right and identified the ambit of the right. Among these experts, the OSCE/ODIHR panel of experts on the freedom of assembly defined assembly as “The intentional and temporary presence of a number of individuals in a public place for a common expressive purpose”⁷⁵ Also, the UN special rapporteur on the right to freedom of assembly and association also defined the right as “An

71. FDRE Const, supra n-20, Art-30(1)

72. Peaceful Demonstration Proclamation, supra n-21, Article -3(1)

73. Ibid, preamble, para-1

74. Ibid, preamble, para-3 and 4

75. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7, p-15

intentional and temporary gathering in a private or public space for a specific purpose”⁷⁶ Further, the UN special rapporteur on extrajudicial, summary or arbitrary executions defined it as “the temporary presence of a number of people in a public space, with the objective of making a collective, mostly political, statement”⁷⁷

These definitions stress on the assembly’s requirements of the existence of at least two individuals at the same time and place, and mental status of participants, i.e. intentional participation in the assembly to pursue common objective, that helps to identify participants from bystanders or others performing their daily businesses. The definitions identify an assembly which deserves the protections accorded to the right to freedom of peaceful assembly.

These experts, in addition to defining the right, also identify types of assemblies. Accordingly, under the right to freedom of peaceful assembly, static assemblies like meetings, mass actions, demonstrations, rallies, sit-ins and pickets as well as moving assemblies like parades, funerals, weddings, pilgrimages, and convoys are protected.⁷⁸ Demonstration is thus finds its place under the right to freedom of peaceful assembly under the category of static assemblies. Thus, the right to peaceful demonstrations is included and protected under the freedom of peaceful assembly.⁷⁹The right to peaceful demonstration is thus, one component of assembly. Accordingly, the right to peaceful demonstration comes into play within the frame work of the right to freedom of peaceful assembly as recognized and protected under human rights instruments.

On the other hand, others trace the protection of the right to peaceful demonstration through the right to peaceful protest which itself is protected under the right to freedom of peaceful

76. A/HRC/26/29(2014) supra n-8, p-5

77. A/HRC/26/36 (2014) supra n-9, p-7

78. Report of the United Nations High Commissioner for Human Rights, Effective Measures and Best Practices to Ensure the Promotion and Protection of Human rights in the Context of Peaceful Protests A/HRC/22/28 (2013) P-8, see also Handbook on Monitoring Freedom of Peaceful Assembly (2011) supra n-10, p-11. See also A/HRC/26/29 supra n-8, p-7 and also UN Freedom of Assembly Best Practices Fact Sheet, that it is provided under both instruments that assembly includes demonstrations, inside meetings, strikes, processions, rallies or even sits-in.

79. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7, p-15, see also A/HRC/22/28 (2013) supra n-78, para-10. These instruments recognize the right to peaceful demonstration as means of exercising fundamental freedoms, including the right to freedom of peaceful assembly and other human rights.

assembly.⁸⁰ According to this construct, protest, though it is one form of assembly, is not content neutral, thus different from assembly and encompasses a variety of expressive conducts characterized by the individual or collective expression of oppositional or reactive views, values or interests through some manifested action, and is not necessarily interchangeable with assembly, as assembly is mostly content neutral while protests are not.⁸¹ Demonstration is a form of manifestation or expression of protest and as such it takes form of collective expression in a public places by individuals united by shared objectives and it imply an element of dissent, opposition, response or reaction to something.⁸²They contend assembly is a generic term that includes content neutral gathering of peoples and also protests that are not content neutral. To express reactive or oppositional views or contents, demonstrations could be used as one channel.

In both constructs, however, the right to demonstration is accorded protection within the framework of the right to freedom of peaceful assembly. As the responsibility of the state for the protection of the right to peaceful demonstration is concerned it bears all the responsibilities it assumed for the protection of the right to freedom of peaceful assembly with necessary regulatory adjustment on the nature of the right.⁸³ Therefore, where the events include acts of intentional and temporary gathering of individuals in public or private places for common expressive purposes, it triggers the duty of state to protect the peaceful demonstrations. Here, it has to be underscored that whether assembly, protest or demonstration, or other gatherings they are used to exercise fundamental freedoms and human rights, including the right freedom of peaceful assembly and freedom of expression.⁸⁴ Therefore, any protection and recognition given to the right to freedom of peaceful assembly applies mutatis mutandis to peaceful demonstration, peaceful public protest or other forms of gathering of peoples who intend to express their views, with necessary regulatory framework required according to the natures of the gatherings.⁸⁵

The right to peaceful demonstration thus, as one type of assembly and as an essential instrument of exercising all other rights, recognized under instruments of human rights both at domestic and

80.Article 19, The Right to Protest (2016) supra n-13, p-7, this line of construct is made by Article 19: Global Campaign for Freedom of Expression in its report on the “Right to Protest”: Background paper(2016)

81. Ibid, 7

82.Ibid, 7

83.Guidelines on Freedom of Peaceful Assembly(2010) supra n-7, p- 15

84. Resource Book on the Use of Force and Firearms in Law Enforcement(2017) supra n-16,p-107

85.Guidelines on Freedom of Peaceful Assembly(2010) supra n-7, p-15

international level. Therefore, the researcher uses the term ‘demonstration’ as one type of assembly and as an essential instrument of exercise of the right to freedom of peaceful assembly and other fundamental freedoms and all human rights, and the themes of this study is to explore how to police such gatherings of people without interfering in the exercise of their protected rights and without infringing or violating their human right as well as maintaining public order, peace and security at the same time.

2.3.2. Significance of the Right to Peaceful Demonstration

The right to peaceful demonstration plays important and significant roles in the economic, social and political life of groups and individuals that justifies its recognition and protection. The right to peaceful demonstration is a means to exercise other rights; civil, political, economic and social rights.⁸⁶ It positively impacts development and can enhance the strengthening and effectiveness of democratic systems and democratic processes, including elections and referendums.⁸⁷ As such it empowers individuals and groups to express themselves and their views and helps them to elect representatives and hold them accountable. Peaceful demonstrations have brought historical changes to the world community, inter alia, human rights movements, change in political landscape and democracy in many countries of the world and many more.⁸⁸ The right to peaceful demonstration could be used to address and resolve challenges and issues of society like the environment, sustainable development, crime prevention, human trafficking, empowering women, social justice, consumer protection and as such an engine for the realization of all human rights.⁸⁹ When the right to peaceful demonstrations repressed or arbitrarily restricted, it often violates the right to life, the right to freedom from torture, and inhumane or degrading treatment or punishment, the right to privacy and right to liberty and security of person.⁹⁰ Conversely, when the right to peaceful demonstration is respected, it enhances and enables to respect and protect these and other rights. The discussion makes it clear that the right to peaceful demonstration touches upon every corner of lives of individuals and groups and if recognized,

86.A/HRC/RES/25/38(2014), supra n-25

87. Ibid

88. A/HRC/17/28(2011), supra n-27

89. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7,p-24, Paras-4-7

90. ARTICLE 19: Global Campaign for Freedom of Expression, The Right to Protest: Principles on the Protection of Human Rights in Protests, Policy Brief (2015) p-13

protected and implemented wisely could contribute multitude of utilities of human development, nurturing democracies, respect for all human rights and good governances of a country.

2.3.3. Limitations on the Right to Peaceful Demonstration

The right to peaceful demonstration is not an absolute right. Though it is a fundamental freedom within the framework of the right to freedom of peaceful assembly and has paramount importance, there are justified grounds and circumstances where the right to peaceful demonstration could be justifiably limited. As the right to peaceful demonstration is protected within the framework of the right to freedom of peaceful assembly, the limitations that apply to the right to peaceful demonstration are those imposed on the right to freedom of peaceful assembly.

The ICCPR provides for the limitation of the right to be made by enactment of laws for the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.⁹¹ Also the ACHPR provides for the imposition of limitation on the right by law for protection of the interest of national security, the safety, health, ethics and rights and freedoms of others.⁹²

Under the FDRE Constitution, the grounds for limitations of the right are; public convenience, the protection of democratic rights, public morality and peace, the well-being of youth, or the honor and reputation of individuals, propaganda of war and human dignity.⁹³ The Peaceful Demonstration Proclamation provides that the exercise of the right shall be without intruding with the legal rights of third parties.⁹⁴ The international instruments and Constitutions, though they recognize the imposition of limitations on the right, they require it to be by enactment of laws and to attain specified objectives. On this point, the human rights council in its resolution recognized that any such limitations must be based in law, in accordance with states' obligations under applicable international human rights instruments.⁹⁵ Generally, the restriction to be imposed on the right to demonstrations should be prescribed by law, pursue legitimate aim and

91. ICCPR (1966), supra n-2, Art 21(2)

92. ACHPR (1981) supra n-5, Art.11 (2)

93. FDRE Const, supra n-20, Art-30(1&2)

94. Peaceful Demonstration Proclamation, supra n-21, Art-3(2)

95. A/HRC/RES/25/38(2014) supra n-25

are necessary and proportionate to achieve such legitimate aims.⁹⁶ Further, any restriction, for whatsoever ground must not impair the essence of the right.⁹⁷ Further, supplementing these grounds with additional grounds in domestic legislations is not important.⁹⁸ Restriction on demonstrations not to take place within the sight and sound of their object and target audience is prohibited and total prohibition of a demonstration should be a measure of last resort.⁹⁹ For any party aggrieved by decision of imposition of limitation by regulatory bodies, there must be established procedural and institutional mechanisms to challenge the decisions through competent, independent, impartial and prompt administrative or judicial review.¹⁰⁰

Only peaceful demonstration is recognized and protected under human rights instruments. But, the peacefulness of the demonstration is to be considered in contexts, as absolute peacefulness is impossible to achieve, particularly in the context of expression of dissents and concerns intended to expose flaws in laws, policies and practices of administrations or expressions that are of minority or marginalized groups. Thus, the maximum requirement of element of peacefulness is that ‘the peaceful intentions of the organizers and the non-violent conduct of the demonstration’.¹⁰¹ Peacefulness includes conduct that may annoy or give offence to persons opposed to the ideas or claims that a particular demonstration is promoting, and even conduct that deliberately impedes or obstructs the activities of third parties.¹⁰²

This standing has even been substantiated by jurisprudences. The ECtHR held that “in practice, the only type of events that did not qualify as ‘peaceful assemblies’ were those in which the organizers and participants intended to use violence”¹⁰³ and in another case the ECHR decided

96. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7, p-17, Para-3.1, p-50, Paras-71, 74, 76 and 78, see also, A/HRC/17/28(2011) p-8, Para-37 and also, A/HRC/20/27(2012) p-11, Para-40 and further, ARTICLE 19 Policy Brief; The Right to Protest (2015) supra n-90, pp-14-15 and discussions of the issues.

97. A/HRC/26/29(2014) supra n-8, p-6, Para 16

98. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7, p-17

99. A/HRC/26/29(2014) supra n-8, p-11, Para 40

100. A/HRC/RES/25/38(2014) supra n-25

101. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7, p-15, see also A/HRC/22/28(2013), para-10. See also, UN Freedom of Assembly Best Practices Fact Sheet that calls on state authorities to presume the peacefulness of assemblies. Again, see A/HRC/26/29(2014) supra n-8, Para 25.

102. Guidelines on Freedom of Peaceful Assembly (2008), p-7, see also, Guidelines on Freedom of Peaceful Assembly (2010) supra n-7, p-15, Para-1.3 and PP-33-34, Paras-25-28.

103. Cisse v. France, Judgment, The European Court of Human Rights (Second Section), Application no. 51346/99, (2002), para.37 with emphasis

that “peaceful assembly does not cover a demonstration where the organizers and participants have violent intentions that result in public disorder”¹⁰⁴

Further, this standing has firm bases in human rights instruments and could be supported by the ‘destruction of rights’ provisions of UDHR article 30 and ICCPR article 5, which obliges to adopt a holistic approach towards the right to peaceful demonstration, i.e. the exercise of the right to peaceful demonstration of an individual should not negate the human rights of others and should not go to the extent of advocating national, racial or religious hostilities or constitute incitement to discrimination, hatred or violence that will forfeit the protection of the rights to peaceful demonstration.¹⁰⁵

But, violent acts by isolated individuals do not affect others’ right to demonstrate peacefully.¹⁰⁶ Also, sporadic violence does not make the entire demonstration non peaceful, that sporadic violence or other punishable acts of others should not hinder and obstruct the right to peaceful demonstration of others.¹⁰⁷ Where an individual or groups individuals participating in a demonstration violate the rights and freedoms of others, such violation by participants in a demonstration does not, of itself, necessarily justify the dispersal of all persons participating in the event, and law-enforcement officials should take measures only against the particular individuals involved either during or after the event.¹⁰⁸ Therefore, the peacefulness requirements under the provisions of the law are presumption of intent of organizers and not all individual participants. Where the organizers have peaceful intent, the demonstration is presumed peaceful, and the regulatory authorities must show with clear evidence that the organizers have violent intent, to limit the demonstrations under specific circumstance.

Some degree of tolerance is necessary before interfering in the exercise of individual’s or groups’ right to peaceful demonstrations. Therefore, the domestic regulation of the right to peaceful demonstration has to strike balances between the protection of the rights of those who seek to exercise their demonstration right on one hand and maintain the public peace, order and

104. G. v. Federal Republic of Germany others, Judgment, FCA 802;91ALR341, (1989)

105. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7, p-29

106. Handbook on Monitoring Freedom of Peaceful Assembly (2011) supra n-10, p-14

107. A/HRC/26/29 (2014) supra n-8, Para 25

108. Guidelines on Freedom of Peaceful Assembly (2010) n-7, pp-57, 58

security of the state on the other hand. In this regard, there are some procedural issues that come into play, particularly the requirement of notifications to hold demonstrations.

Under international human rights instruments, there is no requirement that obliges for notification to undertake demonstration. The only condition that obliges prior notification is therefore, where it is required to make necessary arrangements to facilitate demonstrations and to protect public order, public safety and the rights and freedoms of others.¹⁰⁹ The procedure of the notification has to be non-bureaucratic and in essence should not be additional grounds of limitation on the exercise of the right, rather it has to be understood only as requirement from the organizer of a demonstration to submit a notice of intent rather than a request for permission.¹¹⁰ The period of the notice required has to balance the interests of the authorities to make necessary arrangements required to facilitate the demonstration and also should not unnecessarily delay the request to exercise rights, and to arbitrate between these two interests, the regulation has to provide for an expeditious appeal process by a competent body; a regular court or an independent administrative tribunal.¹¹¹

However, there are types of demonstrations, which make giving notice impracticable. For example, for spontaneous demonstration i.e. demonstrations that are often caused as response to immediate emotions against a decision or action of authorities or incidents, notification is not required. In such instances, the law should explicitly provide an exception from requirements of notice.¹¹² When notification is required mandatorily in domestic legislations of the right to demonstration, they contradict international human rights laws and standards in this regard as many types of assembly do not warrant any form of notification.¹¹³ Accordingly, mere lack of notification will not entitle concerned authorities to automatically disperse demonstrations. To disperse such demonstrations, the authority taking the action of dispersing has to show the requirement of notification under the legal provision and corroborate it with real and imminent danger that would happen to certain protected interests by the demonstration.¹¹⁴

109. Ibid, 18

110. Ibid, 18

111. Ibid, 18

112. Resource Book on the Use of Force and Firearms in Law Enforcement (2017) supra n-16, p-108 and Guideline on Freedom of Assembly (2010) supra n-7, p-18 and A/HRC/26/29 (2014) supra n-8, p-9, Para 29

113. Guideline on Freedom of Assembly (n-7) 17, 18, 28

114. Igor Bazarov v Belarus, Judgment, Human Rights Committee, Communication No. 1934/2010 (2014)

The transparency of decision making process is another fundamental procedural issue. It requires regulatory authorities to evaluate available information objectively, enhance accessibility of decision making process and communicating the decisions in writing to the organizers timely.¹¹⁵

Finally, the regulation must provide procedural and institutional avenues for challenging and reviewing the decisions of the authorities to ensure effective remedy in case of arbitrary decision by the authorities.¹¹⁶ As the right to peaceful demonstration is an essential instrument for exercising fundamental freedoms and human rights, it has to be limited only in certain strict conditions, and such conditions be interpreted narrowly.¹¹⁷

2.4.The Duty of States to Protect the Right to Peaceful Demonstrations and Human Rights in policing Demonstrations

The states' duty of protection of the right to peaceful demonstration and ensuring protection of human rights during policing demonstrations call states to observe their commitment both under domestic laws and international human rights instruments they assented to. It requires genuine commitment and effort of states towards the respect for human rights. It is the obligation states assume under international law, after ratification of international human rights laws; which imposes on them the duty to respect, protect and fulfill human rights.¹¹⁸ These are the blend of obligations of state to promote, protect and facilitate the rights, including the right to peaceful demonstration.¹¹⁹

International human rights instruments, in addition to recognizing the rights also impose duties on state parties to give effect to the rights they recognized by adopting necessary measures, the right to peaceful demonstration in this case.¹²⁰ Such necessary measures are the adoption of legislative, judicial, administrative, educative and other appropriate measures in order to fulfill

115.Guideline on Freedom of Assembly(2010) supra n-7,p-19

116.Ibid, p-19 and also A/HRC/26/29(2014) supra n-8,p-19, Para 81, that recalls this right: Where the right to freedom of peaceful assembly is unduly restricted, the victim(s) should have the rights to obtain redress and to fair and adequate compensation.

117. A/HRC/26/29(2014) supra n-8,p-6 Para 16, As to him, this interpretation is informed by the general comment No. 27 (1999) of the Human Rights Committee on freedom of movement: “in adopting laws providing for restrictions ... States should always be guided by the principle that the restrictions must not impair the essence of the right ... the relation between right and restriction, between norm and exception, must not be reversed”.

118.OHCHR, International Human Rights Laws

at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> [accessed on 26 May 2018]

119. A/HRC/26/29(2014) supra n-8,p-8 Para 27

120. ICCPR supra n-2, Art-2(1, 2 and 3), and ACHPR, supra- n-5, Art-1

their legal obligations.¹²¹ To discharge its international duty under the covenant, a state must ensure that individuals are protected by it against violation of their right to peaceful demonstration by its own agents and also by private entities and persons.¹²² This has been established in jurisprudences of the European human rights court,¹²³ where it held that ‘protection of the right to life in policing demonstration requires the state not only refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard life’.

To this end, states should craft an appropriate legal and administrative framework which defines the limited circumstances in which law enforcement officials may use force and firearms, in light of the relevant international standards. National regulation frameworks of the right to peaceful demonstration must strictly limit the conditions of use of force and firearms that policing operations must secure a system of adequate and effective safeguards against arbitrariness, abuse of force and avoidable accident and in terms of principles, all the surrounding circumstances of the use of force, including the planning and control of the actions, need to be examined.¹²⁴ Again human right court has found a state failed to comply with its obligation to protect the right to life because it had failed to adopt adequate legal provision on the use of force, and ordered that the State must, within a reasonable time, adapt its domestic law, incorporating the international standards on the use of force by law enforcement agents.¹²⁵

Hence, the state obligation as related with the right to peaceful demonstration is ‘not only to actively protect peaceful demonstrations, but also to facilitate the exercise of the right to peaceful demonstrations’¹²⁶ Thus states have duty to actively protect peaceful demonstrations which need to be expressly provided in domestic legislations of the right to peaceful demonstration, that also

121. United Nations Human Rights Committee, General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (2004)

122. Ibid, para-7 and 8

123. Giuliani and Gaggio v Italy, Judgment, ECHR, App no 513,(2011)

124. Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66,(2016) para. 67.

125. NadegeDorzema et al v Dominican Republic, Judgment, IACtHR, (2012)

126. Rue, FThe Promotion and Protection of the Right to Freedom of Opinion and Expression : Addendum, Communications to and from Governments, A/HRC/17/27(2011),para-49,79 and also A/HRC/26/36(2014)

must regulate the police and military powers during policing of demonstrations and should make available policing resources to facilitate demonstrations including appropriate trainings for law enforcement officials to deal with public demonstrations, crowd management and enable them fully understand their responsibility to facilitate the peaceful demonstration and the ethos of the law-enforcement agencies adequately prioritizes the protection of human rights.¹²⁷

The state duty of protection of the right to peaceful demonstrations thus requires states 'to promote and protect human rights and to prevent human rights violations, to promote a safe and enabling environment for individuals and groups to exercise the right to peaceful demonstration including by ensuring that their domestic legislations and procedures are in conformity with human rights obligations and commitments'¹²⁸ The duty of state to protect and ensure the protection of peaceful demonstration thus, starts from drafting domestic laws to regulate the right to peaceful demonstration and then interpretation and implementation of the laws in conformity with relevant international and regional instruments ratified by the state under question, and jurisprudences and good practices, that in turn requires the existence of an impartial and adequately trained police service and independent judiciary.¹²⁹ This obligation contains three essential components; state must refrain from committing the violation itself, including by use of excessive force, against individuals exercising their rights to peaceful demonstrations, protect individuals exercising the right from abuses by state and non-state actors and must fulfill the right by taking positive measures to prevent violations from occurring, and ensuring that everyone can freely and effectively exercise it.¹³⁰

The states' duty of protection of the right to peaceful demonstration could be summarized as to include ratification of all relevant global and regional human rights treaties and giving effect to them through their own procedure of domestication of international treaties, adopting clear and comprehensive legal, regulatory and policy framework for the protection of the right to demonstration that is compliant with international standards and best practices and provision of sufficient safeguards against violation of the right to peaceful demonstration and instituting an

127. Guideline on Freedom of Assembly(2010) supra n-7, p-38,para 31-34

128. United Nations Human Rights Council, A/HRC/22/L.10, The Promotion and Protection of Human Rights in the Context of Peaceful Protests (2013),Para 2 and 3

129.Guideline on Freedom of Assembly (2010) supra n-7,p-28, Para 12

130.Geneva Academy of International Humanitarian Law and Human Rights, Facilitating Peaceful Protests, Academy Briefing No. 5 (2014) p-7

independent and impartial adjudicatory body to scrutinize the validity of the restrictions imposed by regulatory bodies and ensuring for the victims of human rights violations during demonstration effective remedies and redress through criminal and civil processes.¹³¹

The state duty of protection of peaceful demonstration thus touches upon different issues inter alia drafting the legislation for regulation of the right to peaceful demonstration, its implementation and interpretation, in conformity with international human rights standards and commitments undertaken by the country under question, cooperation and enhanced dialogue among stakeholders, human rights training for those who participate in regulating and policing the demonstration including on the use of force during demonstrations, and finally the existence of independent and impartial tribunal among others.¹³² In order to ensure the accountability of law enforcement officials, the rules and regulations of the use of force and firearms need to conform to the UN code of conduct for law enforcement officials and the basic principles on the use of force and firearms by law enforcement officials so that violations of these rules be investigated, violators be held accountable and victims be redressed and compensated.¹³³

In general the obligation of a state to regulate the right to peaceful demonstrations in compliance with its human rights laws obligations both under international human rights laws and domestic regulations requires a state to draft, interpret and implement policies and laws for the regulation of the right to peaceful demonstration, to draft laws on the regulation of use of force and firearms which enhances control, accountability and oversight mechanisms. To facilitate the implementation of these policies and laws a state has to continually provide trainings for law enforcement officials and other concerned stakeholders on human rights and the rights to peaceful demonstrations, its forms and limitations and on the use of force and firearms during policing demonstrations and finally the state has to ensure control and oversight mechanisms; the oversight which should include internal and external oversight, accountability; which includes

131. ARTICLE 19 Policy Brief; The Right to Protest(2015) supra 90, p-17

132. A/HRC/22/28(2013) supra n-78 pp-2,6 and 7, Para14-17, also Guideline on Freedom of Assembly (2010) supra n-7, p-28, Para 12

133. Ibid,7, para-19, see also African Commission on Human and Peoples' Rights Res.281 (LV) 2014 : Resolution on the Right to Peaceful Demonstrations, Luanda, Angola (2014) which provides "the use of force and firearms by law enforcement officials during policing demonstrations must adhere to the provisions of the UN basic principles on the use of force and firearms by law enforcement officials so that force may lawfully be used without violating human rights"

personal, command responsibility and institutional and finally effective remedy and redress for human rights violations and abuses in the course of policing demonstrations, to the victim or his relatives.

Where the system of regulation of the right to peaceful demonstration addresses these issues it can contribute to the protection of the human rights in the context of policing demonstrations. Where the state discharges its obligations of protection and promotion of demonstrations it enables and enhances the protection of human rights in practice, i.e. it enables ‘everyone to express their grievances or aspirations in a peaceful manner through demonstrations without fear of reprisals or of being intimidated, harassed, injured, sexually assaulted, beaten, arbitrarily arrested and detained, tortured, killed or subjected to enforced disappearance’¹³⁴ As one important component of the regulation of the right to peaceful demonstration is the regulation of the use of force and firearms, now it would be logical to explore the normative frame work for the regulation of use of force and firearms that are applicable in policing demonstrations by law enforcement officials, in the next section.

2.4.1. International Legal Framework for the Use of Force and Firearms in Law Enforcement

In addition to major human rights instruments that impose binding obligations on states upon ratification of such instruments, there are some instruments that are specific for regulation of use of force in law enforcements which are adopted under the auspices of the UN,¹³⁵ particularly CCLOE and BPUFF. These instruments, though non- binding on states, some of their provisions are being used by courts as authoritative statements of international rules governing use of force in law enforcement.¹³⁶ Also, states are urged to comply with provisions of these

134. A/HRC/22/L.10(2013) supra n-128, Preamble, Para 13

135. United Nations General Assembly, Code of Conduct for Law Enforcement Officials, A/RES/34/169 (1980) Under paragraph 1 of the resolution, it decided to ‘transmit it to Governments with the recommendation that favorable consideration be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials’ and The Basic Principles were adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990.

In its Resolution 45/166, adopted without a vote on 18 December 1990, the UN General Assembly welcomed the Basic Principles and invited governments to respect them. See section 4

136. Benzer v Turkey, Judgment, ECtHR, Former Second Section, App no 23502/06 (2013) section 90 and Cruz Sánchez et al v Peru, Judgment, IAmCtHR, Case 12,444 (2015) section 264, the Courts refers to the 1979 Code of Conduct in the same paragraph.

instruments.¹³⁷ Particularly it is recommended that the states' law enforcement regulations must expressly provide human rights principles of legality, necessity, proportionality and non-discrimination and should at all-time comply with international human rights laws and standards on policing particularly the UN CCLEO and the BPUFFLEO.¹³⁸ Now, therefore, let's discuss these instruments.

2.4.1.1. The UN Code of Conduct for Law Enforcement Officials (CCLEO)

It is adopted by the General Assembly as a resolution, and is a non-treaty instrument, thus non-binding on states.¹³⁹ The General Assembly, in that resolution decided to 'transmit it to governments with the recommendation that favorable consideration be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials'¹⁴⁰ The adoption of the code of conduct is necessitated by and is to further the promotion, protection and respect for human rights and fundamental freedoms.¹⁴¹

The crucial provision of the instrument is the provision that defines law enforcement officials, which is article 1. This article is very important for it defines law enforcement officer in relation to the activities or powers he/she exercises, not by designation of institutions. Thus, where he/she exercises such police power as enumerated under the definition, he/she would assume the status of police, though in reality he/she is a member of another institution. It provides for the definition of the law enforcement officials as 'all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention, and as including military officers whether uniformed or not, or state security forces, where they exercise such police power'¹⁴² The code recognizes the broad duty entrusted to law enforcement officials and calls upon them to discharge such their duty by serving the community and protecting all persons, with the high degree of responsibility required by their profession.¹⁴³

137. See the UNGA resolution A/RES/34/169 (1980) to adopt code of conduct for law enforcement officials, 'transmitted it for consideration to states in their domestic regulations... under para.1

138. ARTICLE 19 Policy Brief; The Right to Protest(2015) supra n-90, p-26

139. United Nations General Assembly, Code of Conduct for Law Enforcement Officials, A/RES/34/169 (1980)

140. Ibid, para.1

141. Ibid, Para- 1, 2 and 3

142. Ibid, Art-1

143. Ibid, Art-1

In the performance of their duty thus, law enforcement officials are urged to respect and protect human dignity and maintain and uphold the human rights of all persons.¹⁴⁴ To this end, law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.¹⁴⁵ Use of force is exceptionally allowed when certain conditions are fulfilled and to attain certain objectives only.¹⁴⁶

Use of firearms is an extreme measure that it should not be used except when there is armed resistance, lives are at stake and less extreme measures are not sufficient.¹⁴⁷ Infliction, instigation or tolerance to acts of torture or other cruel, inhuman or degrading treatment or punishment is prohibited that even superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency could not be raised as justification.¹⁴⁸

2.4.1.2. The Basic Principles on the Use of Force and Firearms for Law Enforcement Officials (BPUFF)

These basic principles were adopted at the eighth UN congress on the prevention of crime and the treatment of offenders in 1990.¹⁴⁹ It is acknowledged by resolution 45/66 of the UNGA, in which also states are invited to ‘respect them and to take them into account within the framework of their national legislation and practice’.¹⁵⁰ These basic principles “set out the core parameters to determine the lawfulness of use of force by law enforcement personnel and establish standards for accountability and review”¹⁵¹

144. Ibid, Art-2 and its commentary

145. Ibid, Art-3

146. Ibid, commentary part

147. Ibid, Art-3, commentary paragraph of the article

148. Ibid, Article 5, Also see that, the commentary requires that the term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

149. The Basic Principles were adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990.

150. United Nations General Assembly Resolution 45/166 (1990), in which it welcomed the Basic Principles and invited governments to respect them as was adopted without a vote.

151. Resource Book on the Use of Force and Firearms in Law Enforcement (2017) supra n-16, p-8

Structurally, the basic principles have general and special provisions. Articles 1-7 are general provisions whereas articles 9-26 are special provisions.¹⁵² Articles 1-3 deal with the responsibilities and duties of the government and law enforcement agencies and articles 4-6 deal with the duties and responsibilities of the law enforcement officials in operation. Article 8 is of general application to the whole responsibilities of the government, law enforcement agencies and law enforcement official altogether.

The Synopsis of the general provisions includes issues like the need to adopt and implement rules and regulations on the use of force and firearms, the need to constant review of the ethical issues related with the use of force and firearms, development of a range of means and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms, including the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons, to equip law enforcement officials with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind and the evaluation of the development and deployment of non-lethal incapacitating weapons by the governments and law enforcement agencies and application of non-violent means before resorting to the use of force and firearms, use force and firearms only if other means remain ineffective or without any promise of achieving the intended result, whenever the lawful use of force and firearms is unavoidable; to strictly follow self-restraint and act in proportion to the seriousness of the offence and the legitimate objective to be achieved, minimize damage and injury, and respect and preserve human life, assistance and medical aid to any injured or affected persons at the earliest possible moment, prompt report of injury or death caused by the use of force and firearms to superiors, early notification of the injured or affected to relatives or friends as far as possible by law enforcement officials.

The use of force and firearms by law enforcement officials is provided under the special provisions of the code; from principles 9-10. Use of firearms is only allowed for self-defense or defense of others against the imminent threat of death or serious injury and only when less extreme means are insufficient to achieve the objectives. In any event, intentional lethal use

152. The discussion particularly refers structural set up of the basic principles' textual document. Also it is a bird eye discussion of contents of the provision that is presented.

of firearms may only be made when strictly unavoidable in order to protect life”¹⁵³ when using force or firearms, they shall identify themselves as a law enforcement officials, give a clear warning of their intent to use firearms.¹⁵⁴

When regulating use of force and firearms by law enforcement officials, its content should include issues, inter alia circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted, ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm, prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk, regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them and provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.¹⁵⁵

Policing situations and events is provided under principles 12-14. Principle 13 deals with use of firearms in the dispersal of unlawful assemblies; that when the assembly is unlawful but nonviolent law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary. This principle is not in line with the regulations of the right to freedom of peaceful assembly, especially with current developments of regulations and guidelines of the right to freedom of peaceful assembly and the right to peaceful demonstration also.

Under international human rights law and instruments for the regulation of the right to freedom of peaceful assembly, as a fundamental freedom, the exercise of the right in principle should not be regulated. Particularly, the demonstration is presumed peaceful and lawful, as long as the organizers show non-violent means and intentions. There is no requirement for notification to undertake demonstration that amounts to obtaining permission as a rule but notification of intent so as to enable the authorities to facilitate the demonstrations.¹⁵⁶ Where the organizers of the demonstration have peaceful intention that has to be presumed by the regulatory bodies, the

153. Basic Principle 9, principle 1 Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, Article 9

154. Ibid, Article 10

155. Ibid, Article 11

156. See the discussions on this point under the title limitations of the right to peaceful demonstrations for further points on this discussion.

demonstration is presumed peaceful; and it has to proceed without need of regulation.¹⁵⁷ Thus, this problem arises only where the demonstrations are violent in most cases and this provision; some conclude, including the researcher, remains below the international standards in this regard.¹⁵⁸ The provision is relevant only for violent demonstration and not unlawful demonstration.

In the dispersal of violent demonstrations, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. No intentional use of firearms except to defend life.¹⁵⁹ Government and law enforcements agencies are required to selected, trained and employed passing through adequate screening procedures and training processes and tested in accordance with appropriate proficiency standards in the use of force and shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behavior, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms.¹⁶⁰

The final part of the basic principles is principles on reporting and review of law enforcement operations.¹⁶¹ These principles oblige to establish effective reporting and review procedures for all incidents of death and injuries as result of use of force and firearms, and those independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances, ensuring access to justice to those who are affected by the use of force and firearms or their legal representatives and ensure command responsibility of superior officers for law enforcement officials' resort to the unlawful use of force and firearms when they did not take all measures in their power to prevent, suppress or report such use.

157. A/HRC/22/29(2014) supra n-8, Para 45, The High Commissioner on Human Rights has stressed that “an assembly should be deemed peaceful if its organizers and participants have peaceful intentions and do not use, advocate or incite violence; such features should be presumed” see A/HRC/22/28(2013) Para 10

158. Geneva Academy of International Humanitarian Law and Human Rights, Use of Force in Law Enforcement and the Right to Life: The Role of the Human Rights Council, Academy Briefing No. 6 (2016),p-16

159. Under the basic principle, Principle 14 requires that conditions of principle 9 to be fulfilled to use firearms, even to disperse violent assemblies.

160. Principles 18-21

161. Principles 22-26 deals with rule and procedures to be followed in reporting and reviewing of operations of law enforcement, and mostly deal with roles to be played by government and law enforcement officials

The importance and relevance of these instruments has been underscored by experts and also relied upon authoritatively by human rights courts. Experts have noted that some of the provisions of the code of conduct and the basic principles are ‘rigorous applications of legal rules that states have otherwise assumed under customary or conventional international law and among these are the instruments’ core provisions on the use of force’¹⁶² and particularly pointed the substance of article 3 of the code of conduct and principle 9 of the basic principles reflects binding international law.¹⁶³ Also provisions of these instruments have been relied on in decisions of human rights courts as reflecting binding international law.¹⁶⁴

These instruments are useful in influencing the law enforcement institutions and the contents of the laws and regulations of law enforcement officials particularly as related with determination of lawfulness of use of force and firearms by law enforcement officials, establishing standard of accountability of law enforcement agencies institutionally and law enforcement officials individually, establishing standard of control and review of activities of law enforcement institutions and law enforcement officials, enhancing institutional capacities of law enforcement institutions, and establishing standards to enhance access to justice, effective remedy and redress in case of violation of human rights. Also, their importance is pointed in the works and decisions of global and regional human rights regulatory bodies. Particularly, these instruments are being referred in the resolutions of UN human rights council, decisions of human rights committee and the works of special rapporteurs specifically the special rapporteur on the extrajudicial, summary or arbitrary executions and on the right to freedom of assembly and associations as cited in the preceding discussion here and again.

2.4.1.3. International Human Rights Principles Governing the Use of Force and Firearms

The human rights obligation of states encompasses the duty to respect, protect and ensure and fulfill human rights and not to discriminate. As a machinery and representative of the state, law enforcement officials and agencies are expected to discharge such a state responsibility while

162. Alston, p Interim report on the worldwide situation in regard to extrajudicial, summary or arbitrary executions, A/61/311(2006) para-35, The Office of the United Nations High Commissioner for Human Rights, Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials (2017),p-87

163. Ibid

164. Kazingachire et al. v. Zimbabwe, Judgment, AComHPR, Comm. 295/04 (2013) par-110, and Montero Aranguren et al. (Detention Center of Catia) v. Venezuela, Judgment, IAmCtHR (2005), see also Geneva Academy In-Brief(2016) supra n-158, p-5

carrying out their daily business of maintaining or restoring public order, detection and preventions of crimes and providing and assisting during emergencies.¹⁶⁵ Law enforcement officers, for the exercise of their functions, are given power to search and seizure, arrest and detain and even to use force and firearms, which in exercising these inherent powers given by reason of their function, must respect human rights.¹⁶⁶ The state obligations of human rights and its implication on law enforcement officials could be better summarized as:

Human rights obligations are binding on all states and thus on all state organs and agents including law enforcement agencies. These obligations have implications for law enforcement agencies at strategic, operational and tactical levels, and before, during and after the use of force. Scarcity of resources is not an acceptable justification for failure to comply with these duties.¹⁶⁷

To achieve this balance of using inherent power without disregard to the duty for respect for human rights, they need to follow and observe fundamental human rights principles which govern all state actions. These principles are principles of legality, necessity, proportionality, accountability, non-discrimination and precaution¹⁶⁸, which are to be discussed next.

A. Principle of Legality

The principle of legality requires law enforcement officials to be bestowed with policing power and thus use of force.¹⁶⁹ Also the principle requires more than qualifying actions and powers as legal or illegal, or lawful and unlawful, which use of police power and use of force need to serve legitimate objectives.¹⁷⁰ The law needs to be clear enough so that both law enforcement officials and the public can adjust their actions line with the prescriptions and proscriptions of that law.¹⁷¹ At the same time the law must meet international human rights standards.¹⁷²

165.Resource Book on the Use of Force and Firearms in Law Enforcement(2017) supra n-16,p-15

166. Ibid,15

167.Ibid,15

168. A/HRC/26/36 (2014)

169.A/HRC/26/36(2014) supra n-8, para-56-58, See also Guideline on Freedom of Assembly(2010) supra n-7,p-16, par 2.3

170.Amnesty International Dutch Section Police and Human Rights Program, *Use of Force; Guidelines for the Implementation of the UN Basic Principles for the Use of Force and Firearms by Law Enforcement Officials* (2015),p-18

171. Gillan and Quinton v. the United Kingdom, Judgment, ECtHR, Application no. 4158/05 (2010) in Para-77, the court reiterated that “the law must indicate with sufficient clarity the scope of any discretion conferred on the competent authorities and the manner of its exercise”

172.Guideline on Freedom of Assembly(2010) supra n-7, p-16, par 2.3

The principle of legality requires that the use of force or firearms during peaceful demonstration must pass through the test of necessity and proportionality, and in addition to authorization by laws to use force or firearms, it requires showing with clear evidence how the demonstrators actions affected peace, order, security or the rights and freedoms of other that justify the actions of the law enforcement officials.¹⁷³

In general the legality principle requires states to adopt and implement rules and regulations on the use of firearms by their officials¹⁷⁴, these rules and regulations need to serve legitimate objectives of the laws of the land¹⁷⁵ and the law itself needs to meet the standards of international human rights laws and safeguard against abuse, must define lawful law enforcement objectives sufficiently and clearly, and outlaw discrimination on whatsoever ground.¹⁷⁶ The rules and regulations must address the legal and administrative frameworks of the use of force and firearms that it must regulate; who, when and how to use force, it needs to be as comprehensive and clear in distribution of power and responsibilities and also in enhancing accountabilities as well.¹⁷⁷

B. Principle of Necessity

This principle is used to determine the importance of the use of force or firearms in certain circumstance at all as well as the amount of the force or the types of fire arms to be used in the circumstances.¹⁷⁸ For law enforcement operations, the necessity principle dictates them to use nonviolent means before resort to force and it is only where such means fail to achieve the operation objective, they are allowed to resort to force, and in this situation also the principle allows to use force which is strictly necessary and to the extent required under the circumstances.¹⁷⁹

173. Igor Bazarov v Belarus, supra n-121, there the decision was passed in relation to notification and authorization to undertake assembly, but as related with legality principle it can equally applies here.

174. Basic Principles, principle 1, Article I.A

175. A/HRC/ 26/36(2014) supra n-9, Para 56-58, see also Resource Book on the Use of Force and Firearms in Law Enforcement (2017) supra n-16, p- 16, the domestic law needs to define when law enforcement officials mat use force and for what purpose, to prevent abuse.

176. A/HRC/ 26/36(2014) supra n-9, Para 56-58

177. Resource Book on the Use of Force and Firearms in Law Enforcement (2017) supra n-16,p-16

178. Guidelines for the Implementation of the UN Basic Principles for the Use of Force and Firearms by Law Enforcement Officials (2015) supra n-170,p-18

179. Use of Force in Law Enforcement and the Right to Life: The Role of the Human Rights Council, Academy Briefing No. 6 (2016) supra n-158, p-7

Use of force or firearms are only considered necessary when other non-violent means are exhausted and are ineffective to achieve the intended objective, thus force should be used only when it is absolutely necessary and to achieve lawful and legitimate policing objectives.¹⁸⁰ To fulfill the necessity principle requirement, the policing objective itself must be lawful and legitimate.

The necessity principle also obliges to discontinue the use of force immediately after the accomplishment of the objective use of force has to cease or stop.¹⁸¹ The principle also limits the amount of force to be used in policing, when it allows only force required to avert the resistance offered by subject under question¹⁸², i.e. the interest harmed by the use of force is measured against the interest protected; where force is used, whether lethal or not, the same norm applies.¹⁸³

C. Principle of Proportionality

The principle of proportionality ‘sets a maximum limit on the force that might be used to achieve a specific legitimate objective’¹⁸⁴

It dictates ‘whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved’¹⁸⁵ The principle balances two conflicting interests of public peace and human rights; it serves to assess the balance between the harm caused through the use of force and the benefits thereby achieved.¹⁸⁶

Proportionality of the force used is measured against the threat posed by the subject under consideration on life or property or both.¹⁸⁷ This principle reiterates that where the harm caused or to be caused in the circumstances of the case outweighs the achievement of the lawful law enforcement objective, the use of force becomes unnecessary thus, disproportionate and

180.Resource Book on the Use of Force and Firearms in Law Enforcement(2017) supra n-16,p-16

181.Ibid,17

182.NadegeDorzema et al v Dominican Republic, supra n-131, section85iii

183. A/HRC/ 26/36(2014), supra n-9, Para 65

184.Ibid, Para 66

185.Basic principle art-5

186.Resource Book on the Use of Force and Firearms in Law Enforcement(2017) supra n-16,p-17

187. A/HRC/ 26/36(2014), supra n-9, Para 65

unlawful.¹⁸⁸ It is stressed that ‘in order to give meaning to the principles of necessity and proportionality, law enforcement officials should be able to choose from a range of instruments and techniques to use force in order to opt for the least intrusive and most proportional one in the circumstances to achieve the legitimate policing objective’¹⁸⁹

Thus, the force used proportionally in the circumstances of the case is also necessary force that proper utilization of one principle corroborates the other principle and the improper application of one negates the other.

D. Principle of Non-discrimination

Human rights treaties always impose duty not to discriminate on states in implementing the right contained in the treaty. This principle is also contained in article 2 of the code of conduct for law enforcement officials which provides “in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons” i.e. law enforcement officials have the duty to respect and protect the human rights of every person, without discrimination on the basis of their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The principle requires that legislative and operational frameworks in place can ensure the prohibition of both direct and indirect discriminatory acts i.e. use of force in this regard.¹⁹⁰ The principle also helps in the assessment of necessity and proportionality of the use of force to avoid excessive or arbitrary use of force against a person out of prejudice or with discriminatory intent.¹⁹¹

In general the principle requires the freedom to organize and participate in demonstrations must be guaranteed to all without discrimination on whatsoever.¹⁹² Thus, all individuals and groups must enjoy the right to peaceful demonstration and any use of force and firearms against them on discriminatory ground will be unlawful

188.Resource Book on the Use of Force and Firearms in Law Enforcement(2017) supra n-16,p-17

189.Ibid18

190.United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (art. 10(a), Para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20 (2009)

191.Resource Book on the Use of Force and Firearms in Law Enforcement(2017) supra n-16,p-18

192.Guideline on Freedom of Assembly (2010) supra n-7,p-16, par 2.5

E. Principle of Precaution

This principle is a precursory principle and precedes both principles of necessity and proportionality as it deals with plans of law enforcement operations.¹⁹³

Law enforcement operations have to be carefully planned in order to avoid, as much as possible, the use of force and to minimize the risk to bystanders.¹⁹⁴ State officials shall endeavor, to the greatest extent possible, to limit damage and injury, and respect and preserve human life.¹⁹⁵ Training, weapons and equipment must be given accordingly.¹⁹⁶ It is obligations of preparation as pertaining to planning and control phase of operations. Precaution is principle of prudence that requires law enforcement officials to act with due care at all levels, avoid or minimize use of force, make effort to solve any situations of conflict economically by restraining their actions from escalating the event that ultimately plans to minimize to the greatest possible the likelihood of use of force. In order to save lives, all possible measures should be taken ‘upstream’ to avoid situations where the decision on whether to pull the trigger arises, or to ensure that all the possible steps have been taken to ensure that if that happens, the damage is contained as much as is possible’¹⁹⁷

For avoiding arbitrary deprivation of life during demonstration there are list of best practices which the principle of precaution may include:¹⁹⁸ implement effective mechanisms to prohibit use of lethal force in the context of public demonstrations, implement an ammunition registration and control system, implement a communications records system to monitor operational orders, and identify who issued them and who carried them out, promote visible markings that personally identify police agents who participate in public law enforcement operations, appoint political officials responsible for law enforcement operations during marches, particularly during

193. Geneva Academy of International Humanitarian Law and Human Rights, Use of Force in Law Enforcement and the Right to Life (2016) supra n-158, p-9

194. Basic Principles, Article 3

195. Ibid, Article 5(b)

196. Basic Principles, Article 2

197. A/HRC/26/36(2014), supra n-9, Para 63

198. Inter-American Commission on Human Rights, Report on Citizen Security and Human Rights (2009) para-201 See also, The United Nations Office on Drugs and Crime, Handbook on police accountability, Oversight and Integrity, Criminal Justice Handbook Series, (2011), pp-89-100

scheduled marches or prolonged social conflicts or where potential risks to the rights of the demonstrators or others can be anticipated, instruct such officials to supervise field operations and ensure strict compliance with norms governing use of force and police conduct and establish administrative sanctions for law enforcement personnel who commit abuses or acts of violence; involve independent investigators and redress victims among others.

F. Principle of Accountability

This principle dictates that ‘law enforcement agencies and their officials should act responsibly when using force and be answerable for inappropriate ones to their victims, through internal and external checks and balances and that law enforcement agencies be subjected to appropriate control and oversight for their compliance with the legal and operational framework governing their functions and be held accountable for the fulfillment of their duties, including with regards to their use of force’¹⁹⁹

This principle recognizes the wide power granted to law enforcement officials and agencies and warns them against the abuse of such wide power, therefore urges them to comply with the legal and operational framework, which applies both to individual law enforcement officials and law enforcement agencies alike that they must be held accountable for their acts and also omissions.²⁰⁰ Ensuring accountability requires taking appropriate measures at different levels and stages like adoption of proper policies and procedures of use of force and firearms including supervision and control set-up to ensure the effective implementation of these policies and procedures; ensuring that policies, procedures, training and equipment are continually reviewed and providing training to law enforcement officials by the law enforcement institutions and also it requires ensuring clear chain of command and clearly determined responsibilities within hierarchies.²⁰¹

Summarily, effective accountability can only be achieved through a system of checks and balances allowing for the evaluation of any law enforcement action with regard to its compliance with the law, including human rights, as well as with internal regulations and operational procedures; and this system should also enable an assessment of the effectiveness of the action in

199.Resource Book on the Use of Force and Firearms in Law Enforcement(2017) supra n-16, p-18

200.Guidelines for the Implementation of the UN Basic Principles for the Use of Force and Firearms by Law Enforcement Official(2015) supra 170,p-19

201. Ibid,20

terms of fulfilling law enforcement responsibilities and duties. Accountability therefore requires a range of mechanisms, involving the judiciary, the legislature, the executive and the public.²⁰²

2.4.2. Experiences in Some African Jurisdictions to Comply With the State Duty of Protection of the Right to Peaceful Demonstration

After exploring the states obligations of protection of the right to peaceful and necessary measures to be undertaken to protect the right to peaceful demonstration and other human rights while policing demonstrations, now the researcher investigates experiences of some country in this regard, for a comparative purpose to measure the Ethiopian experiences of protection of human rights in policing demonstrations. To this end, the researcher selected two African countries, who have better laws, experiences and institutional set ups for the protection of the right to peaceful demonstrations and thereby protection of human rights in the activities of policing demonstrations, the South Africa and Kenya.

2.4.2.1. Protection of the Right to Peaceful Demonstration and Human Rights in Policing Demonstrations in South Africa

Some label South Africa as ‘the protest capital of the world’ to indicate the recurrent incidents of protest through demonstrations and other forms.²⁰³ This recurrence of the protest and the transformation from apartheid government to democratic governance since 1994 necessitated the country to reform the legislative and institutional framework of law enforcement institutions of the country. South African police and the policing of the country also transformed from repressive approach to policing to serve the people.²⁰⁴ Before 1994 the police, supported by the military were suppressing and using force to control any unrests flowing from political opposition whereas the democratization process brought major change to the policing of public protest.²⁰⁵

202. Ibid, 20

203. Exploring South African Police Service’s Management of Civil Protests in South Africa, Proceedings of ADVED 2017- 3rd International Conference on Advances in Education and Social Sciences 9-11 October 2017- Istanbul, Turkey, Conference Paper (2017), p-461

204. Ibid, 461

205. South Africa, Ministry of Police: Policy and Guidelines: Policing of Public Protests, Gatherings and Major Events, (2011)

The objectives and functions of the South African police are defined under the 1996 Republic of South African Constitution, Section 205(3) which includes inter alia preventing, combating and investigating crime, to maintain public order and to uphold and enforce the law.²⁰⁶

To implement these constitutional mandates and objectives, the South African Police Service Act 68 of 1995 was adopted. This act in turn, provide for the establishment of the national public order policing unit by the National Police Commissioner.²⁰⁷ This was implemented when the South African Police Service developed and implemented Standing Order 262 on Crowd Management and the National Policing Standard for Crowd Management.²⁰⁸

Accordingly, this Standing Order No. 262, in a clear and coherent manner, states that the use of force must be avoided at all costs and members deployed for the operation must display the highest degree of tolerance. The use of force and dispersal of crowds must comply with the requirements of section 9 of the South African Police Service act. It further puts in place the procedure(s) to be followed by the police if negotiations fail in a public gathering which exposes the lives of people and property to danger. At the same time the standing order also prescribes the requirements which are to be followed by the police if the use of force becomes unavoidable.²⁰⁹ The standing order highlights that the use of force must be avoided at all costs and members deployed for the operation must display the highest degree of tolerance.²¹⁰ The use of excessive force in such circumstances is therefore guided by the Standing Order 262 as it gives clarity regarding the kind of weapons and ammunition that are allowed to be used during public protests.²¹¹

Also, an institution called Independent Police Investigative Directorate is established under the Constitution of the Republic of South Africa, 1996 as an oversight structure tasked with investigating allegations of human rights violation against the police in the country. It ensures that the agencies that are tasked to conduct policing like the South African Police Service do not

206. Ibid,6

207. Ibid,7

208. Ibid,7

209. Ibid, ,pp7, 8

210. Conference Paper (2017) supra n-205,p-464

211. Ibid,464

misuse their privileges which may result to excessive use of force.²¹² It is an agency of the South African government responsible for investigating complaints against the South African Police Service and municipal police services.²¹³ It is responsible for ensuring that all policing agencies in South Africa conduct themselves within the confines of the constitution.²¹⁴

The other important instrument of police use of force in South Africa is the Use of Force Policy. In order to adopt this policy, there were different discussions and workshops held with stakeholders.²¹⁵ The document of the policy points that the country is experiencing proliferate incidents of protests which in some instances are accompanied by serious provocation, intimidation, public violence and even elements of criminality, where the South African Police Service is to respond to such incidents within the spirit and context of a community orientated policing model and the Bill of Rights. This requires a realistic balance between acknowledging the rights of citizens to demonstrate versus the police's need to ensure peace and stability. These challenges require us to assess the effectiveness of public order policing, especially with regard to its practice and response.²¹⁶

The policy aims to address the high level of complaints of the use of force by police officers that needs structured approach to apply force in a disciplined manner, that the use of force policy would ensure ethical practices, higher levels of accountability, effective monitoring, issuing of appropriate equipment, proper training and improved community relations. It aims to provide a framework with guidelines for the South African Police Service in reviewing and aligning its operational strategies and instructions applicable on policing of public protest and related major events with a view of minimizing provocation, intimidation and violence. Mainly its objective is to promote ideal crowd control and management capacity within the police in order to secure public trust and maintenance of safety during public gatherings, provide a framework and facilitate the development of appropriate guidelines by the South African Police Service on the use of force in relation to crowd control and management that adheres to international accepted standards, establish the principle of intervention in controlling public protest in order to

212.Ibid,464

213.Ibid,464

214.Ibid,464

215.Ndlovu, D and Bruce,D, A Report on the Workshop, Developing a Use of Force Policy for the South African Police Service; Emoyeni Conference Centre, Johannesburg, (2011),p-5

216. Ministry of Police: Policy and Guidelines (2011) supra n-205,p-3

proportionate the means of force that can be applied by the police and facilitate the introduction of appropriate training initiatives which must, amongst others, address guide South African Police Service operational planning and response, resource deployment and physical execution.²¹⁷ This policy then provides for the policy statements as “to ensure the policing approach is consistent with Constitutionally accorded rights for all individuals, effective and peaceful crowd control demands, an approach that does not impact negatively and enhances tensions between the police and community at the time of protest, this has potential to continue even beyond the protest and our policing approach not generating the very violence it seeks to control in public protests”²¹⁸ This is followed by a summary of the relevant legislative and policy framework, including the Constitution, applicable laws, standing orders and regulations. The policy also references South Africa’s international obligations. A framework is then provided for what needs to be done in order to comply with obligations under international and domestic law, such as setting up a specialized unit, training its members, command and control, operational planning, etc.²¹⁹

2.4.2.2. Protection of the Right to Peaceful Demonstration and Human Rights in Policing Demonstrations in Kenya

The policing activities and functions in Kenya are governed by international and regional laws pertinent for policing, which the country assented to and ratified.²²⁰ Further, there are the National Police Service, the National Police Service Commission Act (with amendments) and the Independent Policing Oversight Authority Act that enrich policing norms in Kenya.²²¹ The above laws and their annexed schedules, the attendant regulations, subsidiary legislation others provide how the National Police Service should operate, including during public order management.²²² In the country, in addition to the non-limitation of the fundamental freedoms and human rights without strictly justifiable grounds under the constitution and laws, there were set of laws enacted to bring for a fresh and independent police service, where the constitutional

217. Ibid, 4

218. Ibid, 5

219. Ibid, synoptic summary of the contents of the document of the policy

220. Independent Policing Oversight Authority, Monitoring Report on Police Conduct during Public Protests and Gatherings: A Focus on the Anti-IEBC Demonstrations (2016),p-9

221 . Ibid, p-9

222. Ibid, 9,10

Articles 244, 245, and 246 were to be made operational through the work of the Independent Police Oversight Authority, the Independence of the National Police Service, and especially the office of the Inspector General respectively.²²³

The new Kenyan constitution which is adopted in August 2010 has major bearings on the country's move to end impunity and hold officials accountable for their actions of human rights violations. To this end, the constitution enhances police accountability significantly. It places the police services of the country; the Administrative Police and the Kenya Police Service under single administrations by an Inspector General of Police.²²⁴

The National Police Service Commission is an independent commission established by the Constitution. It is mandated to curtail political interference with police personnel management practices and is responsible for recruitment, promotions, transfers and disciplinary sanctions of police.²²⁵ The constitution prescribes the human rights laws and standards to be followed in addition to the obligations of the country under international human rights laws. It states that national security shall be promoted and guaranteed with "utmost respect for the rule of law, democracy, human rights and fundamental freedoms."²²⁶ There were laws adopted to implement the constitutional provisions in relation to the police of Kenya since then.

i. The National Police Service Act (2011)

This act regulates the administration, functions and powers of the Inspector General Police and the Deputy Inspector Generals, the Kenya Police Service, the Administration Police Service and the Directorate of Criminal Investigations. It gives the police a robust mandate, strengthens internal accountability, and attempts to curtail interference in police operations. It outlines the Kenya Police Service and the Administration Police Service's functions, establishes the Directorate of Criminal Investigations with independent funding, with the intention of enhancing the management and quality of its investigations, clearly describes the powers of police officers in order to reduce arbitrary police actions, requires all serving police officers to be vetted for integrity and competence to determine their suitability to continue in the service, in order for

223. Ibid, 13

224. The Constitution of Kenya of August 2010, Art - 245

225. Ibid, Art-246

226 . Ibid, Art-238(2) (b)

those suspected of human rights violations to be prevented from holding positions where they could repeat such violations, places limits on the use of force and firearms, arrest and detention by providing clear instructions for its use, and outlines management responsibilities when using these police powers, diversifies means of accountability by establishing clear command structures and responsibilities; an Internal Affairs Unit to receive and investigate complaints about police misconduct, independent of the two services and directly reporting to the Inspector General Police; and civilian oversight at county level through the County Policing Authorities.

ii. The National Police Service Commission Act (2011)

This act establishes an independent commission overseeing appointments, promotions and transfers of police officers, to address corruption in recruitment and career management, and also disciplinary matters. Some of its important features include independent recruitment and appointment, promotions and transfers of members of the National Police Service, oversight over the disciplinary process and removal of members of the National Police Service and vetting of all current members of the National Police Service by the Commission¹²; Oversight of police training to enhance the capacity of police officers to deliver high quality policing with respect for human rights.

iii. The Independent Policing Oversight Act (2011)

The act requires the Authority to give effect to the provisions of Article 244 of the Constitution, which obligates the National Police Service to strive for the highest standards of professionalism and discipline among its members, prevent corruption, promote and practice transparency and accountability, comply with constitutional standards of human rights and fundamental freedoms, train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity and foster and promote relationships with the broader society²²⁷ This oversight body is mandated with receiving complaints against the police and conducting disciplinary and criminal investigations and make recommendations for disciplinary action or criminal sanctions.²²⁸ This act stipulates the objectives, functions, and powers of the Independent Policing Oversight Authority, a significant step towards promoting

227. Monitoring Report on Police Conduct during Public Protests and Gatherings(2016) supra n-220,p-7

228. Police Reform in Kenya: “A drop in the Ocean” Amnesty International, AFR 32/001/2013 (2013), p-9

police accountability and enhancing access to justice by creating an independent civilian oversight body over the National Police Service to independently investigate allegations of police misconduct and human rights violations, investigating any death or serious injury suspected to have been caused by a member of the police to prevent excessive use of force and extrajudicial executions, inspecting police premises, investigating and monitoring policing operations, promoting police accountability to the public and providing independent oversight of complaints handled by the police.

In conclusion, with adoption of the new constitution in 2010, the Kenyan government then has shown great commitment for the protection of the fundamental freedoms and human rights by adopting new laws and adjusting existing laws in line with the constitution and by constituting institutions for the follow up of the laws and further making necessary adjustments to enhance accountability and command responsibility. This has had great bearings on the protection of human rights and enhancing oversight, accountability and redress for violations human rights as a whole, that could be taken as experience.

2.5. Conclusion

Under this chapter, the researcher has discussed that the right to peaceful demonstration is protected under the right to freedom of peaceful assembly as one type of assembly and as an essential instrument of exercising fundamental freedoms and other human rights. As such, the protection extended to and limitations imposed on the right to freedom of peaceful assembly applies to the right to peaceful demonstration *mutatis mutandis*. As with regard to duty of the state in relation to the right to peaceful demonstration, the state must ensure that national laws on the regulation of the right to peaceful demonstration comply with international human rights law and standards. Restrictions to be provided in domestic laws must conform to international human rights laws and no additional ground should be added under domestic regulations. Where domestic regulations require notification, their rationale for such notification should be to enable the regulatory body make necessary preparation to facilitate the demonstration and no more. Thus the procedure of the notification should be simple, swift and non-onerous. The state duty of protection of the right to peaceful demonstration starts from coining of policy and legal frameworks domestically that regulates the right to peaceful demonstration, use of force, accountability of law enforcement officials, control and oversight and effective remedy for

victims of human rights in policing demonstrations that conforms to international human rights laws and commitments of the state under consideration and interpretation and implementation these laws accordingly.

The basic principles on the use of force and firearms by law enforcement officials, the code of conduct for law enforcement officials and the basic principles of human rights governing the use of force discussed in the chapter are very important for the policing of demonstrations. They form comprehensive system of regulation of policing activities starting from the need for crafting policing policy and laws for the regulation of the right to peaceful demonstration, the use of force and firearms and the control, oversight and accountability mechanisms. They are provided to influence the content and substances of domestic regulation of these major issues. This is because, when these issues are adequately and comprehensively addressed under domestic laws, as required by international human rights laws, the resolutions of the human rights council, the best practices of the UN special procedures and other sources discussed in the preceding sections, such domestic regulations can enable the country under consideration to discharge its obligations of human rights protections in general protection of human rights in the context of policing demonstrations in particular.

CHAPTER THREE

3. PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF POLICING DEMONSTRATIONS IN ETHIOPIA

3.1.Introduction

In this chapter the researcher explores how Ethiopia has been discharging its obligations of human rights protection as emanating from international human rights laws and domestic laws to ultimately identify Ethiopian experiences of human rights protection in policing demonstrations. In order to achieve this objective, the researcher identifies the major sources of obligations of Ethiopia in protection of the right to peaceful demonstration and evaluates the steps Ethiopia took; legal, institutional and other necessary measures to give effect to the right to peaceful demonstration, emphasizing on how the use of force by law enforcement officials, accountability of law enforcement officials, control and oversight mechanisms and effective remedy and redress for victims of human rights violations were addressed in these laws of the country in light of the international human rights laws, standards and best practices. Finally the researcher evaluates Ethiopian experiences of human right protections as related with the right to peaceful demonstrations in the laws of the country and also practically protection of human rights in policing demonstrations while policing in the past incidents of demonstrations that undertook in most parts of the country. Then the researcher identifies the whole picture of protection of human rights protection in policing demonstrations and draws conclusions of experiences of human rights protection in the context of policing demonstrations in Ethiopia.

3.2.Normative Frameworks of the Right to Peaceful Demonstrations under Ethiopian Laws

The normative sources of the right to peaceful demonstration in Ethiopia are the domestic laws; the FDRE Constitution²²⁹ and the peaceful demonstration proclamation.²³⁰ The other sources of the right in the country are international human rights laws to which the country is a party to, like the ICCPR²³¹, ICEAFRD²³², CRC²³³ and the ACHPR.²³⁴ Further, though not a covenant that

229. FDRE Const, supra n-20, Art-30(1) “everyone has the right to assemble and to demonstrate together with others peaceably and unarmed, and to petition”

230. Peaceful Demonstration Proclamation, supra n-21, Art-3, however this law predates the Constitution. Article-3 provides that “the right to organize and participate in peaceful demonstration is guaranteed”

231.ICCPR(1966) supra n-2, Art 21(1) provides “the right to peaceful assembly shall be recognized”

binds, the UDHR is another source of the right.²³⁵ Ethiopia is a party to these major international human rights instruments²³⁶ thus bears international human rights obligations under international law. As discussed in the previous chapter, under international human rights instruments, the right to peaceful demonstration is protected under the right to freedom of peaceful assembly, as one form of exercising fundamental freedoms and other human right²³⁷ and it is not an independent and distinct right recognized on its own. It is one type of assembly as protected under the right to freedom of peaceful assembly.²³⁸ Unlike the case under international human rights instruments mentioned above, the FDRE Constitution deals with the right to peaceful demonstration and right to assembly distinctly. Therefore, the sources of the right to peaceful demonstration in Ethiopian is the international human rights instruments to which the country is a party to and domestic laws; the FDRE constitution and ordinary law as discussed above.

3.3.Analyzing the Duties of the Government of Ethiopia to Protect the Right to Peaceful Demonstration

Ethiopia owes obligations of protections of human rights in policing demonstrations mainly under the ICCPR and the ACHPR and its own constitution as well as the peaceful demonstration proclamation. Accordingly, Ethiopia is expected to give effect to the right to peaceful demonstration, as recognized and protected by these international and domestic instruments, by adopting necessary measures.²³⁹

To discharge its obligation the country need to protect individuals against violation of their right to peaceful demonstration, both by the state agents and private persons and entities.²⁴⁰ This in turn necessitates taking legislative, judicial, administrative, educative and other appropriate

232. ICEAFRD(1966) supra n-3, Art-5(d)(ix)

233. CRC (1989) supra n-4, Art-15

234. ACHPR (1981) supra n-5, Art.11 (1) provides “every individual shall have the right to assemble freely with others”

235. UDHR(1948) supra n-1, Art.20(1) provides “everyone has the right to freedom of peaceful assembly and association” see FDRE Constitution(1995) supra n-21, Art-13(2)

236. Ethiopia became party to the ICCPR on 11 June 1993 and to ACHPR on 15 June 1998, supra n-18

237. ARTICLE 19: Global Campaign for Freedom of Expression, The Right to Protest (2016) supra n-13,p-7 and also A/HRC/26/29(2014) supra n-8

238. A/HRC/22/28(2013) supra n-78, p-8 see also Handbook on Monitoring Freedom of Peaceful Assembly (2011) supra n-10,p-11 and Guidelines on Freedom of Peaceful Assembly (2010) supra n-7,p-15

239. ICCPR(1966) supra n-2, Art-2(1, 2 and 3)

240. A/HRC/22/28(2013) supra n-78, para-7 and 8

measures.²⁴¹ This obligation also requires Ethiopia to take appropriate steps and measures to safeguard and protect the human rights of demonstrators, bystanders, as well as others like the Medias and journalists.²⁴² These measures, inter alia requires putting in place an appropriate legal and administrative framework which defines the limited circumstances in which law enforcement officials may use force and firearms, in line with international standards and also refraining from violations human rights including during policing demonstrations.²⁴³ Thus, Ethiopia needs to adopt adequate legal provision on the use of force and also promote a safe enabling environment for individuals and groups who exercise the right to peaceful demonstration.²⁴⁴ The legislations and procedures adopted to fulfill this obligation need to conform to human rights obligations and commitments of the country.²⁴⁵ It requires Ethiopia to draft legislation for regulation of the right to peaceful demonstration, provision of human rights training for those who participate in regulating and policing the demonstration including on the use of force during demonstrations, provision of sufficient training and equipment as relating to crowd control and use of force, implementation and interpretation of the legislation in conformity with international human rights standards and commitments undertaken by the country, investigation of any allegation of use of force and other human rights violation impartially and independently and bring perpetrators to justice.²⁴⁶

The laws that regulate the demonstrations must also regulate accountability of law enforcement officials and provide for control and oversight mechanisms within the regulation of the demonstrations and effective remedy and redress for victims of human rights violations in policing demonstrations.²⁴⁷ The regulation of the right to peaceful demonstrations need to address these issues in line with the UN code of conduct for law enforcement officials and the

241. General comment no. 31, supra n-121

242. *Giuliani and Gaggio v Italy* (2011) supra n-130

243. *Ibid*, this case was entertained in relation to the protection of the right to life of a demonstrator. The ruling on the obligation of the state and the reasoning however can equally apply to the protection of all human rights in policing demonstrations.

244. HRC/Res/22/10(2013) n-128, Para 2 and 3

245. *Ibid*, Para- 3

246. A/HRC/22/28(2013) supra n-78, pps-2, 6, 7 and 19, see also Guideline on Freedom of Assembly (2010) supra n-7, p-28, Para 12.

247. A/HRC/22/28(2013) supra n-78, pps-2, 6, 7 and 19, see also Guideline on Freedom of Assembly (2010) supra n-7, p-28, Para 12

basic principles on the use of force and firearms by law enforcement officials.²⁴⁸ The obligation dictates Ethiopia to establish a carefully designed legal and policy framework that conforms to international standards with adequate trainings and equipment for use of force and firearms for law enforcement officials.²⁴⁹ Generally, the inclusion of the regulation of the use of force in the law of the right to peaceful demonstration aims at reducing the need to resort to force, where conditions and circumstances compel, how to use it in conformity with applicable UN standards and norms and international human rights laws, to prevent the abuse of force and provisions of remedies where there is unlawful, excessive or arbitrary use of force occurs.²⁵⁰ Ethiopia should follow this standard for adequate and comprehensive regulation of the use of force in policing demonstrations and thereby protect human rights.

Now, therefore, based on these international and domestic obligations assumed by Ethiopia, the researcher explores how the country has been discharging its obligations of human rights protection in the policing of demonstrations. Specifically, the policy and legal framework which governs the right to peaceful demonstration in the country is discussed in light of the need to address the use of force, accountability of law enforcement officials, control and oversight mechanisms and effective remedy and redress for violations of human rights sustained in policing demonstrations.

3.4.Measures Taken by the Government of Ethiopia to Protect the Right to Peaceful Demonstration

3.4.1 National Policy Frameworks

Though not mandatory under international human rights laws, states may develop policies that further develop the general framework for the use of force laid out in laws, for general as well as for particular policing situations like demonstrations.²⁵¹

248.Ibid,7 para-19, see also ACHPR/Res.281 (LV) 2014 : Resolution on the Right to Peaceful Demonstrations, which provides “the use of force and firearms by law enforcement officials during policing demonstrations must adhere to the provisions of the UN basic principles on the use of force and firearms by law enforcement officials so that force may lawfully be used without violating human rights”

249. Resource book on Use of force and firearms(2017) supra n-16, p-1

250. UN Doc A/31/66 (2016) , supra n-124, para-21

251. Resource book on Use of force and firearms(2017) supra n-16, p-9

Developing national policy on the use of force in law enforcement operations serves as a basis for developing further guidance on the use of force in policing peaceful demonstrations and also provides a coherent approach in areas such as reporting, oversight and training.²⁵²

In Ethiopia, one can find human rights protection issues in different policies and strategies of the country scattered here and there. However, the country does not have policy for protection of the right to peaceful demonstration as well as for the use of force and firearms. Further, the country does not have single and comprehensive policy frame work and guideline for the protection of human rights in general. This gap was acknowledged in the first national human rights action plan of the country which was adopted by the HPR.²⁵³ Under the second national human rights action plan, it is pointed that there were draft laws produced on the police officers' use of force and accountability, which is under consideration and hoped to be adopted in the near future. However, the document itself indicates that the time frame for the adoption of the law on use of force has been elapsed.²⁵⁴ Thus, the country has no policy guideline and framework that guide the laws and activities of police officers policing, including during policing demonstrations.

As pointed above, it is not mandatory to have a policy for the protection of the right to peaceful demonstration or on the use of force in policing demonstration. However, having such policy can facilitate the protection of the right, mainly by providing guidelines for the activities, roles and responsibilities of law enforcement agencies and officials. Also, it can serve as a basis for developing further guidance and operational standards on the use of force in policing peaceful demonstrations as well can provide a coherent approach in areas such as reporting, oversight and training. For example, Ethiopia can draw lessons from South Africa as the country has a good policy on the use of force.²⁵⁵ South Africa has a policy and guideline for policing, which reminds the human right obligations of the country, both under domestic and international laws, lists the relevant policy and legislative frame work applicable in policing these events including the Constitution, applicable laws, standing orders and regulations, and then provides activities to be done to meet the obligations like setting up a specialized unit, training them, command and

252. Ibid,10

253. Ethiopian National Human Rights Action Plan I, 2013-2015, under chapter 2(1) on page 31, it points that to enable to ensure the protection of the right to life, there would be studies undertaken that strengthens the provisions of the effective laws on the police use of force and accountability. (Translation Mine)

254. Ethiopian National Human Rights Action Plan II, 2015-2019, pp-20-22

255. Ministry of Police: Policy and Guidelines(2011), supra n-205

control mechanisms and also operational planning.²⁵⁶ This could give Ethiopia an experience of drafting policy on use of force for policing demonstrations and other gathering that could enhance protection of human rights in policing demonstrations.

3.4.1. The FDRE Constitution

The right to peaceful demonstration should be accorded constitutional protection, which has to provide for the positive statement of the right and the state duty to protect the right.²⁵⁷ Also, the constitution should contain “a provision that guarantees fair procedures in the determination of the rights contained therein.”²⁵⁸ As pointed in the preceding chapter, the FDRE Constitution recognizes and protects the right to peaceful demonstration directly and independent of the right to freedom of peaceful assembly. However, the constitution only provides the positive statement for the right, but does not contain government duty of protection and procedures of determination of contents of the right. The Constitution provides as;

Article 30 - The Right of Assembly, Demonstration and Petition

1. Everyone has the right to assemble and to demonstrate together with others peaceably and unarmed, and to petition.

This provision thus recognizes the right to demonstrate peaceably and unarmed distinctly, but fails to contain guarantees of the right against arbitrary decisions of authorities.

This provision of the FDRE Constitution also lists limitations that could be imposed on the right to peaceful demonstrations. Accordingly, public convenience as related with the route movement of demonstrators, protections of democratic rights, public morality and peace during such demonstrations are the limitations anticipated to be included in the laws for the regulations of the right to peaceful demonstration.²⁵⁹ The grounds of limitations listed under the constitution, particularly the first two grounds, when seen in light of international human rights laws, particularly the ICCPR, remains below the standards. In order to justify this assertion it is

256. Ibid

257. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7, p-27, para-10

258. Ibid, supra n-7, p-27, para-10

259. FDRE Const, supra n-20, Art-30(1) paragraph-2

important to discuss these grounds of limitations under the constitution which are susceptible to remain below standards in detail.

A. Public Convenience as Relating to the Route of Movement of Demonstration

International treaties, when ratified by the country, become an integral part of law of the land.²⁶⁰ On the other hand, when interpreting the fundamental freedoms and human rights under chapter three of the constitution, the thresholds for interpreting them is required to be in line with principles of the UDHR, ICCPR and International instruments adopted by Ethiopia.²⁶¹ Though debatable, the status of international treaties, including human rights treaties under the FDRE Constitution is thus, subordinate to the constitution and assumes the status of proclamations.²⁶² The researcher also concurs to this standing. Thus, ICCPR and ACHPR, which impose duty of to protect the right to peaceful demonstration themselves are an integral law of the land, which could be applied. However, as Ethiopia dualist approach in adoption of international treaties, i.e. all laws of the federal government need to be published in the Federal NegaritGazeta²⁶³ to be applied; one cannot directly apply the provisions of the ICCPR, ACHPR or any other international human rights instruments recognizing the right to peaceful demonstration to which Ethiopia is a party. Therefore, the discrepancy of these two laws of country, on the grounds of limitation imposed by the constitution and the international instruments here creates problem in application of the ground of limitation imposed by the constitution. The problem of this ground of limitations as recognized under the constitution starts from absence of literatures and laws that elaborates on the term ‘public ‘convenience’. Under the Siracusa principles on the limitation and derogation of provisions in the ICCPR, the term ‘public convenience’ is not mentioned as grounds of limitation and thus not elaborated.

The constitution is unique in providing such ground of limitation and this makes the endeavor to identify the parameter of the term difficult. This ground of limitation under the constitution is new addition and vague.²⁶⁴

²⁶⁰. FDRE Const, supra n-20, Art-9(4)

²⁶¹. Ibid, Art-13(2)

²⁶². Kassie, A Human Rights in the Ethiopian Constitution: A Descriptive Overview, *Mizan Law Review*, Vol.5, No1(2011) 47

²⁶³. Federal NegaritGazeta Establishment Proclamation No.3/1995, Art-2(3)

264. Andualem,T ‘Protection of the Right to Freedom of Assembly under Ethiopian Law, supra n-63, p-304

The grounds of limitations recognized under the ICCPR are only those imposed in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.²⁶⁵ These grounds are elaborated by experts, are more stringent and strict conditions, thus legitimate grounds for restricting the right,²⁶⁶ unlike those under the constitution.

The way out of the problem is thus, applying the provision of the constitution in line with interpretation guideline of the human rights provisions of the constitution.²⁶⁷ This need anyone taking action and giving decision must first know both laws, and interpret the provisions and ensure the compatibility of his/her actions or decisions with these laws, hem/herself before and then apply it. However, regulatory authorities and law enforcement officials and agencies, who usually take decisions as related to the right to peaceful demonstrations, may lack expertise knowledge of applying the constitutional provision by interpreting it in line of the international human rights Ethiopia adopted as required by the constitution. Thus, they may apply the limitation without interpretation which makes problem when applied as it is.

However, interpreting the limitation ground as ‘public order’ seems logical, which could also conform to the grounds of limitations recognized by the ICCPR, which the constitution requires while interpreting the provision.²⁶⁸ But, the ground of limitation under the constitution, if taken as it stands is a new addition to the grounds of limitations under international human rights instruments, mainly the ICCPR.

This is against the best practice that prohibits supplementing the grounds with other additional grounds.²⁶⁹ Accordingly demonstrators’ ‘use of public space for demonstration is legitimate and this should be acknowledged when considering the necessity of any limitation, that the public space use for commercial activity or for vehicular or pedestrian purpose should not be given

265. ICCPR(1966), supra-2, Art-21, para-2

266. Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1984/4 (1984), Art- vii, para.33

267. FDRE Const, supra n-20, Art-13(2) which provides guideline for interpretation of human rights and fundamental freedoms provisions of the constitution

268. Ibid, Art-13(2) which provides guideline for interpretation of human rights and fundamental freedoms provisions of the constitution, see also Andualem,T ‘Protection of the Right to Freedom of Assembly under Ethiopian Law, supra n-63, p-305

269. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7, p-17, para-3.1, see also, A/HRC/26/29(2014) supra n-8, p-8, Para-21 and General Comment No-30(2004), Para-35

priority'.²⁷⁰ These best practices recommend facilitating demonstrations within 'sight and sound' of its object and target audience and organizers of peaceful demonstrations 'should not be coerced to follow the authorities' suggestions if these would undermine the essence of their right to demonstration.²⁷¹

Therefore, this ground of limitations under the FDRE Constitution is below standards of good practices of protection of the right to peaceful demonstrations. When the limitations of the right to peaceful demonstration are articulated in general terms and leaves wide discretions to the regulatory authorities, like under this provision of the FDRE Constitution, it increases the chance of manipulations and the possibility for abuse.²⁷²

B. The Limitation for the Protection of Democratic Rights

This ground of limitation is also unique, when compared to grounds of limitations under international human rights instruments, particularly the ICCPR. Under the FDRE Constitution, the rights that are classified as 'democratic rights' are those listed from article 29-44, like the right to freedom of speech, movement, association, assembly, right of women, right to vote, right of children, nationality, marital, family and personal, access to justice and property etc. As it stands, this provision has the message that the right to peaceful demonstration is limited only for the protection of the rights listed here above, which makes it problematic if one takes it as it stands. But this is not in line with international human rights instruments, particularly the ICCPR.²⁷³ This ground of limitation under the constitution seems provided as substitute for the terms 'the protection of the rights and freedoms of others'.²⁷⁴ The problem with this ground of limitation under the constitution is thus it creates sort of confusion, especially in countries like Ethiopia, where ordinary peoples lack full-fledged knowledge and access of laws. This is because the problem could only averted through interpretation as required under article 13(2) of the constitution before applying it, which is not simple task for individuals who are not experts in the area.

270.Ibid,17, para-3.2 and explanatory notes at p-31, para-19, also A/HRC/26/29(2014) supra n-8, p-11, Para-39-41

271. A/HRC/26/29(2014) supra n-8, p-11, Para-39-41 and Guidelines on Freedom of Peaceful Assembly (2010) supra n-7,p-31, Para-19

272.Guidelines on Freedom of Peaceful Assembly (2010) supra n-7,p-27, para-10

273.Andualem,T 'Protection of the Right to Freedom of Assembly under Ethiopian Law, supra n-63,p-306

274.See the grounds of limitations under the ICCPR, second paragraph last words.

According constitutional protection to the right to peaceful demonstration is very important, as it provide for the positive statement of the right and the state duty to protect the right.²⁷⁵The constitution, though not expected to provide specific and detailed remedies of all issues in the regulation of a right recognized in it, it has to provide for fair procedures to determine the rights contained in it and expressly articulate the principles of legality and proportionality which could serve as a guideline in legislating ordinary laws to implement the constitutional provision.²⁷⁶

The FDRE Constitution recognizes and protects the right to peaceful demonstration as a distinct right independent of the right to freedom of peaceful assembly, but it does not provide for the duty of state to protect and fulfill the right. It does not clarify on the state duty of protection of the right as recognized under it. It does not contain the major principles of legality and proportionality which serve as guarantees against arbitrary decisions and actions. This has impact on the content of the implementing law to be enacted under the provision of the constitution and ultimately on the protection of human rights, during policing demonstrations in this particular case. This gap in the provision of the constitution creates problem in determining the conditions of use of force, accountabilities of law enforcement officials and institutions for use of force and firearms, oversight and control mechanisms and effective remedy for violations of human rights in policing demonstrations. Hence, the FDRE Constitution only provide the positive statement of the right to peaceful demonstration without further clarifications on state duty of protection of the right as recognized under the provision. That is why some, including the researcher, argue the constitution gives an inadequate protection to the right to peaceful demonstration, because it only lists ground of limitation of the right but does not contain guarantees for preventing arbitrary restrictions such as necessity, legality and proportionality in explicit manner²⁷⁷ which are necessary guarantees against arbitrary decisions and abuses.

The FDRE Constitution provision's clear gaps in this regard also makes problem in determining the accountabilities of the regulatory authorities, accountabilities of law enforcement officials and institutions for use of force and firearms and human rights violations in policing demonstrations, and procedures of investigations of allegations of excessive use of force and

275. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7, p-27, para-10

276. Ibid, 27, para-10

277. Andualem, T 'Protection of the Right to Freedom of Assembly under Ethiopian Law, supra n-63, p-296

human rights violations and abuses and ensuring accountability of law enforcement officials and control and oversight mechanisms.

The problem is worsened by the failure of the HPR to enact special law for the regulation of the right to peaceful demonstration, as required by the constitution.²⁷⁸ The HPR did not enact special laws for the regulation of the right to peaceful demonstration and today the law that regulates the peaceful demonstration in the country is the proclamation enacted under the transitional charter of the country which predates the constitution itself.²⁷⁹ This failure of the House to discharge its responsibilities and duties has resulted in failures to address the gaps and loopholes in the proclamation adopted to provide for procedures of peaceful demonstration and public political meetings which governs the right to peaceful demonstration in the country to date, that in turn affected protection of human rights in policing demonstrations as will be discussed in the next section.

The other relevant provision of the constitution, as related with the right to peaceful demonstration and the protection of human rights, is the provision that empowers the HPR to carry out investigations and take necessary measures in case where the conducts of the national defense, public security and national police force infringes on human rights.²⁸⁰ This is clear provision of control and oversight power of the House on the activities of the law enforcement officials, which could be used also in case of violations of human rights during policing demonstrations. But, the incompleteness of the constitutional provision of the right to peaceful demonstrations, i.e. failure to articulate the principles of legality and proportionality, has detrimental effect on the procedure and content of the control and oversight mechanisms of the House on the activities of the law enforcement.

3.4.2. The Proclamation to Establish the Procedure for Peaceful Demonstration and Public Political Meetings

278. FDRE Const, supra n-20, Art-13(1) and Art-30(1), the constitution imposes duty to legislate necessary special laws and regulations that governs the rights and freedoms recognized under it upon concerned institutions; the HPR in this regard.

279. Peaceful Demonstration Proclamation, supra n-21

280. FDRE Const, supra n-20, Art-55(7)

The ordinary law that regulates peaceful demonstration in Ethiopia today is the proclamation adopted to establish the procedure for peaceful demonstration and public political meetings proclaimed under the 1991 transitional charter of Ethiopia.²⁸¹ It is thus hard to take the proclamation as an implementing law of the FDRE Constitution both for legal and practical reasons. From legal point of view, the FDRE Constitution anticipates for adoption of another implementing law for implementing the right to peaceful demonstration.²⁸² This may imply that it has acknowledged the shortcomings of the proclamation. Practically, this proclamation is adopted until another laws adopted, “until detailed laws are worked out and promulgated in the near future to provide for the exercise of these and other rights...”²⁸³

The rationales for the adoption of the proclamation are; to safeguard the rights of participants in peaceful demonstration, eliminating conditions that disturb the public peace and security and to control the harms to individuals and damages to property in the process of exercising democratic rights through peaceful demonstrations.²⁸⁴ The right to organize and participate in peaceful demonstration is guaranteed by the proclamation without interfering in the rights of third parties.²⁸⁵ The responsibilities of the organizers of the peaceful demonstration include to give notification 48 hours before the peaceful demonstration to concerned administrative organs of towns or woreda, which need to include particulars like the objective of the peaceful demonstration, the place, date and hour of the peaceful demonstration, estimate duration of time of the peaceful demonstration, the type of assistance required from the government to keep public peace and the full name, address and signatures of organizers among others.²⁸⁶ Upon receipt of the notice, the municipal or woreda administrative office has to make all necessary preparations to maintain public peace and security and where it is of the opinion that the peaceful demonstration be held at some other place or time, it shall so notify the organizers giving reasons, in writing, within 12 hours of the submission of the notice.²⁸⁷ As related with the

281 . Peaceful Demonstration Proclamation, supra n-21

282 . FDRE Const, supra n-20, Art-30(1)

283 . Peaceful Demonstration Proclamation, supra n-21, Preamble- Para-4

284. Ibid, Synopsis of the preambles part of the proclamation

285 . Ibid, Art-3(1 &2)

286 . Ibid, Arts-4&5

287 . Ibid, Art-6

responsibilities of security officers, they by their presence in any peaceful demonstrations, have the responsibility to safeguard the peoples' rights and peace and security.²⁸⁸

The proclamation thus, does not address issues of use of force and firearms by law enforcement officials, accountability of law enforcement agencies and officials, control and oversight mechanisms and effective remedy and redress for victims of human rights violations in policing demonstrations as is required under international human rights laws and the UN standards and best practices as discussed in the preceding chapter.²⁸⁹ The law is expected to enable the country to prevent any excessive use of force by the police by containing rules on the use of force and firearms that conforms to the UN code of conduct for law enforcement officials and the basic principles on the use of force and firearms by law enforcement officials and provide for control and oversight mechanisms that enable to investigate any violations of these rules to bring those violators to justice, punishing the guilty and redress the victims.²⁹⁰

However, the proclamation does not address human rights responsibilities of law enforcement officers and particularly it fails to address issues of use of force and firearms by law enforcement officials in policing demonstrations, procedures of investigations of allegations of excessive use of force and human rights violations and abuses while policing demonstrations and issues of accountability of law enforcement officials and control and oversight mechanisms, thus it defies the human rights obligations of the country and remains below human rights protection standards. It is inadequate in addressing necessary issues in policing demonstrations thus protection of human rights. Therefore, the proclamation does not enable the country to discharge its obligations of human rights protection in policing demonstrations because of its inadequacy in its contents on major issues of human rights protection discussed herein above. On the issue of inadequacy of the proclamation to regulate the right to peaceful demonstration and enable the

288 . Ibid, Art-10

289. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7, p-7, para-19, see also ACHPR/Res.281 (LV) 2014 : Resolution on the Right to Peaceful Demonstrations (2014) which provides “the use of force and firearms by law enforcement officials during policing demonstrations must adhere to the provisions of the UN basic principles on the use of force and firearms by law enforcement officials so that force may lawfully be used without violating human rights”

290. Guidelines on Freedom of Peaceful Assembly (2010) supra n-7, p-7, para-19, see also ACHPR/Res.281 (LV) 2014 : Resolution on the Right to Peaceful Demonstrations (2014) which provides “the use of force and firearms by law enforcement officials during policing demonstrations must adhere to the provisions of the UN basic principles on the use of force and firearms by law enforcement officials so that force may lawfully be used without violating human rights”

country to discharge its obligations of human rights protection, all the three interviewees approached agree on the inadequacy of the proclamation, pointing that it has been tested in practice in the past ‘disturbances’ that it is incomplete in many respects, and it is being considered for amendment.²⁹¹

3.4.3. Regulation of Use of Force and Firearms under the Ethiopian Federal Police Commission Laws

The regulation of use of force and firearms by police force has direct impact on the protection of human rights under human rights systems of any state. Thus, it is wise to explore how use of force and firearms of police officers in Ethiopia is regulated under the laws that establish and regulate the activities of police officers in the country.

In Ethiopia, the national police force is established by the constitution.²⁹² Pursuant to this provision, Ethiopian Federal Police Commission is established.²⁹³ The proclamation defines ‘police officer’ as a member of the Ethiopian Federal Police Commission who has received basic training in the police profession and is employed by the commission.²⁹⁴ Among the powers and duties of the commission, one is prevention and investigations of acts of crimes against human rights.²⁹⁵ Some sort of control or responsibility and accountability of police officials are provided under the provision that provide for principles of operation.²⁹⁶ Accordingly, officials and employees of the commission at all level are obliged to work in team, that entail joint and several liability, the operation of the commission bases on principles of accountability and transparency, public participation and impartiality. In exercising police powers, there are some prohibitions which have implications for the use of force and firearms. These are commission of any acts of inhumane or degrading treatment, and discriminatory acts based on race, nationality, color,

291. Interviews with W/roAskaleTilahun, Member of the HPR and member of the standing Committee of Legal and Justice Affairs of the House, Commissioner GezahignGebreHiwot, Legal Affairs Division Directorate, at Ethiopian Federal Police Commission and AtoYosefGirma, EHRC Investigator and member of investigation committee of the 2008 human rights situations in the country

292. FDRE Cons, supra n-20, Arts-51(6) and 55(7) which provide, It shall establish and administer a federal police force, and It shall determine the organization of a national police force.

293. Ethiopian Federal Police Commission Establishment Proclamation, Proclamation No. 720 of 2011, Art-1

294. Ibid, Art-2(1)

295. Ibid, Art-6(1)

296. Ibid, Art-21(1-5)

gender, language, religion, political outlook, social background, wealth, birth or any other stand.²⁹⁷

The proclamation indicates that the council of ministers may enact regulations necessary for the implementation of this Proclamation and the commission may enact directives for the implementation of the proclamation and regulations of the council of ministers.²⁹⁸ Based on this authorization by the proclamation, the council of ministers has adopted a regulation for administration of the federal police officers.²⁹⁹ This regulation, though it is an implementing law, which is adopted to implement the provisions of the proclamation, it goes one step ahead of the proclamation itself and regulates the police officers' use of force and firearms specifically which is not provided in the proclamation.³⁰⁰

Accordingly, a police officer is allowed to use proportionate force when faced with clear resistance and other options are not available and to use firearms, a police officer is allowed proportionate firearms when faced with clear resistance and only where other measures are short of firearms are insufficient to protect his own life or the life of others from death or from grave bodily injury.³⁰¹ A police officer who has used firearms shall report the incident of the use of force to the concerned higher official forthwith and help the injured person to get emergency medical treatment.³⁰²

Thus, in light of the international regulations of use of force or firearms, the proclamation including the regulation, is incomplete and inadequate. To start from the definitional provisions of the proclamation defines police officers in relation to the institution that hired them and trainings they received,³⁰³ whereas the UN code of conduct for law enforcement officials defined the officer in relation to the activities or powers he/she exercises, not by designation of

297. Ibid, Art-24(1-2)

298. Ibid, Art-27(1-2)

299. Federal Police Officers Administration Council of Ministers Regulation, Regulation No. 268 of 2012

300. The provision of the regulation on use of force and firearms under article 45 is new addition, as it is not provided under the proclamation. This provision, though the title says use of force, it provides regulation for both the use of force and firearms.

301. Ibid, Art-45(1&2)

302. Ibid, Art-45(3)

303. Ethiopian Federal Police Proclamation(2011) supra n-293, Art-2(1)

institutions.³⁰⁴ This may lead to the interpretation that in Ethiopia the use of force regulation provided under the regulations of police officers will not be applicable for other law enforcement officials even if they exercise police power. Particularly this is problematic in countries like Ethiopia where other officials like the security officials, the military and militias exercise police powers, especially during policing demonstrations.

The proclamation contains no single provision for the regulation of police officers use of force or firearms. This baffling whenever seen in light of the vast activities of police officers, whose daily business involves use of force or even firearms. It does not contain precautionary measures like dialogue with demonstrators, which can enhance prohibition of use of lethal force in demonstrations. It does not provide for ammunition registration and control system like who issued them and who carried them out, provide for visible markings that personally identify police agents. For one thing, the lack of single provision for the regulation of use of force or firearms obviously leads to the conclusion that the use of force or firearms by the police officers has no legal basis, that one can claim they are not accountable for any use of force or firearms. On the other hand, this lack of single provision for the regulation of use of force or firearms by police officers, poses greater challenge to determine the accountability for abuse of the power to use force or firearms, if there is one. How can one determine accountability in the absence of laws that attaches or gives the power to use force or firearms or both, where there is no law that provide for the roles and responsibilities of the institution and officials clearly?

Further, this gap creates problem on the responsibilities of the supervisory bodies as pointed in the section on the protection of the right to peaceful demonstration under the FDRE Constitution. Particularly, how does the HPR undertakes its constitutional responsibilities of supervisory roles in case of violation of human rights by the police officers, for example in policing demonstrations? What are the standards for the supervision in the absence of clear laws that specifies the roles and responsibilities of both the commission as an institution and police officers individually? Where there is no law that clearly defines the powers, roles, responsibilities and accountabilities of institutions which participate in the regulations of the right to peaceful demonstrations, it would be difficult to manage, control them effectively and oversight their activities as well.

304. Resolution 34/169(1980) supra n-150, Art-1

As pointed above, the use of force is regulated under the regulation of the council of ministers for the administration of police officers, which is surprise to see additional issue regulated under an implementing law, where the superior law does not regulate it. But, this is even positive step when considered from human rights protection perspective, as the regulation at least addressed one gap of the proclamation. However, the regulation itself, when measured in light of the standard of regulation of use of force and firearms under international human rights laws, remains below standard, as there are so many issues unaddressed under it. Among these major issues, the ones relevant for this study are issues of accountabilities of police officers for the arbitrary use of force and firearms, responsibilities of higher officials for failure to control their subordinate, remedies for victims of use of force and firearms.

In general when the researcher evaluates the measures taken by Ethiopia to give effect to the right to peaceful demonstration and discharge its obligations, he identified that the country does not have any policy frame work and guideline that elaborates on the roles, responsibilities accountabilities all stakeholders in the administration of the right to peaceful demonstration and this has negatively affected the protection of the human rights in policing demonstration in the country. The right to peaceful demonstration is accorded constitutional protection independently and distinctly, which is positive. However, the constitution does not clearly and adequately provide the duty of the government to protect and facilitate the right. It does not provide for fair procedures to determine the rights contained in it and fails to expressly articulate the principles of legality and proportionality, which could serve as a guideline in legislating ordinary laws to implement the constitutional provision and could serve as a guarantee against arbitrary actions and decisions of regulatory personnel's. This gap in the provision of the constitution creates problem in determining the conditions of use of force, accountabilities of law enforcement officials and institutions for use of force and firearms, oversight and control mechanisms and effective remedy for violations of human rights in policing demonstrations. Also, the incompleteness of the constitutional provision of the right to peaceful demonstrations has detrimental effect on the procedure and content of the control and oversight mechanisms of the HPR on the activities of the law enforcement.

Further, the peaceful demonstration proclamation, which is a governing law of the right to peaceful demonstration in Ethiopia to date, recognizes the right to organize and participate in

peaceful demonstration. However, this proclamation has numerous gaps and loopholes. Mainly, relevant for this study, it does not provide for the duties, responsibilities and accountabilities of the law enforcement officials; particularly it does not regulate issues of use of force, accountabilities of law enforcements, control and oversight procedures and remedy in case of violations of human rights in policing demonstrations.

The ordinary law that regulates police use of force in Ethiopia is the council of ministers regulation of the federal police officers administration. But, the regulation itself when measured in light of the standard of regulation of use of force and firearms under international human rights laws, remains below standard, as there are so many issues unaddressed like issues of accountabilities of police officers for the arbitrary use of force and firearms, responsibilities of higher officials for failure to control their subordinate, remedies for victims of use of force and firearms. In a nutshell, as discussed in the previous chapter, in order to effectively discharge its duty of protection of the right to peaceful demonstration and to protect human rights in policing demonstrations issue of use of force should be governed by a clear legal framework, which enhances taking all feasible steps in planning, preparing and conducting an operation to avoid the use of force and minimize its harmful consequences in policing demonstrations. When the use of force unavoidable, it must provide conditions and circumstances must adhere to the UN standards. The measures taken by Ethiopia, as discussed herein above sections, does not address these issues adequately and comprehensively. Therefore, Ethiopia does not have policy framework and guideline, and comprehensive and adequate legal frameworks for policing demonstrations which enables her to ensure protection of human rights in the context of policing demonstrations.

3.5.Human Rights Protection Situations in the Incidents of Demonstrations in Ethiopia

In the preceding sections the researcher has discussed the measures taken by Ethiopia to protect the right to peaceful demonstration and of human rights through normative frameworks and evaluated them in light of international human rights laws and standards. Now the researcher investigates the protection of the right to peaceful demonstrations and human rights in practice in the context of policing demonstrations as happened in the past in Ethiopia, in the next section. Since the coming into force of the FDRE Constitution, there were different incidents of

demonstrations undertaken in different parts of the country. In these conduct of demonstrations there were various allegations of human rights violations on the government of Ethiopia while policing these demonstrations.

The 2005 Ethiopian general election has left behind enormous history of demonstrations and allegations of human rights violations in policing these demonstrations in most parts of the country. The demonstration started on 1 November 2005, when the election result was released, following disagreement on election result between the government and opposition parties and when supporters of opposition demonstrated, which turned into violence when confronted by security forces both in Addis Ababa and towns across the country, that in Addis Ababa alone, tens of thousands of demonstrators were arrested for participating in the demonstrations.³⁰⁵ Related to this demonstration, illegal detentions, torture, killing and harassment of demonstrators were alleged.³⁰⁶ Also, there were allegations of impunity of law enforcement officials for these violations human rights and loose control and oversight mechanisms.³⁰⁷ This called the international community to react. Accordingly there were resolutions adopted expressing the concern of human rights situation in the country particularly the killing and injury of demonstrators during demonstrations by security forces, the arbitrary arrests and other serious human rights violations directed at suspected members and supporters of opposition groups, students and human rights defenders.³⁰⁸ Further, they urged the Ethiopian government to ensure the impartiality, independence and integrity of the National Parliamentary Commission investigating the acts of violence in the country and to bring the perpetrators of human rights violations to justice; to guarantee, at all times, freedom of opinion and expression as well as the right to hold peaceful demonstration and political assembly and finally to comply with the international instruments ratified by Ethiopia, most notably ACHPR, the ICCPR and the ICESCR.³⁰⁹

The Addis Ababa Master Plan, an integrated regional development for Addis Ababa and the surrounding towns of Oromia region is the triggering factor for the second wave of incidents of

305.The Guardian (2005) supra n-40

306.USD Country Report on Ethiopia(2005) supra n-41

307. Ibid

308.AComHPR Resolution 92(2005) supra n-55

309.Ibid

demonstrations in the country. Following its publications, it raised concerns among peoples in the region, as it was produced without meaningful consultations, adequate compensations for evictees and other administrative issues.³¹⁰ Reacting to this release of the plan, demonstrators went to the street in different parts of the Oromia region, and this was turned into violence which resulted human rights violations allegations on the government of Ethiopia, as security officers beat people during and after the demonstrations including demonstrators, bystanders and even parents of demonstrators for failing to control their children.³¹¹ This has called international communities to react as the situation of human right in the country is deteriorating from time to time. The AComHPR adopted a resolution concerned by the deterioration of human rights situation following the demonstrations which began in November 2015; by the use of excessive and disproportionate force to disperse demonstrations, resulting in the deaths and injuries of several demonstrators as well as the arbitrary arrest and detentions of many others.³¹² Also the European parliament has adopted resolution pointing that the security forces used excessive lethal force and killed at least 140 protesters and injured many more, arbitrarily arrested a number of peaceful demonstrators, journalists and opposition party leaders in the context of brutal crackdown on the protesters in Oromia region, those arrested are at risk of torture and other ill-treatments.³¹³

From July 2017 onwards different incidents of demonstrations started to take place in the Amhara region of the country. These demonstrations were triggered by the concern of administration of borders between the Tigray and Amhara regions of the country and the identity issue of Qimant peoples.³¹⁴ Here again there were enormous allegations of human rights violations on the government of Ethiopia, from different corners of the world. Turning to the issue allegations of human rights violations as related with these incidents of demonstrations, in its 2016 country report on Ethiopia, the US Department of state published a report containing summary of the situations.³¹⁵ The report points that the government of Ethiopia did not respect right to peaceful demonstration and killed, injured, detained and arrested numerous

310.IPI Global Observatory, *The Roots of Popular Mobilization in Ethiopia*(2017) supra n-57

311. Amnesty International, 'Because I am Oromo'(2014) supra-43

312. AComHPR, Res- 356(2016) supra n-60

313. European Parliament Resolution(2016) supra n-45

314. Fana Broadcast Corporate, *violence in Oromia*(2016) supra n-46

315. US Department of State, *Country Reports on Ethiopia* (2017) supra n-44

demonstrators throughout the year, it received reports from human rights organizations like the HRW and Amnesty International that the security forces killed more than 500 demonstrators since November 2015, that only on August 6 and 7, security forces reportedly killed approximately 100 persons in response to simultaneous demonstrations in major cities and towns across Oromia and Amhara regions and this led the human rights supervisory bodies to express their concerns; that the UN experts called on the government to end the crackdown on peaceful demonstrations, the UN high commissioner for human rights requested access to the regions, which the government did not provide, the office of high commissioner for human rights called for an investigation and urged the government allow independent observers access to Oromia and Amhara regions among others.

According to some experts' on the rights to freedom of peaceful assembly analysis, in Ethiopia more than 600 people have been killed by security forces since political demonstrations began in 2015.³¹⁶ Ethiopian Human Rights Commission, undertook an investigation into the demonstrations and identified through its investigations and reported that “following the unrest, 140 people 110 civilians and 30 security personnel were killed, damages to properties worth over 111 million birr sustained in Amhara. It also reported that there were measures taken by the security forces which are unnecessary, security officers used unnecessary force at Dembia, Zeguna, Debark, Wegera, Debretabor, Simada, Ebinat, Wereta, Dangila which claimed lives.³¹⁷ In general this report reveals that law enforcement officials killed 131 people through unnecessary or excessive use of force.³¹⁸ The US Congress has passed a resolution on the human rights situation in Ethiopia, in which it highlighted the democratic space in the country since 2005 general elections and overall human rights abuses and violations in the country since 2015.³¹⁹ The resolution starts by referencing the US-Ethiopian relations and it mentions inter alia Ethiopia has been an ally of the US and partner in the war on terror, it also references the 2016 Department of State Country Report on Human Rights Practices for Ethiopia which reports serious human rights violations, including arbitrary arrests, killings, and torture committed by

316. Freeassembly.net, Report(2016) supra-n-59

317. Fana Broadcast Corporate, violence in Oromia(2016) supra n-46

318. Ethiopian Human Rights Commission, [EHRC Discloses its Investigation Findings](http://www.ehrc.org.et/web/guest/-/ethiopian-human-rights-commission-discloses-its-investigationfindings) (2017) available at <http://www.ehrc.org.et/web/guest/-/ethiopian-human-rights-commission-discloses-its-investigationfindings> [visited on 1 June 2018] See also Fana Broadcast Service(2016) supra n-46

319. United States 115th Congress 1st Session, H. RES. 128 Supporting Respect for Human Rights and Encouraging Inclusive Governance in Ethiopia. In the House of Representatives (2017)

security forces, restrictions on freedom of expression among others, it cites reports of human rights organizations, particularly the HRW report which estimates that the Ethiopian security forces had killed between 500 and 800 peaceful protestors in the Oromia and Amhara regions by November 2016, and the number is likely higher and it points that there has been no credible independent investigation into any of the abuses mentioned herein and no indication that anyone has been held to account for these abuses.³²⁰ Further, the resolution condemns the killing of demonstrators and excessive use of force by Ethiopian security forces and the arrest and detention of journalists, students, activists, and political leaders who exercise their constitutional rights to freedom of assembly and expression through peaceful protests.³²¹

The credibility of the EHRC report is also questioned both from inside and outside the country. For instance, the HRW criticized the report;

The Ethiopian government rejects external investigations insisting that it can investigate itself, but past investigations by the EHRC have not met basic standards of impartiality, including its June 2016 report into abuses during the protests' first six months. In April 2017, the EHRC acknowledged that 669 people were killed in an oral report to parliament, but found that security forces had used excessive force in just a few situations, which stands in stark contrast to what HRW and other organizations have found, drawing on evidence that includes a wealth of video and photographic material.³²²

Also, the US congress's resolution implicitly questions the credibility of the investigation undertaken by the EHRC when it called on Ethiopian government to "conduct a full, credible, and transparent investigation into the killings and instances of excessive use of force that took place as a result of protests in the Oromia and Amhara regions and hold security forces accountable for wrongdoing through public proceedings"³²³

320. Ibid, summary of the human rights concerns of the congress that is taken as a basis of the resolution. The researcher has focused on parts that he thinks relevant for this study.

321. Ibid

322. HRW, European Parliament Demands Investigation into Ethiopia Killings (2017) <https://www.hrw.org/news/2017/05/18/european-parliament-demands-investigation-ethiopia-killings>, [accessed on 2 June 2, 2018]

323. H. RES. 128(2017) supra n-319

There were no clear control and oversight on the activities of law enforcement during the policing of these demonstrations. Especially, the HPR though it is mandated to carry out control and oversight to some extent, it was passive in doing so because there is no clear and specific law that enables the House to effectively discharge this obligation.³²⁴ But, where the investigating commission found violations of human rights associated with the past incidents of demonstrations, the House has clearly urged concerned organs to take necessary measures and to send feedback, and waiting for such feedbacks still.³²⁵ Also, the control and oversight mechanisms during these activities of policing demonstration have their own problem and were very loose. For the efficacy of such oversight and control mechanisms, other jurisdictions, especially Kenya delegated the power to control, monitor, oversight and investigate policing operations affecting members of the public³²⁶ to an independent organ established by the law, and asked whether there is such an initiative in Ethiopia to constitute an independent organ that oversees, controls and investigates law enforcements' operations during policing public gatherings like the peaceful demonstration, the interviewee from the HPR³²⁷ answered that there is no such an initiative, rather the House is more concerned to strengthen the human rights institutions established under the Constitution; the EHRC and the Ombudsman to impartially and independently undertake their functions including human rights violations investigations.

The issue of effective remedy and redress for violations of human rights is the other problem unresolved still, that at writing of this thesis the government is promising it will take necessary

324. The commission is given mandate to oversight the human rights violation on its own motion or upon complaint, under Articles 6 and 24 of the Proclamation No 210/2000. See also www.ehrc.org.et/AboutUs/VisionandMission/tabid/57/Default.aspx, [accessed on May 23, 2018]

However, the institution is not effective in over sighting activities of the government organs. Mohamed Abdo , in his article entitled “The Ethiopian Human Rights Commission and its Contribution in the Protection of Human Rights and Building of Good Governance: Challenges and Prospects”, reinforces this assertion “The Commission appears to be more comfortable with the protection of human rights where the issues involved do not have political overtones and are politically not sensitive. Instead of focusing on monitoring government entities and checking on government abuses, it, in other words, invested its energy in private complaints and violent conflict. This is the case where the objects of complaints relate to non-governmental entities, and where public authorities (officials) are not directly implicated in areas such as labor and conflict.” Further, this could also be inferred from, Interview with W/roAskaleTilahun, Member of the HPR and member of the standing Committee of Legal and Justice Affairs of the House, The control and oversight is highly reliant on activity performance report and no legal basis to take immediate measures, according to respondent.

325. Ibid

326. Kenyan Independent Policing Oversight Authority Act, Act No. 35 of 2011, Section 6 (c)

327. Interview with W/roAskaleTilahun, Member of the HPR and member of the standing Committee of Legal and Justice Affairs of the House

measures to make accountable those who violated human right in the pretext of policing demonstrations and redress the victims as well.³²⁸ Lack of clear law for regulation of all stake holders is apparent, according to an interviewee with the police commission,³²⁹ “this was one area where serious problem was identified in the past disturbances, because there were no clear law that identifies the powers and duties of police officers while policing such disturbances” he said. He added “On one hand, the police have the duty to maintain constitutional order, peace and security and on the other hand they bear the duty to protect human rights in doing their activities. But the only laws we use to balance these confronting interests are the FDRE constitution and the police establishment proclamation and the council of ministers police regulation. Most of the officers do not have detail knowledge of these laws and cannot operate keeping balance between the human right and peace and security. Therefore, we have recommended the concerned organs to amend the police regulation laws based on this fact. In the past events of demonstrations we have highly depended on operational rules and principles of the institution”³³⁰The other interviewee from EHRC³³¹ said “as the country’s laws for the regulation of the right to demonstration does not meet the current needs of the country and the existing law on use of force are inadequate, especially to determine responsibility and accountability for use of force and violation of human rights, it has highly impacted our work, particularly the investigation we conducted. Even, to complement the laws of use of force of the country we used the UN laws on use of force and firearms. Therefore, in the absence of laws that addresses the right and the use of force to limit the right, we used other international human rights laws, as this is allowed under our Constitution”³³²

328.FBC May 30, 2018, Premier Reaffirmed Government’s Commitment to Protect Human Rights of Citizens, available at <http://www.gcao.gov.et/web/en/-/premier-reaffirmed-government-s-commitment-to-protect-human-rights-of-citizens> “The meeting mainly focused on human rights violations in Ethiopia and lack of commitments by federal and regional institutions in accepting and implementing the Commission's decisions, the Commissioner said in a press conference issued following the meeting” [accessed on June 7, 2018]

329.Commissioner GezahignGebreHiwot, Legal Affairs Division Directorate, at Ethiopian Federal Police Commission, interview conducted on 22 May 2018.

330. Commissioner GezahignGebreHiwot, Legal Affairs Division Directorate, at Ethiopian Federal Police Commission, interview conducted on 22 May 2018

331. AtoYosefGirma, EHRC investigator and member of investigation committee of the 2008 human rights situations in the country

332. AtoYosefGirma, EHRC investigator and member of investigation committee of the 2008 human rights situations in the country

From these interviewees' responses, it is clear that the legal gaps and loopholes have highly affected the human rights protection situations of the country, the reality which the researcher is also congruent with. The experts in the field identified inter alia lack of adequate and clear law or overly permissive law on use of force and non-existence of internal and external accountability mechanisms as contributing factors for police killings and other human rights violations in a country where police killings as a consequence of excessive use of force were prevalent.³³³This, is because, enacting adequate, clear and comprehensive laws in line with international human rights laws is the first step in protection of human rights in policing demonstrations. Therefore, in Ethiopia also, the human rights violations during policing demonstrations could be safely associated to the absence of adequate, clear and comprehensive laws for the regulation of the use of force and firearms by law enforcement officials, on their accountabilities for the use of force and firearms, effective control and oversight mechanisms on the activities of law enforcement agencies and officials and effective remedy for human rights violation sustained during policing demonstrations.

This has detrimental effect on the protection of human rights of the country as a whole and the legitimacy and credibility of the system of human rights protection, including on the police, human rights institutions, the judiciary and others. Where there is no law how can one determine accountability, control on and oversight of executive bodies and others, issues that are important and even basis for the protection of human rights in policing demonstrations? It is based on these human rights situations in the country that donors, human rights organizations and supervisory bodies call on the government of Ethiopia to;

“end the use of excessive force by security forces, conduct a full, credible, and transparent investigation into the killings and instances of excessive use of force that took place as a result of demonstrations in the Oromia and Amhara regions and hold security forces accountable for wrongdoing through public proceedings, respect right to peaceful demonstration in keeping with Articles 30 of the Ethiopian constitution, guarantee allow a rapporteur appointed by the UN to conduct an independent examination of the state of human rights in Ethiopia, hold accountable those responsible for killing, torturing, and detaining innocent civilians who exercised their

333. Heyns, Ch Extrajudicial, Summary or Arbitrary Executions Follow up to country recommendations: Albania, A/HRC/23/47/Add.4

constitutional rights and repeal proclamations that allow for the arrest and detention of peaceful demonstrators”³³⁴

In general, from these reports, resolutions, investigation results and response of interview respondent’s, the researcher concludes that, despite differences in casualties of death and injury, detentions and other human rights violations were prevalent as related with policing demonstrations in the country. There were impunity of law enforcement officials for violation of human rights, the control and oversight were not responsive to the then situation and there were problems related with effective remedy for victims of human rights which are not addressed till today while the researcher writing this research. Therefore, the protections of human rights in policing demonstrations during the past incidents of demonstrations in most parts of the country were not in line with the human rights protection obligations of the country.

The general picture of the protection of the right to peaceful demonstration and protection of human rights in the context of policing demonstrations in the country, both in law and practice is not in line with the human rights obligations of the country, as it does not meet the requirements of human rights laws standards and best practices available in this regard.

3.6.Conclusion

The sources of obligation of Ethiopia to protect the right to peaceful demonstration are the ICCPR, ICEAFRD, CRC and ACHPR to which the country is a party and also the UDHR and domestically, the FDRE Constitution and the peaceful demonstration proclamations are identified. The obligation assumed under these instruments by the country is an obligation to respect and to ensure to all individuals within or subject to its territory the right to peaceful demonstration, by adopting necessary measures, like legislative, judicial, administrative, and educative and other appropriate measures. The obligation assumed under these instruments as related with policing of demonstrations and protection of human rights are inter alia refraining from violation of human rights and also taking appropriate steps and measures to safeguard and protect the human rights of demonstrators and bystanders as well as others like the Medias and journalists, by putting in place an appropriate legal and administrative framework which defines

334.H. RES. 128 (2017) supra n-319, see also other resolutions referred herein have similar message; describe the human rights situations of the country, condemn the situation and urge for measures addressing the situations.

the limited circumstances in which law enforcement officials may use force and firearms, in line with international standards. In line with these obligations when the Ethiopian experience of protection of the right to peaceful demonstration and protection of human rights in policing demonstrations is explored it is identified in this chapter that the country does not have any policy frame work and guideline that elaborates on the roles, responsibilities, functions and accountabilities of all stakeholders in the administration of the right to peaceful demonstration, which has negatively affected the protection of the human rights in policing demonstration in the country. Again the laws which regulate the right to peaceful demonstration in the country; the constitution has clear gap in providing the duties of those regulating the right, as it only provides limitations of the right and leaves out the obligations of these bodies, particularly as it does not contain certain fundamental principles of legality, necessity, impartiality and proportionality in decision making which has a detrimental effect on the protection of human rights in the country. The peaceful demonstration proclamation also besides protecting the right to peaceful demonstration does not impose adequate and comprehensive duties on the officials who participate in the regulations of the right to peaceful demonstration, as it does not address issues of use of force, accountability and control and oversight mechanisms in policing demonstrations. The use of force in the country is regulated under the council of ministers regulations of police officers as a general, which could applied to policing demonstrations, which itself is inadequate to address even the major issues in policing demonstrations; like accountability, control and oversight and effective remedy for victims of arbitrary use of force or firearms. Therefore, the Ethiopian experiences of human rights protection in policing demonstrations is found to be below human rights laws and best practices of policing demonstrations, both in laws and practices which is against the human rights obligations of the country domestically as well as internationally.

CHAPTER FOUR

4. CONCLUSION AND RECOMMENDATIONS

4.1. Conclusion

This research is undertaken to explore whether Ethiopia has adequate and comprehensive policy guidelines and legal frameworks for policing demonstrations which enables ensure human rights protection during policing demonstrations. As such it mainly aims at identification of the existence of policy guidelines for use of force and firearms in policing demonstrations, adequate and comprehensive legal frame work that governs policing demonstrations, accountability of law enforcement officials and control and oversight of activities of law enforcement official in policing demonstrations and effective remedy and redress for victims of human rights in relation to policing demonstrations. To achieve these objectives, the researcher explored how the right to peaceful demonstration is recognized and protected under international and domestic human rights instruments. As such, under international human rights, the right to peaceful demonstration is recognized under the right to freedom of assembly, as one type of assembly and as a form of exercising fundamental freedoms and all human rights. As such the protection extended to and limitations imposed on the exercise of the right to freedom of peaceful assembly applies to the right to peaceful demonstration *mutatis mutandis*. However, domestically, the right is recognized distinctly under the FDRE Constitution and also the peaceful demonstration proclamation.

The obligation of state party under international human rights law, requires states to ensure her domestic regulations of the right to peaceful demonstrations is in line with the international human rights instrument that recognize and protect the right, in this case the ICCPR and ACHPR mainly. This obligation undertaken by a state is an obligation to give effect to the rights recognized by the instrument by adopting laws or other necessary measures, which enables the country to discharge its obligation under the instrument. As with the state duty of protection of the right to peaceful demonstration, it starts from coining of policy and legal frameworks domestically that regulates the right to peaceful demonstration, the use of force and firearms in policing demonstrations, control and oversight and effective remedy and redress for victims of human rights violations that conforms to international human rights laws and commitments of the state under consideration and interpretation and implementation these laws accordingly. The domestic regulations of these major issues are required to follow international human rights laws,

standards and best practices. Mainly they are required to stick to the content and spirit of the UN basic principles on the use of force and firearms by law enforcement officials, the code of conduct for law enforcement officials and the basic principles of human rights governing the use of force, which form a comprehensive system of regulation of policing activities. It is when these issues are comprehensively and adequately regulated in compliance with the international human rights, standards and best practices in domestic regulations of the right to peaceful demonstration that such domestic regulations can enable the country under consideration to ensure the protection of the right to peaceful demonstration and protection of human rights in policing demonstrations and ultimately enables to discharge its obligations of protection of human rights.

Ethiopia owes obligations to protect the right to peaceful demonstration and human rights in policing demonstrations as emanating from its commitment to the major human rights instruments recognizing the right to freedom of peaceful assembly like the UDHR ICCPR, ICEAFRD, CRC and ACHPR and its domestic laws; the FDRE Constitution and the peaceful demonstration and public political meetings. Thus, the country has an obligation to respect and to ensure to all individuals within or subject to its territory the right to peaceful demonstration as recognized and protected under these sources of obligations of the country by adopting necessary measures, like legislative, judicial, administrative, educative and other appropriate measures in order to fulfill its legal obligations. Further, under this obligation, the protection of human rights in policing demonstrations requires the country refraining from violation of human rights and also taking appropriate steps and measures to safeguard and protect the human rights of demonstrators and bystanders as well as others like the Medias and journalists, by putting in place an appropriate legal and administrative framework which defines the limited circumstances in which law enforcement officials may use force and firearms, in line with its obligations.

In this regard, it is found in this research that the country does not have any policy frame work and guideline that elaborates on the roles, responsibilities , functions and accountabilities all stakeholders in the administration of the right to peaceful demonstration and which has negatively affected the protection of the human rights in policing demonstration in the country, and the laws which regulate the right to peaceful demonstration in the country; the constitution has clear gap in providing the duties of those regulating the right, as it only provides limitations of the right and leaves out the obligations of these regulatory bodies, particularly it does not

contain certain fundamental principles of legality and proportionality in decision making which has a detrimental effect on the protection of human rights in the country. Also, the peaceful demonstration proclamation, beside protecting the right to peaceful demonstration, does not impose adequate and comprehensive duties on the officials who participate in the regulations of the right to peaceful demonstration, as it does not address issues of use of force, accountability and control and oversight mechanisms and remedies for violations sustained in policing demonstrations, which are a clear gaps and loopholes. The use of force in the country is regulated by the council of ministers regulations of police officers, which could be applied in policing demonstrations. But, this law itself is inadequate to address even the major issues in policing demonstrations; like accountability, control and oversight and effective remedy for victims of arbitrary use of force or firearms.

The policy gap and gaps and loopholes in the laws applicable for policing demonstrations has greatly impacted the situations of human rights protection in the country in the past years incidents of demonstrations in the most parts of the country. Most of the activities in the policing were performed based on operational frameworks which are highly influenced by difference in capacities of officials and availabilities of facilities. Therefore, the Ethiopian experiences of human rights protection in policing demonstrations is found to be below human rights laws and best practices of policing demonstrations, both in laws and practices which is against the human rights obligations of the country, domestically as well as internationally.

4.2.Recommendations

In the previous discussion, the researcher has identified that the Ethiopian experience of protection of the right to peaceful demonstration and human rights in policing demonstrations is found to be below human rights laws and best practices of policing demonstrations, both in laws and practices which is against the human rights obligations of the country under domestic and international human rights laws.

Therefore, based on these findings of the research, the researcher recommends the following to be considered by the government;

- I. Amend Article -30 of the FDRE Constitution- The constitution is the supreme law of the land and the basic legal framework for the promotion and protection of human rights in the country. As such, it should be compliant with international human rights laws, in providing the basics of protection and promotion of human rights, particularly with the ICCPR and ACHPR, as the regulation of the right to peaceful demonstration is concerned. In this regard, the Constitution should provide the positive statements of the right and also the duty of state to protect and fulfill the right. However, the FDRE Constitution recognizes the right to peaceful demonstration and lists ground of limitation of the right but does not contain guarantees for preventing arbitrary restrictions such as legality and proportionality in an explicit manner. This could make problems in applying the constitutional provision. To solve this problem, the researcher recommends the government of Ethiopia to amend article 30 of the FDRE Constitution to expressly contain principles of guarantees against arbitrary restrictions and actions, such as legality and proportionality.
- II. Adopting new implementing law of the right to peaceful demonstration of the country- A Proclamation to Establish the Procedures for Peaceful Demonstration and Public Political Meeting, Proclamation No 3 of 1991, which is the substantive law that regulates peaceful demonstration in Ethiopia today has many gaps and loopholes, particularly on the issues of use of force and firearms by and accountabilities of law enforcement officials and institutions, control and oversight mechanisms and issues of remedy and redress for human rights violation and abuse in relation to exercise of the right to peaceful demonstration. Therefore, the researcher recommends the HPR to repeal this law and

adopt new implementing law in place of this inadequate law or amend this law in a way it can comprehensively address these issues to better protect the right to peaceful demonstration and human rights in policing demonstrations in Ethiopia.

- III. Develop national policy on the use of force in law enforcement operations-Developing national policy on the use of force in law enforcement operations serves as a basis for developing further guidance on the use of force in policing peaceful demonstrations and also provides a coherent approach in areas such as reporting, oversight and training. Therefore, the researcher recommends the government of Ethiopia to develop a national policy on the use of force in law enforcement operations which could be used in policing peaceful demonstrations, gatherings and other similar events. In this regard, the researcher recommends the government of Ethiopia to borrow experiences from other jurisdictions having ripe policy instrument in this regard like the South Africa, who have better experiences.
- IV. Establish an independent oversight body on the operations of law enforcement officials-Such an independent body should always provide oversight, on behalf of the public, in the work of the law enforcement officials and ensure accountability, impartiality and respect for human rights in policing. This can enhance the credibility of law enforcement officials and their accountability. Therefore, the researcher recommends the government of Ethiopia to constitute such an independent oversight body that can exercise oversight, on behalf of the public, in the work of the law enforcement officials and ensure accountability, impartiality and respect for human rights in policing independently. In this area the government can draw lessons from both countries mentioned in this research for comparative experiences of policing activities, the republic of South Africa and Kenya, who has such an institution and experiences.

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