**HANDOUT SIX**

**UNIT SIX: HIERARCHY OF LAWS UNIT OBJECTIVES**

**5.1) HIERARCHY OF LAWS UNDER THE UNITARY FORM OF ETHIOPIA**

Under this topic, we will be discussing hierarchy of laws in the 1955 Revised Constitution and the 1987 Constitution of the People’s Democratic Republic of Ethiopia. Both these constitutions established the unitary form of government in Ethiopia.

**5.1.1) THE HIERARCHY OF LAWS UNDER THE REVISED CONSTITUTION OF 1955 AND THE PDRE CONSTITUTION OF 1987[Ayele Bogale; 1999: 23-60]**

**Though the present constitution is basically different from its predecessors in its approach of treating the status of laws, since we can not divorce the past from the present in most cases it would be worthwhile, if not indispensable, to have a bird’s eye view of the status of laws under the 1955 Revised Constitution and the 1987 PDRE Constitution.**

**A) HIERARCHY OF LAWS UNDER THE REVISED CONSTITUTION OF 1955**

With regard to hierarchy of laws, Art. 122 of **the Constitution declared that all primary and subordinate legislations were inferior to the Constitution**. Thus, “in the hierarch of laws, on **top is the Constitution and below are other legislation**. Accordingly, one can understand the hierarchical relation of the laws under the Revised Constitution by reading Arts 122 and 64 of the said Constitution. The latter reads as: **“every one in the empire has the duty to respect and obey the Constitution, laws, decrees, Orders and regulations of the Empire.**” Here, the laws are mentioned in hierarchical order **from the higher to the lower.** It is clear that the Constitution is on top and other legislation are below. Pursuant to this Article, all citizens were primarily bound by the Constitution of 1955. Thus, their acts should be consistent to it. The supremacy of the Revised Constitution could also be understood from the oaths that the officials of the then government used to take under Arts. 20 through 251 of the Constitution. **While taking the oath they were required to promise to respect and defend the Constitution.**

**Which one does prevail if conflict arises between international treaties and the Constitution?** One may argue that the latter (i.e. the Constitution) should prevail, because the **Constitution is deemed to be the direct expression of the people and they all acts** of what ever their kind should be consistent to it.

**B) TYPES OF LEGISLATION AND THEIR HIERARCHY UNDER THE REVISED CONSTITUTION OF 1955**

**Legislation can be categorized as primary and subordinate.** The former, that is **primary legislation are laws that are made by the legislative body, that is, by the House or Houses of parliament as the case may be.** Thus, in the case, under consideration, Chamber of deputies and senate of Ethiopia made such laws.

Under the Revised Constitution of 1955, **primary legislation include proclamations, decrees, and Orders, which were made by the Emperor himself.**

**Although both proclamations and decrees were under the category of primary legislation,** in so far as **proclamations were enacted by the concordant wills of the two supreme law making bodies (Parliament and Emperor), they assumed supremacy over decrees.** Because the latter was made by a single will that is, only by the will of the Emperor pending decision on them by the Parliament. **Nevertheless, this was true only until the time that they were upgraded to the status of proclamations by the approval of the Parliament.**

Legislation were not only of primary nature, they were also subordinate in character. In the words of Salmond; **Subordinate legislation [are]that which proceed from any authority other than the sovereign power and [are] there fore dependent for [their] continued existence and validity on some superior or a supreme authority.** They may be regarded as having their origin in a delegation of the power of parliament to inferior authorities, which in the exercise of their delegated function remain subject to the control of sovereign legislator.

In other words, subordinate (subsidiary) legislation are those administrative orders and regulations which are made by executive authorities having derived their law making power from the legislator by way of delegation. Thus, **so long as the executive authorities are granted the power to enact such laws by the legislator the laws made by them should be consistent to the laws enacted by the legislator.**

Subsidiary legislation at the time under consideration covered: **orders, which were made by each ministry; regulations; legal notice; general notice; and notice of approval.** Orders made at that time were of **two types**. **They were those with the capital letters and passed by the Emperor himself and those with the small letters, which were issued by the office of each ministry. The one, which was made by the Emperor by his prerogative power as provided in Art 27 of the Constitution, was not categorized under this type of legislation.** Since the Emperor was empowered to enact this type of order by the Constitution and thus **it belonged to the group of primary legislation.** Therefore, the type of order, which fell under the category of subordinate legislation, was the one, which was mentioned in Art. 144 (ministerial order) of the Constitution.

Like orders, **regulations were mentioned under Art. 64 of the Constitution.** Although, the other types of legislation such as legal notice, general notice and notice of approval were not clearly indicated in the Constitution, they used to appear in the a Negarit Gazetta having the force of law.

**5.1.2) HIERARCHY OF LAWS UNDER THE PDRE CONSTITUTION OF 1987**

**The Constitution as the basic law is regarded to be the source of all laws and thus those laws which derive their validity from it have to be in full ordinance** with the sprit of the constitution. Conformably to this, Art. 118 of the PDRE Constitution declared that it was superior to all other laws. The PDRE Constitution was binding on all departments and offices of the government and hence any act made by them in Contradiction of the said constitution would be invalid.

Under the PDRE Constitution, **the supreme organ of state power was the National “Shengo (Art .62 of the PDRE Constitution).** Thus, the Constitution in its Art .63 granted it the power to enact laws on matters of national interest. However, the fact that National Shengo was empowered to determine on all issues having national importance does not mean that it was free from any constitutional limitation. This limitation can be understood from the declaration of the Constitution itself [Art 118]. **In effect, this organ was subordinate to the PDRE Constitution. Hence, all laws made by it were also subordinate to the Constitution.**

**Unlike the Revised Constitution, the PDRE Constitution did not grant international treaties the status of supreme law.** With respect to treaties Art. 82(1) (D) of the Constitution stated that the Council of State would, “ratify and denounce international treaties.” Thus, from this provision it is possible to say that **international treaties under the PDRE Constitution were on equal footing with the decrees proclaimed by the Council of State.** This is because they came into application by the act of this organ, that is to say, by the ratification of the Council of State. As a result, the Constitution alone was superior to all laws including international treaties.

The other point that can show the special position of the Constitution is its formal aspect. This aspect includes the adoption and the amendment of the Constitution. However, the method by which the Constitution is adopted is not the same. It can be adopted either by referendum or by the constitutional assembly or by the act of the legislator as the case may be. In this regard, even though the majority of the (socialist) constitutions have been adopted through the normal legislative procedure in the normal legislative body, the 1987 **PDRE Constitution was adopted by referendum.**

**Like in the case of its adoption, the amendment of the Constitution also differs from the normal law making process. It requires a qualified majority of vote in the legislative body.** In like manner, the PDRE Constitution provided a special majority of vote under Art. 119 of the same. It says, “The constitution of the people’s democratic republic of Ethiopia may be amended only by a three fourth majority decision of the members of the National “Shengo”. Therefore, from all these points we can understand that the PDRE constitution was on top on the ladder of hierarchy.

What were the legislation and their hierarchy at that time?

We have seen in the preceding part of this material that the National “Shengo” was the supreme legislative body. Consequently, **the laws enacted by this body and by its standing bodies (the President and Council of State) constituted the primary legislation and thus they stood second in hierarchy to the Constitution.** The forms of legislation passed by those organs included **proclamations**, which were enacted by the National “Shengo”, **decrees and special decrees, which were made by the Council of State and decrees and special decrees that were enacted by the office of the President.** However, the fact that all these types of legislation were under the category of primary legislation does not imply that they were on equal footing in hierarchy.

**The hierarchy between such laws can be seen in connection with the power relationship that existed among the makers themselves.** Thus, for our purpose, we need those powers the national “shengo”, the Council of States and the Office of the President. Accordingly, one can understand from the close reading of chapters nine, ten and eleven of the PDRE Constitution that **the National “Shengo” was the highest authority and the other two (the Council of State and the President of the Republic) were accountable to it.** As a result, the legislation made by the National “Shengo” **(Proclamation) were superior to the other legislation (decrees and special decrees) passed by the Council of State and by the Office of the President.**

Since proclamations were enacted by the superior organ(National Shengo), they were superior to decrees ands special decrees.

However, **the supremacy of the proclamations over the presidential special decrees and the special decrees of the Council of State was not always true.** Because there were certain circumstances in which such decrees came to have equal authority with the statutes enacted by the National “Shengo” These special decrees were enacted by the Council of State and by the President of the Republic as provided in Arts 83 of the PDRE Constitution respectively. As stated in the Articles, both the special decrees of the Council of State and of the President were issued when compelling circumstances necessitated their issuance. The issuance of these decrees was done between the sessions of the National “Shengo”.

According to Art, 83 (3) of the constitution, **the special decree of the Council of state should be transmitted for consideration by the National “Shengo” at its next session.** This was also held well in the case of the special presidential decrees [Art 87 (2) of the PDRE constitution]. Therefore, after consideration, if the National “Shengo” approved such. **Special decrees to be upgraded to proclamations, they would appear in the Negarit Gazetta, in the form of the said legislation (Proclamations).** However, if the “Shengo” refuted them, they would cease to continue in force.

Contrary to this, **ordinary decrees those were legislated by the Council of State and by the President in accordance with Arts. 82 and 86 of the Constitution consecutively were lower in hierarchy than the proclamations and the special decrees of the Council of State and of the President.** Both the Council of State and the President were conferred with the power to make such decrees at any time when legislation of such types were required for the exercise of their powers and duties given to them under the Constitution. For this reason, **the two organs were not expected to submit those decrees to the National “Shengo” for approval.**

What was the hierarchy, if any, between the decrees and the special decrees made by the Council of State, on the one hand, and the decrees and the special decrees passed by the President, on the other hand? As indicated in the foregoing discussion, both the Council of State and the President were the standing bodies of the National “Shengo”. Therefore, it seems that **the two organs (Council of State and the Office of the President) had equal rank in the power order**. For this reason, their relationship was not vertical but rather it was horizontal.

Art 92(1) of the PDRE **Constitution authorized the Council of Ministers to issue regulations and directives**. Therefore, in such a case so long as the Council of Ministers did not derive the right to do so from the primary legislation (proclamations), the regulations issued by it were non-derivative and thus they fell with in the group of the primary legislation. Never the less, the fact that such regulations were categorized as primary legislation does not show us that they had equal status with proclamations. **What made them primary legislation was their being enacted by the organ empowered to do so by the Constitution, nothing else**

Regarding the position of these regulations on the ladder of hierarchy of laws, we can say that in so far as the Council of Ministers was lower in the power order than the National “Shengo” and its permanent bodies (sections) **the laws enacted by this organ were subordinate to the proclamations and decrees of whatever kind they be.** Moreover, the Council of Ministers and each ministry had the right to issue regulations and directives. **However, their position on the ladder of hierarchy was below the non derivative regulations issued by the same organ** (Council of Ministers).

In addition, the “Shengo” of **the administrative or autonomous regions at the time under discussion were empowered by the Constitution** of the PDRE to issue directives. Their right to issue the directives was provided in Art, 97 (2) and (4) of the Constitution. Thus, so long as the “Shengos” of the administrative or autonomous regions derived their power to issue those directives from the Constitution itself, such legislation were non- derivative in character. **However their being non-derivative in character did not make them higher or equal in hierarchy with any legislation enacted by the central authorities. This is because, in a unitary state, there is only one central system of government, parliament, cabinet, head of state, high court e.t.c**. The powers and duties of the organs of this system of government cover in principle, the whole territory of the country in all administrative levels.

**All state’s organs below the level of the central system of government are organs of local government and there for subordinate to the central organs.**

Therefore, **the directives issued by the “Shengos” of the administrative or autonomous regions were even lower in hierarchy than the derivative regulations and directives issued by the Council of Ministers and each ministry.**

**5.2) THE HIERARCHY OF LAWS WITH IN THE PRESENT LEGAL STRUCTURE OF ETHIOPIA**

The Constitution of 1994 guaranteed the peoples, nation and nationalities of Ethiopia their right to self-determination and put an end to the long-lived unitary form of government. Thus, **Ethiopia adopted a federal state structure**

**Under the present federal structure, the nine autonomous states which constitute FDRE, enjoy the right to have their say on their own affairs.** Hence, **they have their own laws made by their own state councils in the same way as what the central government does have. Thus, we do have two sets of laws: State’s and federals.** Accordingly, we will see the hierarchical relationship of the states/regions/ and the federal government.

**5.2.1) THE SUPREMACY OF THE FDRE CONSTITUTION**

A federal constitution is a covenant of the union by which federal relationship is established. So as to make this relation perpetual, the covenant should be reduced to a written document.

Furthermore, in order to avoid misunderstanding arising there from, the terms of the agreement should be simple and understandable.

**The federal constitution, being the source of powers of both the central and the regional governments, is believed to be the supreme law.** In the original sense of the term as used by Bryce, it is “rigid”. So as to say that a constitution is supreme, we need to see its declaration to the effect that the power of the legislator to alter the constitution is either limited or non existent. In this respect, the federal constitution usually embodies a provision, which prohibits both the legislators of the whole country and of the parts to alter the constitution unilaterally. **The supremacy of the constitution and its rigidity are the essential characteristics of the federal constitution and they are also the manifestations of the idea of federalism itself.**

The 1994 FDRE Constitution in its Art 9(1) states that the **Constitution is the supreme law of the land. It reads as “any law, customary practice, and act of an agency of government or official act that contravenes the Constitution is invalid.”** In this Article, the phrase “any law” is used to cover all laws, which are now in force both at the central and at the regional levels. This can be understood from the reading of Arts. 50 through 55 in conjunction with Art. 9(1) of this Constitution. **Therefore, the Constitution of the FDRE is superior to all federal and state laws including the state constitutions. This Constitution is binding on all the authorities of both the federal and of the regional states [Art 9(3) of the Constitution].** Hence, all acts made by their authorities in contravention of the supreme law are invalid.

Pursuant to Art. 9(4) of the Constitution, **all international agreements ratified by Ethiopia are integral parts of the laws of the country.** According to this sub-Article, since international treaties (agreements) are part of the laws of Ethiopia, **they should be included under the phrase “any law” in sub-Article one of the present Article.** We have said above that the said phrase is used to cover all laws (federal and state) that are subordinate to the Constitution. **Thus, it would be fair to conclude that international treaties, being part of those laws, are lower in hierarchy than the Constitution.**

By virtue of Art 13(2) of the FDRE Constitution, the chapter on fundamental rights and freedoms:

**Shall be interpreted in conformity with the Universal Declaration of Human Rights, international human rights covenants, humanitarian convention and with the principles of other relevant international instruments, which Ethiopia has accepted or ratified.**

Does the declaration of the above sub-Article make the international instruments mentioned superior or equal in hierarchy to the Constitution? If it does so, does not it contradict the conclusion that we have arrived at, in the proceeding paragraph, which says that international agreements are positioned below the Constitution on the ladder of hierarchy?

Of course, the inclusion of the term “**conformity**” under Article 13(2) of the FDRE Constitution **makes some people understand the position of international instruments indicated under the said sub-article as equal as the Constitution of FDRE**. In support of this position, Kenenissa said that, “one possible way to come out of this /dead lock/ is to make the international human rights instruments as supreme as the Constitution.” However, while saying this, he did not make clear as to when they become as supreme as the Constitution. Nevertheless, can one say from the reading of Article 13(2) of this Constitution that the international instruments are paramount to the provision under chapter three of the same in all cases? Or does **the “conformity” in Art 13(2) of the same imply that the provisions dealing with the fundamental rights and freedoms under the 1994 FDRE Constitution must conform to the instruments in question even there is no need for interpretation?** As can be understood from this short discussion, the position of Kenenissa seems to answer the above question in the affirmative. In dealing with this issue, he tended to give more emphasis to the “conformity” than the “interpretation”. **Accordingly, his stand appears to make the instruments in issue as supreme as the Constitution of FDRE even when there is no need for interpretation.**

However, in the opinion of Ayele, Art 13(2) of the Constitution does not make the international instruments paramount to the provisions under chapter three of the same in all cases. Because as it is clearly provided under Art 13(2) of the PDRE Constitution, **the need to conform to those “international standards for the bill of rights” is required only in case of interpretation.** In other words, **such international standards are used as references when the provisions under the chapter on fundamental rights and freedoms of the Constitution become vague, ambiguous, equivocal, etc.** Because it is, in such cases, that the rule of interpretation comes into application. However, if the provisions under chapter three of the Constitution become clear, the reference to the said instruments is not required. Therefore, Art 13(2) of the FDRE Constitution is there to serve for the sake of clarity but not to create contradiction with the basic principle enshrined under Art 9(1) of the same. In short, Ayele seems to conclude that the **Constitution is superior.**

**5.2.2) THE STATUS OF INTERNATIONAL TREATIES VIS-À-VIS OTHER DOMESTIC LAWS**

As we have discussed in the preceding part of this material, **the status of international treaties under the present legal system of Ethiopia is not clear. Thus, it is only by interpretation that we can determine their position.**

In respect of the status of treaty in our present legal structure, Ayele has already reached on the conclusion by reading Art 9(1&4) of the FDRE Constitution that they are subordinate to the Constitution. **However, this Article except stating in its sub-Article four that international agreements are the integral part of the laws of Ethiopia, it does not indicate as to where their position lies in relation to other laws (federal and state).** As said before, in case, where determining hierarchy of laws is difficult, it is submitted that the identification of the power order of the respective makers is of great importance. **Thus, in order to know the status of treaties in Ethiopia, it is significant to identify the organ empowered to ratify treaties.**

As it is clearly indicated in the Constitution of the FDRE, **the House of Peoples’ Representatives is conferred the power to ratify international agreements negotiated and signed by the Council of Ministers [Art. 55(12) of the FDRE Constitution].**

**This organ is also empowered by the Constitution to enact proclamations (federal statute) [Art 55 of the same].** **Thus, both treaties and proclamations come in to force by the act of this organ.** Hence, now a question may arise with regard to the hierarchy between the treaties and proclamations. To put it in question, which one is superior in hierarchy between the treaties and proclamations? Which one is superior in hierarchy when conflict arises between the two? **When laws are passed by the same body, the rule is that such laws are on equal stand on the ladder of hierarchy. Therefore, so long as international treaties and proclamations are ratified and enacted by the same body (the House of Peoples’ Representatives), they have equal status on the ladder of hierarchy.**

However, in order to say that international treaties have such position on the ladder of hierarchy, they have to be concluded in accordance with and the spirit of the Constitution of FDRE. In this regard, the present Constitution in its Art 86 **asserts that international agreements concluded in the promotion of the external relation should respect and accord with the sovereignty of Ethiopia and the interest of its people**. On this point, Dr. Fasil[1997] wrote: “taking a lesson from history, the Ethiopian Constitution insists on making it a matter of record that the promotion of foreign relation must accord with the interest of peoples of Ethiopia”. Therefore, it is only so long as they conform to the declaration of Article 86 of the Constitution that international treaties being ratified by the same body which enacts the proclamations that they can stand equal in hierarchy with the latter. In such a case, **if conflict arises between the two (treaty and proclamation) the one which is subsequent in time prevail over the other which is prior in time.**

**It is essential to note that proclamations are normally higher in hierarchy than other federal legislation. Thus, in so far as we have reached on the conclusion that proclamations and treaties have equal status on the ladder of hierarchy, Ayele argues that those laws that are subordinate to the proclamations are also inferior to international treaties.**

**Is there a hierarchical relationship between international agreements and state/regional laws?**

As already mentioned above, **the FDRE Constitution does not clearly show the relation of international treaties with the other domestic laws including laws of regions.** However, although there is no a clear indication in the Constitution as regards the relation between international treaties and state laws, to the opinion of Ayele, the reading of chapter five of the Constitution is of some help to this effect. In its chapter five, **the Constitution states that the federal government “shall negotiate and ratify international agreements”[Art 54(8) of the Constitution]. Hence, the making of international treaties falls under the exclusive jurisdiction of the federal government.** In a federal system, **there is no a superior and inferior relation of laws that are enacted on matters falling under the federal and the state lists.** Similarly, in so far as international agreements fall under the federal list, **we can not establish a hierarchical order between such agreements and the state laws.** Nevertheless, since the 1994 FDRE **Constitution imposes the states the duty to respect the federal power, international agreements that are negotiated and ratified by the federal authorities are not affected by the state laws.**

**5.2.3) FEDERAL LEGISLATION AND THEIR HIERARCHY**

As already mentioned in the foregoing part of this material **the position of federal legislation on the ladder of hierarchy is below the federal Constitution.** We have seen that **primary legislation normally refers to the enactments made by the supreme legislative organ of the country to which it belongs. Therefore, in our case, federal statutes (proclamations) enacted by the House of Peoples’ Representatives, which is the supreme legislative organ of the federal government [Art 50 (3) of the Constitution] fall under this group of legislation (primary legislation).**

In addition to this, **there are certain circumstances in which the primary legislation may include laws that are issued by the executive (subordinate) authorities.** However, in such a case, for those laws to be categorized under the above group of legislation, **the authorities enacting them should be empowered to do so by the supreme law (constitution).** In connection with this, **the FDRE Constitution confers the Council of Ministers the power to proclaim a decree of emergency** [Art. 93 of the Constitution]. Hence, such decrees passed by this organ may also **fall under the said category of laws**.

Nevertheless, **the fact that both the proclamations and the decrees of emergency belong to the same group of law does not mean that they have equal authority in the hierarchy of laws.** This is because, as a rule, in order to say that legislation made by different authorities are on equal footing in hierarchy; **their makers should be on the same position in the power order.** However, this is not true in the case under consideration. As said shortly before, the House of Peoples’ Representatives is the supreme authority of the federal government. As a result, **the federal statutes (proclamations) enacted by it are superior to all other laws made by the federal authorities**. Accordingly, **the Council of Ministers, being a federal authority, is subordinate to the House of Peoples’ Representatives and thus the laws made by it are inferior to the proclamations.**

**However, the status of the decrees of emergency proclaimed by the Council of Ministers is exceptions to what is said above.** This is because, **the Constitution empowers the Council of Ministers to suspend even democratic and political right provided there under through the decrees issued by it in time of emergency.** Therefore, for stronger reason, it is possible to say that **the decrees of emergency proclaimed by the Council of Ministers can repeal the proclamations.**

Unlike the decrees, those were issued under the Revised Constitution of 1955 and the Constitution of the PDRE, **the decrees that are proclaimed under the FDRE Constitution have short span of life.** In other words, **they are expected to stay as decrees for a maximum of 15 days as it is indicated in Art 93 (2) of the Constitution.**

**If the House of Peoples’ Representatives is in session, the decrees of emergency proclaimed by the Council of Ministers are submitted to it within 48 hours of its adoption. However, if the House of Peoples’ Representatives is not in session, the decree is submitted to it within 15 days of its adoption. If such decree is approved by a two-thirds majority vote of the House, then it will be promulgated as a proclamation of emergency [Art. 55(8) of the Constitution].**

However, **if the decree does not obtain the required majority vote, it will be annulled.** The practice in the previous two constitutions was different from this, because the decrees in both the Constitution of 1955 ad 1987 were proclaimed only when the parliaments were not in session and they were submitted to them at their next session. For this reason, **the decrees issued under the two Constitutions might be in force for a longer period of time.** This was especially true in the case of decrees issued under the PDRE Constitution because the National “Shengo” which was the supreme legislator under this Constitution was not in session through out the year. It was only once in a year that it had a regular session [Art 67 of the PDRE Constitution].

**The other group of law (derivative legislation) that are issued at the federal level include regulations and directives. The Council of Minister and each ministry issue these legislation**. In this case, the Council of Ministers derives its power to make the regulations from the supreme legislator i.e. the House of Peoples’ Representatives through the primary legislation. Consequently, **the position of the regulations and directives on the ladder of hierarchy is below the proclamations and decrees.** However, in so far as the regulations are passed by the Council of Ministers, **they are higher in hierarchy than the directives passed by each ministry**.

Generally, as we have seen above, the legislation that are enacted at the federal level are not as such of many kinds. Therefore, their hierarchy can be easily identified.

**5.2.4) STATE LAWS AND THEIR HIERARCHY**

**At present, the Federal Democratic Republic of Ethiopia comprises nine states** [Art 47(1) of the Constitution]. They are: Tigray; Afar; Amhara; Oromia; Somali; Benshangul (Gumuz); Southern Nations, Nationalities and Peoples; Gambella peoples and Harari people. The powers of the Federal Government and of these states are defined by the Constitution of FDRE [Art 50(8) of the same]. **The federal Constitution grants the State councils the power to enact laws on matters falling under the state** [Art 50(5) of the same]. As it is mentioned in Art 52(2)(b) of the same, **the laws that are enacted by the State Councils include the state constitution and other state laws.**

In order to see the hierarchy of those laws in the states mentioned above, the following four state constitutions are taken as instances. These are: the Constitutions of Tigray Regional State, Amhara Regional State, Gambella People Regional State and the Southern Nations, Nationalities and Peoples’ Regional state. All these Constitutions declare in their supremacy clause that **subject to the supremacy of FDRE Constitution, they are the supreme laws of the respective state**. To this effect, the Constitution of Tigray Regional state in its supremacy clause states that consistent to the FDRE Constitution, it is the supreme law of that regional state. According to this Constitution, **any law, customary practice and an act of agency of government or official that contravenes it shall have no effect** [Art 9(1) of Tigray Regional State Constitution]. The Constitutions of Amhara Regional State (Art 9(1)) and Gambella Peoples’ Regional State (Art. 9(1)) have also employed the same wording.

The forms of legislation existing in the states under consideration are similar to that of the federal legislation. These legislation cover: state statutes, decrees, regulations, and directives. As provided under Article 49 of the three regional state constitutions (Tigray, Amhara, and Southern Nations Nationalities and peoples), **the state councils of these Regional states are empowered to enact laws that do not contravene the federal Constitution and other laws.** The Constitution of Gambella people regional state also confers power to the State Council of the same to make laws that are applicable in that regional state [Art. 50(3)(1) of Gambella regional State Constitution].

What is more, as per Art 93(1)(b) of **the FDRE Constitution, state executives have the power to make laws in case of emergency.** Art 93(1) of the FDRE Constitution reads:

**State executives can decree a State wide state of emergency should a national disasters or an epidemic occur. Particulars shall be determined in State Constitutions to be promulgated in conformity with this Constitution**.

Accordingly, the Constitution of Amhara Regional State empowers the executive committee to issue a decree of emergency when the state Council of that regional state is not in session (Art. 54(8) of the Amhara Regional State Constitution).

In the regional States under discussion, **both decrees and regulations are issued by the same bodies (the state executives).** Moreover, **both legislation are non-derivative.** However, the question is which one of the two is higher on the ladder of hierarchy? **Decrees are issued in special circumstance with a view to avoid a series danger that may destruct the whole society. Thus, though both are issued by the same organ and have the same character (non-derivativety), Ayele thinks that decree should prevail over regulation.** In general, hierarchies of laws in states (regions) **seem to be the same with that of Federal State.**

**CONCLUSION**

We have seen that **the concept of hierarchy of laws indicates a chain of subordination between laws that emanates from the power chain of the lawmakers**.

In the federal legal system, **it is difficult to determine the hierarchy of laws of the federal and the states or regions in our case.**

We have seen that the **Constitution was, under the Revised Constitution of 1955, and the Derg regime and is now, supreme, i.e. it is at the higher level of the hierarchical order of laws.** The 1955 Revised Constitution also grated supreme power to the emperor. Accordingly, **the emperor had the final say on laws to be enacted.** Proclamations, decrees and order were under the Revised Constitution. In addition to these primary legislation, **subsidiary legislation as orders, regulations, legal notice, general notice and notice of approval come to the next ladder below to the primary legislation.** We observed that **orders enacted by the Emperor have the character of primary legislation since the Emperor was empowered to enact them by the Constitution.**

Coming to the PDRE Constitution of 1987, **legislation enacted by the President and the Council of State stood second in the hierarchy to the Constitution.** We have discussed that **laws that were made by the National “Shengo” were superior to decrees and special decrees passed by the President and by the Council of State.** What is more, **special decrees made by the Council of State and approved and upgraded to proclamations have the same hierarchy with proclamations.**

On the other hand, **regulations and directives were subsidiary legislation**. These came under the hierarchy of laws enacted by the Council of Ministers. Administrative regions were also empowered to enact **directives, which were lower in hierarchy to regulations and directions, and directives issued by the Council of Ministers and each Ministry**.

**Under the 1994 FDRE Constitution**, **international treaties have been given the place of proclamation at the federal level.** These international treaties and agreements, being part of the federal laws of Ethiopia, **should not be affected by the laws of Regions.** However, **it is hard to determine the hierarchy between such treaties and agreements and the law of Regions.**

Further, **all laws (proclamations) made by the House of Peoples’ Representatives are second to the Constitution**. **Other laws enacted by subordinate bodies of the Federal State are inferior to the proclamations, except decrees enacted by the Council of Ministers in case of emergency.** Such decrees may be promulgated as emergency proclamation where **the House of Peoples’ Representative approves them.**

Furthermore, we have seen that the House of Peoples’ Representatives enact regulations and directives according to the power given under proclamations.

**Under Regions, Constitutions are superior in hierarchy.** Regions have the power to enact emergency decrees where the State Council is not in session. **The decrees should be submitted to the Councils and they may prevail over regulations made by the same body.** We have seen that **decrees come on the upper ladder compared with regulations in the regions.**