

Judicial Independence in Ethiopia and Its Challenge Vis-à-Vis the United Nations Basic Principle on Independence of Judiciary

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To cite this article:

Lemlem Dejenu Mulugeta. (2023). Judicial Independence in Ethiopia and Its Challenge Vis-à-Vis the United Nations Basic Principle on Independence of Judiciary. *Journal of Political Science and International Relations*, 6(4), 111-119.

<https://doi.org/10.11648/j.jpsir.20230604.12>

Received: November 8, 2023; **Accepted:** December 12, 2023; **Published:** December 22, 2023

Abstract: Judicial independence is a vital cornerstone of any democratic society, as it guarantees the fair and unbiased administration of justice. However, the judiciary in Ethiopia has faced numerous obstacles that hinder its autonomy and effectiveness. This paper deals with the current state of judicial independence in Ethiopia, thoroughly analyzing the legal framework and institutional arrangements in place. It explores the extent to which the judiciary operates independently from external influences, such as the executive and legislative branches of government. This paper aims to shed light on the challenges faced by the country's judiciary and propose potential solutions. It also addresses practical challenges in addition to legal ones by employing a qualitative research method, including interviews, practical case reviews, and focus group discussions. Therefore, the concept of judicial independence is of utmost importance in ensuring a fair and impartial legal system. Ethiopia, as it strives to strengthen its democratic institutions and promote the rule of law, faces significant challenges in achieving judicial independence. This paper aims to thoroughly analyze the current state of judicial independence in Ethiopia, examining the legal framework and institutional arrangements in place. By evaluating Ethiopia's adherence to the UN Basic Principles on the Independence of the Judiciary, this paper seeks to propose potential solutions to the challenges faced by the country.

Keywords: Basic Principle on Independence of Judiciary, Judicial Independence, Judge, Judiciary

1. Introduction

Judicial independence is an essential pillar of any democratic society, including Ethiopia. It encompasses the ability of judges and courts to render decisions without any undue influence or interference. In essence, it guarantees that judges can impartially resolve cases based on the law without fear of retaliation or coercion from external forces. In Ethiopia, as in any nation, a robust and autonomous judiciary plays a vital role in upholding the rule of law and safeguarding the rights of its citizens. Moreover, it fosters stability and ensures community confidence in the legal system.

The United Nations Basic Principles on the Independence of the Judiciary [1] were established in 1985 to provide guidance and standards for countries worldwide to uphold the independence of their judicial systems. These principles

were formulated to shield judges from external pressures and to guarantee the fairness and credibility of the justice system. In addition, The Bangalore Principles of Judicial Conduct [2] express judicial independence as an essential requirement for the establishment of the rule of law and serves as a fundamental assurance of a fair trial. Consequently, it is imperative that judges uphold and embody judicial independence in both their personal conduct and within the institutional framework. However, Ethiopia currently faces challenges in maintaining judicial independence. This article deals the legal and practical challenge that affect the judicial independence in Ethiopia, aligning with the United Nations Basic Principles on the Independence of the Judiciary.

2. Method

This article adopts a qualitative research approach, employing various methods such as semi-structured interviews, focus group discussions (FGD) with judges, practical case studies, and observations. Furthermore, the researcher extensively utilizes both primary and secondary sources to ensure comprehensive data collection and analyses.

3. Definition of Judicial Independence Under International Laws

Judicial independence is a crucial concept in international law. It refers to the principle that judges should be free from external influences and pressures when making decisions. By upholding judicial independence, international law aims to protect the integrity of the judicial system and ensure that justice is served [3].

3.1. Operative Description of Judicial Independence Under International Law

In international law, the concept of judicial independence can be defined as follows

- a) Impartial;
- b) Approach cases in an unbiased manner;
- c) Display no prejudice;
- d) Be politically independent; and
- e) Operate without fear. Based on international law these principles can be translated into the following operational guidelines:
 - a) The power to make judicial appointments should not lie in the hands of a single political actor, especially the executive, with the ability to exercise wide discretion in the selection and appointment of judges. Judicial appointments should be made through a process that provides for the participation of other sectors of government and society, for example, judges, the legal profession, opposition political parties, civil society, the legislature, or members of government responsible for judicial administration.
 - b) Security of tenure requires that judicial appointments be for life, until mandatory retirement, or for a set term of office.
 - c) Terms of service and remuneration cannot be reduced unfavorably and must be secured by law.
 - d) Judges must remain accountable for their conduct: judges may only be dismissed or disciplined for serious misconduct, incompetence, or incapacity, based on objective standards and criteria that are set out beforehand, and through fair procedures with a right of judicial review.
 - e) Transfer and re-assignment of judges within the judiciary must be determined by the judiciary internally and lie beyond the sole control of the legislature or executive.

- f) All courts must be established by law: the court structure must not be subject to summary modification by the executive, and ad hoc courts must be prohibited.
- g) The judiciary, or an independent judiciary council, must be responsible for the administrative management of the judiciary.
- h) Tribunals other than traditional courts are subject to the same principles of judicial independence as the ordinary courts.
- i) Courts must be provided adequate financial resources to fulfill their functions. The judiciary itself or a judiciary council must be solely responsible for managing the judiciary's budget.
- j) The allocation of cases to judges is a matter of internal judicial administration. Ideally, case allocation should be randomized or routinized.
- k) Military tribunals must have no jurisdiction to try civilians.
- l) Prosecuting authorities must be impartial, and operate fairly.
- m) A judiciary council, if established, should be composed primarily of judges, and its powers and functions set out clearly in law.

3.2. Description Under Basic Principle on Independence of Judiciary

The United Nations Basic Principle on the Independence of the Judiciary is a fundamental tenet that upholds the integrity and autonomy of judicial systems worldwide [1]. This principle serves as a cornerstone for ensuring fair and impartial justice, safeguarding human rights, and promoting the rule of law.

The principle emphasizes the importance of an independent judiciary, free from any undue influence or interference, be it from the executive, legislative, or any other external entity. It recognizes that an impartial judiciary is essential for upholding the rights and freedoms of individuals, fostering public trust, and maintaining social order. Moreover, the Basic Principle of the Independence of the Judiciary highlights the significance of transparent and accountable judicial systems. It calls for the establishment of clear procedures for the appointment, promotion, and discipline of judges, ensuring that these processes are based on merit, integrity, and competence.

4. Personal Independence and the Institutional Independence of the Judiciary Under the Basic Principle

Ensuring the integrity and autonomy of individual judges and the judiciary as a whole is paramount. Judicial independence demands that judges exhibit unwavering integrity and decide cases by the principles of impartiality, free from any external influence. Moreover, it necessitates that the judiciary function autonomously, without

interference from other branches of government, in managing its administrative and internal affairs. By upholding these principles, we safeguard the integrity and effectiveness of our judicial system [4].

4.1. Personal Independence of the Judiciary

The concept of personal independence within the judiciary signifies that each judge possesses the ability to autonomously render decisions to resolve a case presented before their court. This process should be conducted fairly and impartially, devoid of any unwarranted interference from external parties, including other judges, regardless of their position or authority within institutions or as individuals.

4.2. Nomination

The United Nations Basic Principles on the Independence of the Judiciary emphasize the importance of ensuring that judicial appointments are based on integrity and ability, while also safeguarding against appointments made for improper motives. However, these principles do not prescribe specific mechanisms for such appointments, as they defer to the discretion of domestic law. It is crucial, nonetheless, that appointment procedures unequivocally prohibit any form of discrimination [1].

4.3. Security of Tenure

The principle of security of tenure serves as a vital safeguard, ensuring that judges remain immune to dismissal, except in well-defined circumstances, until the conclusion of their designated term. This crucial protection shields judges from the risk of hasty removal by executives, legislatures, or even a discontented judicial council, solely due to their rulings [1].

4.4. Terms of Service

Ensuring the remuneration of judges and safeguarding the conditions and terms of their service from unfavorable reductions are crucial aspects of upholding judicial independence. The manipulation of judges' decisions can occur through the menacing prospect of pay cuts or the imposition of less favorable terms of service [1].

4.5. Removal, Discipline and Sanction

The Basic Principles on the Independence of the Judiciary provide that judges should not be removed or suspended from office except for reasons of incapacity, inability to discharge their duties, or a lack of fitness for the position. Further, all disciplinary proceedings must adhere to standards of procedural fairness, with judges subject to discipline, removal, or sanction only for violations or non-fulfillment of established standards of judicial conduct. All such proceedings must be subject to independent review [5]. Human Rights Committee General Comment No. 32 states that judges should only be removed in cases of serious misconduct or incompetence [10].

4.6. Transferal and Promotion

The transfer of judges to less favorable postings can be used as a threat to influence judicial behavior. Transfer rules must be carefully constituted to eliminate this threat, but allow for reasonable and necessary administrative reassignment and transfer of judges. While transfer and reassignment can act as a threat to influence judicial decisions if not properly controlled, promotion can be used as an incentive to reward judicial behavior that is favorable to political elites. Any system of promotion must eliminate judicial advancement as a reward for political bias. The Basic Principles on the Independence of the Judiciary require that promotions occur through a system based on "objective factors, in particular ability, integrity, and experience" and Human Rights Committee General Comment No. 32 recommends that there be clear procedures and objective criteria for the promotion of judges.

4.7. Judgment Making

Judges must base their decisions solely on the proven facts and applicable law. When a government official influences a judge's ruling, it compromises the independence of the judiciary. Similarly, if a judge is unable to make decisions based on their analysis of the facts and law due to the fear of removal, the judicial office loses its independence. In this regard, the United Nations principles emphasize that the judiciary should decide cases based on facts and by the law, without any restrictions, improper influences, inducements, pressures, threats, or interferences. These principles underscore the importance of maintaining an impartial and unbiased judicial system.

By adhering to these principles, judges can ensure that their decisions are fair, just, and free from external influences. Upholding the independence of the judiciary is crucial for upholding the rule of law and ensuring equal justice for all.

4.8. The Allocation of Cases and the Right to a Lawful Judge

The distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing of lots or a system for automatic distribution according to the alphabetic order of some similar system." "A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interests. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges [10].

4.9. Judicial Independence vs Accountability of Judge

The preservation of judicial independence relies heavily on the intricate mechanisms and procedures that govern the

appointment of judges, as well as the limitations placed on external influences once they assume their roles. However, it is crucial to hold judges accountable if they fail to competently, independently, and impartially carry out their duties [3]. Judicial independence should not be misunderstood as a free pass for judges to act without consequences. Therefore, it becomes essential to establish a comprehensive set of rules that carefully balance the protection of judges from undue external influence with the need for judicial accountability. These rules should encompass the entire judicial process, including the appointment process, terms of service, dismissal procedures, disciplinary measures, and applicable sanctions. By striking this delicate balance, we can ensure a judiciary that remains both independent and accountable.

5. Institutional Independence of the Judiciary

The Basic Principles on the Independence of the Judiciary state that judicial independence must be set out in the constitution or the laws of a country: “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country [13].

5.1. Ensuring Budget Independence for the Judiciary as an Institution

The Basic Principles on the Independence of the Judiciary provide that courts must have adequate resources to properly serve the judicial function [7]. The management and allocation of the budget are important considerations in the judiciary's independence as the resources it is allocated in the first place. The Special Rapporteur has recommended that judicial independence is best served when the judiciary or an independent body, rather than the executive or legislative branches, is responsible for the judiciary's budget [8].

5.2. Case Assignment

The right to a fair trial includes the right to have a judge who is impartial and follows the law. This means that the government should not have the power to choose which judge will hear a specific case. The Basic Principles on the Independence of the Judiciary emphasize that the decision to assign cases should be made solely within the judiciary, without any interference from the other branches of government [1].

6. The International Legal Framework on Judicial Independence

Numerous international legal instruments recognize and protect judicial independence.

6.1. International Covenant on Civil and Political Rights

The Covenant on civil and political rights [9] includes a

clear statement of the requirement of judicial independence in the right to a fair trial. Article 14 provides in part: (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order, or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. Everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law.

6.2. Universal Declaration of Human Rights

The UDHR affirms the right to a fair trial before an independent and impartial tribunal (Art. 11), the right of accused persons to be presumed innocent (Art. 11), and the guarantee that all are equal before the law and enjoy all rights and freedoms equally [10].

6.3. UN Basic Principles and Guidelines

The UN has adopted several sets of basic principles and guidelines as framework models for how a country's domestic laws and institutional structures can protect the independence of the judiciary. These document includes; Basic Principles on the Independence of the Judiciary; Basic Principles on the Role of Lawyers; and Guidelines on the Role of Prosecutors [1].

6.4. United Nations Human Rights Committee, General Comment No. 32

General Comment No. 32 deals specifically with the fair trial rights in Article 14 of the ICCPR. It is valuable in understanding what Art 14 means for individual states as they seek to fulfill the right to a fair trial and ensure judicial independence in their domestic legal systems. It is an influential document [10].

7. The Judiciary and Its Role in the Protection of Human Rights

National courts play a fundamental role in the protection of human rights. They must respect themselves, and the duty to protect from vertical and horizontal violations of Human rights [21].

7.1. Judiciary Protects Human Rights from Themselves

First and foremost, it is imperative that the courts prioritize

the responsibility of upholding and respecting human rights. This entails the obligation to honor fundamental rights such as the right to a fair hearing, bail, due process, appeal, freedom of expression, and the right to legal representation. By adhering to these principles, the courts play a crucial role in safeguarding human rights from any potential violations [12].

The principle of judicial independence was not established solely for the benefit of judges themselves, but rather to protect individuals from potential abuses of power. This principle serves as a safeguard against any undue influence or manipulation that may compromise the fairness and impartiality of judicial proceedings. It is essential to recognize that judges bear the responsibility of applying the relevant laws and regulations when making decisions. They must refrain from allowing personal biases or external pressures to influence their judgments. This ensures that justice is administered objectively and without any form of favoritism.

7.2. Judiciary Has the Responsibility to Protect Human Rights from Vertical Violators

The courts bear the crucial responsibility of safeguarding human rights from vertical violators, namely governmental bodies that enforce these rights. This includes entities like the police, prosecution, correctional and rehabilitation centers, as well as administrative agencies. Judges are expected to exhibit great ingenuity in devising mechanisms that hold the executive branch accountable for any violations committed against individuals under their custody, such as those who have been arrested, detained, accused, or sentenced [12].

Courts are widely regarded as a vital check and balance on the other branches of government, ensuring that both the laws enacted by the legislative branch and the actions carried out by the executive branch align with international human rights standards and the principles of the Rule of Law.

7.3. Judiciary Must Protect Horizontal Violation of Human Rights

The courts have a crucial responsibility to safeguard human rights, including protecting individuals from violations committed by other people. This form of violation, known as horizontal violation, can only occur if there is a legislative framework in place that safeguards individuals' rights from non-state actors or other individuals. In such cases, the primary objective is to hold the violator accountable and provide justice to the victim [12].

Courts play a pivotal role in ensuring that victims or potential victims of human rights violations receive adequate remedies and protection. They also strive to bring perpetrators of such violations to justice. Additionally, the courts are committed to upholding international standards by ensuring that anyone suspected of a criminal offense receives a fair trial.

By fulfilling these responsibilities, the courts contribute significantly to the preservation of human rights. They act as

a safeguard against any infringement on individuals' rights, ensuring that justice prevails and that all individuals are treated fairly and equitably [12].

8. Need of Independent Judiciary for Human Right Protections

The daily business of the judiciary revolves around the crucial task of safeguarding human rights, making them the true guardians of these fundamental rights. However, in order to effectively fulfill this role, it is imperative that the judiciary operates independently, both institutionally and personally, free from any external influences. Only then can it truly protect, promote, and enforce human rights.

When the judiciary is influenced by individuals or institutions outside of its own sphere, its ability to fulfill its duty as a watchdog for human rights becomes compromised. In such cases, the judiciary's role seems to lack the necessary teeth to effectively protect human rights. It is important to note that human rights violations can occur not only vertically and horizontally, but even within the judiciary itself, if it is subject to external influences.

One of the key powers granted to the judiciary is the ability to conduct judicial reviews. Through this process, the courts can ensure that legislative or executive actions are in line with human rights protections. However, for the judiciary to effectively exercise this role in safeguarding human rights, its independence is of paramount importance. Without independence, the judiciary would be unable to fulfill its duty in protecting human rights [12].

9. Historical Context: Judicial Independence in Ethiopia

Ethiopia has a long history of diverse legal traditions, with a judiciary system that has evolved. From the ancient legal codes to the imperial era and subsequent regimes, the judiciary played a significant role in resolving disputes and upholding the law.

9.1. National Legal Framework and Practical Implementation on Judicial Independence

In Ethiopia, judicial power vests in Courts [14]. The most important aspect of the independence of the judiciary is its constitutional position. A look at the papers of the FDRE Constitution, one can assert that a separate and independent judiciary as an organ of the government is established by the Constitution [14]. The Constitution explicitly provides the establishment of an independent judiciary [14]. It further asserts that all courts are required to be free from any interference or influence of any governmental body, government official, or any other source [14]. The constitution also provides the allocation of the requisite budget to be administered by the court.

The constitution provides common rules concerning the

appointment, transfer, and removal of judges and court budgets. It calls for judges to exercise their function independently, free from any influence and to be directed solely by the law. It also protects judges' tenure security by prohibiting removal before retirement age provided that they didn't violate disciplinary rules and show gross incompetence and incapability to hold position.

The other legal framework applicable in Ethiopia regarding judicial independence is the amended Federal Judicial Administration Council Proclamation No 1233/2021, the Federal judge's code of conduct. Regional States also have the same version of federal laws. The above-mentioned proclamations govern issues like the administration of courts and, the appointment and removal of judges for disciplinary issues.

10. The Challenge of Judicial Independence in Ethiopia in Line with the United Nations Basic Principles of the Judiciary

The independence of the judiciary in Ethiopia faces numerous challenges that are in direct violation of the United Nations Basic Principles on the independence of the judiciary. These challenges not only hinder the proper functioning of the judiciary but also undermine the rule of law and the overall justice system in the country.

10.1. Challenges from an Institutional Perspective

The judiciary, as a vital pillar of any democratic society, encounters numerous challenges that stem from its institutional framework. This article aims to shed light on the various obstacles faced by the judiciary and explore their implications for the legal system. By delving into these challenges, we can gain a deeper understanding of the complexities surrounding the judiciary's functioning [15].

10.2. Budget Administration and Audit

The Federal Supreme Court shall draw up and submit to the House of Peoples' Representatives for approval the budget of the Federal courts, and upon approval, administer the budget [14]. Even though the judiciary has the power to plan and implement its budget, the executive controls and audits it. While auditing is important, the intervention of the executive organ in auditing the judiciary's budget amounts to a violation of judicial independence as an institution [16]. Additionally, the judiciary does not have the power to hire its administrative staff. It needs permission from the public service to hire human resources, indicating its dependence on executive organs. Concerning the Budgets of State courts shall be determined by the respective State Council. The House of Peoples' Representatives shall allocate compensatory budgets for States who's Supreme and High courts concurrently exercise the jurisdiction of the Federal High Court and Federal First-Instance Courts [14].

Therefore, it is possible to assert that an independent judiciary in Ethiopia, as a means to 'check and balance' and as a guarantor of human rights, is facing serious challenges due to the actions of the legislature and executive [16].

10.3. Adjudicating Cases Involving Constitutional Issues

There is a serious concern regarding the court's authority to adjudicate cases involving constitutional issues and review the constitutionality of legislative and executive acts. Many scholars argue that the judiciary's power to interpret the constitution has been stripped away by the legislative body known as the 'House of Federation', leading to a lack of clear separation of powers. Consequently, the institutional independence of the judiciary is not being respected [17]. Therefore, it can be concluded that there is a significant challenge to the independence of the judiciary as an institution.

10.4. Fail to Accept Court Orders and Decision

The court may issue numerous orders that are implemented by the executive body, particularly by the police. However, in practice, there is a significant challenge in accepting court orders, often resulting in opposing responses. This is especially evident when the court orders the release of an accused or wrongdoer, as police officers or correctional centers may resist releasing them and instead detain them at the police station or correctional center without any legal justification [18].

10.5. Challenge Related to Human Rights Protection

Currently, in Ethiopia, there is internal conflict and political instability. Human rights are being violated daily, with many individuals being unjustifiably killed and arrested by both government forces and opposing groups. Furthermore, individuals who are suspected of wrong doing are being detained in police stations without being presented to court. This situation indicates the judiciary is a toothless dog in protecting human rights from vertical violations and calls for immediate attention and resolution [18].

11. Challenges from the Individual Judge Perspective

Furthermore, apart from the obstacles faced at an institutional level, some challenges arise from individual perspectives. Let us explore into these perspectives in greater detail.

11.1. Appointment

According to the FDRE Constitution, the Prime Minister and Chief Executive of the State select and submit the President and Vice-President of both Federal and State Supreme Courts respectively [14]. This constitutional provision indicates the appointment of the president and vice president of both federal and regional by executive organs [14]. In addition;

law-making organs (The parliament and state council) make an appointment task once submitted to it by executive organs. The interference of the executive and legislative organs in the selection process undermines the very essence of an independent judiciary. The judiciary should be free from any external pressures or influences to ensure fair and impartial decision-making. However, the current system in Ethiopia seems to prioritize the consolidation of power rather than upholding the principles of justice.

Moreover, the absence of specific criteria for the appointment of judiciary officials further exacerbates the issue. Without clear guidelines or standards, the selection process becomes susceptible to favouritism, nepotism, or other forms of bias. This lack of transparency and accountability erodes public trust in the judiciary and raises questions about the integrity of its decisions.

To address these concerns, Ethiopia must revisit the process of appointing judiciary officials. The selection should be based on merit, competence, and integrity rather than political considerations. Establishing clear criteria and a transparent selection process will help restore public confidence in the judiciary and strengthen its independence.

11.2. The Challenge Regarding Tenure Security

The Constitution [14] along with proclamation [19] guarantees judge's security of tenure. However, there have been instances where the council deems a judge incapable or incompetent to hold office, revealing a lack of tenure security in Ethiopia. In terms of the termination of the president and vice president of the Federal Supreme Court, the proclamation stipulates that their tenure can be ended by the Judicial Administration Council (JAC) upon the request of the executive branch (Prime Minister) and with the approval of the House of People's Representatives (HPR) [38] through a simple majority vote. These actions significantly undermine the independence of the judiciary.

11.3. Transfer and Promotion of Judge

When judges are transferred, their consent is not taken into consideration, and they are often relocated to places they may not desire. Similarly, promotions are frequently based on personal connections and friendships rather than merit and competence [23].

This discriminatory practice undermines the integrity and fairness of the judicial system in Ethiopia. It is crucial for the transfer and promotion of judges to be conducted transparently and impartially, ensuring that the best interests of justice are served. To rectify this issue, it is imperative to establish a comprehensive and objective evaluation system for judge transfers and promotions. This system should prioritize the qualifications, experience, and performance of judges, rather than personal relationships. By doing so, the Ethiopian judiciary can enhance its professionalism and credibility, ultimately fostering public trust in the legal system.

Furthermore, it is essential to involve judges in the

decision-making process regarding their transfers. Their consent and preferences should be taken into account, as this will not only promote a sense of fairness but also contribute to their overall job satisfaction and effectiveness.

By addressing these concerns, Ethiopia can work towards a judiciary that upholds the principles of justice, equality, and professionalism. A transparent and merit-based system for judge transfers and promotions will not only benefit the judges themselves but also ensure that the rights and interests of all citizens are protected.

11.4. Challenge on Decision Making on Case

Judges must conduct fair court proceedings and provide reasoned decisions to uphold judicial independence. However, in Ethiopia, there is a prevalent lack of fair trials, especially in high-profile and sensitive cases [21], due to interference from internal officials, executive organs, and the individuals involved in the case through bribery.

To ensure the integrity of the judicial system, judges must prioritize conducting court proceedings fairly and impartially [22]. This means treating all parties involved with equal respect and consideration, regardless of their social status or influence. By doing so, judges can guarantee that justice is served and maintain public trust in the legal system.

One of the most concerning factors contributing to the lack of fair trials in Ethiopia is the influence exerted by the individuals involved in the case. Through bribery, these individuals attempt to manipulate the outcome of the trial in their favour. This not only undermines the principles of justice but also erodes public confidence in the legal system. In Ethiopia, there is a condition to suspend and remove a judge from their duties if their decision is made solely on the basis of law and facts, without succumbing to any external influence that may divert the decision according to the officials' desires [23].

To address this issue, the Ethiopian judiciary must take immediate action. Measures should be implemented to prevent interference from internal officials and executive organs. Additionally, strict penalties should be imposed on those found guilty of bribery, ensuring that justice is served and the integrity of the judicial system is upheld.

By prioritizing fair trial principles and combating Internal and external interference, Ethiopia can work towards a more just and independent judiciary. This will not only protect the rights of individuals involved in legal proceedings but also contribute to the overall development and stability of the country.

11.5. Arrest and Robbery on Judge

A judge cannot be arrested, detained, or prosecuted unless they are caught committing a serious crime in the act, and their immunity can only be lifted by the Council. However, in practice, the executive branch, particularly the police officers, has failed to enforce court orders and has even resorted to brutal tactics, such as physically assaulting and arresting judges without them losing their immunity and

being held accountable. For instance, on October 4th, the police in Adama, East Shoa Zone, unlawfully detained three judges from the Oromia Supreme Court, Eastern Criminal Division, without following proper legal procedures, simply because they had granted bail. [24].

Furthermore, there have been numerous attacks on judges in different parts of the country. For example, on November 8th, 2022, a judge in North Wello Bugena Wereda was targeted and assaulted [25]. In a similar manner, in Hararge, a plaintiff tragically killed his wife while attending a court session and even attempted to harm the judge presiding over the case during the date of judgment [20]. Furthermore, in different parts of the Oromia region, a judge was kidnapped by an opposing group known as Shene [20].

There are serious issues with the protection and respect for judges' rights and immunity. The executive branch, particularly the police, must prioritize upholding the law and ensuring that judges can carry out their duties without fear of unjust treatment or harm.

11.6. Challenge Regarding Training

When it comes to the training and on-going education of judges in human rights, the judiciary must take responsibility for promoting professional education and training in this area. However, in Ethiopia, there is currently no structured and systematic training organized by the judiciary. The judiciary is not actively involved in providing human rights training, except in occasional situations.

One way to ensure the independence of judges is by allowing them to freely organize in professional associations. Unfortunately, there is no known association of judges in Ethiopia. Judges need to have the necessary freedom and access to form professional associations, as this is vital for the development and advancement of their profession [22]. To address these issues, the judiciary in Ethiopia must prioritize the training and continued education of judges in human rights. This can be achieved through the establishment of a comprehensive and structured training program, which would provide judges with the necessary knowledge and skills to effectively uphold human rights in their judicial roles.

Furthermore, the judiciary should actively engage in organizing regular human rights training sessions rather than relying on occasional situations. By doing so, judges will be better equipped to handle human rights cases and ensure justice is served.

Additionally, the judiciary must support the formation of a professional association for judges. This association would not only safeguard the independence of judges but also provide a platform for judges to exchange knowledge, share best practices, and collectively work towards the improvement of the judicial system.

12. Conclusion and Recommendation

An independent judiciary plays a vital role in upholding human rights and rule of law, as it possesses the authority to

shield against violations committed by other branches of government and operate without external interference. Unfortunately, in Ethiopia, the judiciary encounters substantial legal and practical barriers that erode its independence and impartiality, consequently weakening its capacity to safeguard human rights and rule of law. Therefore, it is crucial for the Ethiopian government to recognize and fulfill its international legal obligations, which stem from various sources. In particular, the government must conduct a thorough examination of its laws and practices to ensure they align with established international standards concerning judicial independence.

Acknowledgments

First and foremost, I am grateful to the Almighty God and offer my praise for His invaluable assistance in the completion of this article. Secondly, I am unable to express enough gratitude for the immeasurable moral, psychological, and material support I received from my family, relatives, and friends throughout the process of accomplishing this work. Lastly, I would like to extend a special acknowledgment to my husband, Mr. Nahom Solomon. Without his unwavering love, encouragement, assistance, and patience, this paper would have never reached its completion.

Conflicts of Interest

The authors declare no conflicts of interest.

References

- [1] UN“ Basic Principles on the Independence of the Judiciary”, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by the General Assembly in Resolution 40/32 of 29 November 1985 and Resolution 40/146 of 13 December 1985.
- [2] Bangalore Principles of Judicial Conduct, United Nation office of drug and crime, 2018 veina.
- [3] International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors – A Practitioners Guide (Second edition) ISBN: 978-92-9037-118-8 Geneva, 2007.
- [4] Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, Professional Training, New York and Geneva. 1, 2007., guide No1, UN Human Rights Committee, General Comment No. 32, para 19.
- [5] Judicial Accountability - A Practitioners' Guide, International Commission of Jurists, June 2016.
- [6] Chang W-C. Institutional Independence of the Judiciary: Taiwan's Incomplete Reform. In: Lee HP, Pittard M, eds. Asia-Pacific Judiciaries: Independence, Impartiality and Integrity. Cambridge: Cambridge University Press; 2017: 330-353. doi: 10.1017/9781316480946.01.

- [7] Report of the Special Rapporteur on the Independence of Judges and Lawyers, 2008, para 35.
- [8] International Covenant On Civil And Political Rights adopted 16 December 1966 by general Assembly Resolution 2200A (XXI).
- [9] Universal Declaration of Human Rights, adopted in 1948.
- [10] Brill, The Role of the Judiciary in the Protection of Human Rights Series: Centre of Islamic & Middle Eastern Law Series, Volume: 5, published on October, 2023.
- [11] Role Of Judiciary In The Protection Of Human Rights, Human Rights Laws <https://farheendhanjal.law.blog/> Accessed on November 2023.
- [12] Tsegaye Ragasa Mizan Law Rev. making legal sense of human vol 327, 2009.
- [13] Kelly, W. F. B, An Independent Judiciary: the Core of the Rule of Law, International Centre for Criminal Reform and Criminal Justice Policy, 2002.
- [14] Constitution of The Federal Democratic Republic of Ethiopia Enacted in 1995.
- [15]] Aron Degol, Institutional independence of Judiciary, Mizan law review 2020.
- [16] Interview made with Mr. Solomon Moges, Judge at Oromia Supreme Court on 11/10/2023.
- [17] Takele Soboka Bulto, Judicial referral of constitutional dispute in Ethiopia, 2009.
- [18] Interview made with Mr Dabale Assafa, Judge at Oromia region North Shewa High Court on 10/9/2023.
- [19] Federal Judicial Administration proclamation No. 1233/2021, Art 33 (2).
- [20] Interview made with Mr Tolosa Karu Wareda Court President at Oromia Region Jida wareda Court, on 2/9/2023.
- [21] Interview made with Ms Haregweyn Ayele, Judge at Federal High Court of Ethiopia, on 5/9/2023.
- [22] Interview made with Ms Metselal Hayile Cassation bench, Judge at Federal Supreme Court of Ethiopia, on 23/11/2023.
- [23] Interview made with Mr Obang Ujulu, Case flow management directorate at Federal Supreme Court of Ethiopia, on 11/10/2023.
- [24] News outcry over arrest of three Oromia supreme court judges. <https://addisstandard.com>
- [25] Attack made on judge in North wello Bugenawereda on 8 November, 2022.