

Notes on the Freedom of Assembly and Demonstration in the Constitutions of Somalia, Ethiopia and Uganda

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Abstract

The freedom of assembly and demonstration are among the fundamental human rights; hence, people around the globe have these rights protected in their constitutions. However, these basic rights are infringed, in some way or other, by the governments. Evidences extracted from world democracy and freedom index has shown ranges of low scale in the target countries. Somalia is the lowest among those compared showing the existence of heavy challenge against variants of human freedom, freedom of assembly, freedom of expression and the rule of law.

This desk study aims to identify the constitutional provisions that describe the right to freedom of assembly and demonstration in Somalia, Ethiopia and Uganda; and determine the extent to which the respective government practically carries out these legal provisions. These countries have witnessed political unrest and devastated civil war in their contemporary history; therefore, these rights are necessary to achieve political stability in these countries.

Keywords: Freedom of assembly, freedom of demonstration, human rights, Somalia, Ethiopia, Uganda.

1. Introduction

Human fundamental rights are guaranteed and protected in social contracts. Among these rights is the freedom of assembly and demonstrations which are highly protected in most constitutions. However, many countries have experienced tyranny where dictators seize power with different ideological and political backgrounds.

In principle, the constitution of any country confers basic rights of freedom for assembly and demonstration to the citizens, and these rights cannot be infringed. Nevertheless, government forces prevent people from assembling and gathering for demonstrations, and that is ultra-virus breaking basic constitutional rights; which means that the executive branches of many nations are not enforcing the law in the right way, but the laws are politicized in such a way lay people lose their basic rights.

Dictatorship is one of the main factors which cause oppression and more illegal ruling. With these dictatorship elements are the fundamental rights breached due to tyranny, fascism and despotism¹.

Freedom of assembly and demonstrations are essential components of the free world where people express their feelings of acceptance and rejection, mainly against public decisions and international issues that negatively or positively impact a given national community interests. The democratic world has almost succeeded in protecting basic human rights in their constitutional provisions where the written words have the force of law, and the courts of law have the freedom to interpret laws in view of human rights protection. But still, current challenges are undermining the full execution of fundamental rights in developing countries because the rule of law has no supremacy; rather the executive power makes the directions for authority decisions.².

Countries in the third world are likely to have the fundamental right of their citizens violated compared to those countries in the developed countries, although they have, also some challenges. Freedom of assembly and demonstration have been among the most pressing issues in the universe for centuries and remain in many countries at present. Emphatically, the freedom of assembly and demonstration are also among the fundamental human rights that are constitutionally protected in the target countries, including Somalia; yet, these rights are infringed in these countries.

Somalia is a federal system with a federal constitution adopted in August 2012, but citizens cannot exercise their constitutional rights for freedom of assembly and demonstrations. A good example was the February 2021 event when the government forces opened fire to a demonstration organized by the opponents to prevent them from the demonstration³. In Ethiopia, the federal constitution of 1995 gives citizens constitutional freedom of assembly and demonstration. Still, practically people are prevented from expressing their ideas if it is not in the interest of the ruling regime⁴. Uganda is one of the most stable countries in East Africa. Its constitution was drafted in 1995 and later revised in 2017. In November 2020, reports show that at least 45 people were killed during the demonstrations against the regime⁵.

This study aims to identify the extent to which the rights to freedom of assembly and demonstration are described in the constitutions of the target countries (Somalia, Ethiopia and Uganda). It will carry out data comparisons on the legal framework of these countries. Both macro and micro comparative approaches were used and the author exercised own discretion to make the argument and criticism. The target countries were selected based on identical circumstances; moreover, Somalia is given much consideration. These countries have witnessed political unrest and devastated civil war in their contemporary history; therefore, these rights are necessary to achieve political stability in these countries.

2. The Constitutional Framework of Freedom of Assembly and Demonstrations

The constitutions of Somalia, Ethiopia and Uganda stipulated the freedom of assembly and demonstrations as follows:

2.1 Somalia

In Somalia, under the fundamental rights of the citizens in the current provisional federal constitution of Somalia, article 29 reads as follows:

“Article 20. Freedom of Assembly, Demonstration, Protest, and Petition

(1) Every person has the right to organize and participate in meetings, and to demonstrate and protest peacefully, without requiring prior authorization.

(2) Every person has the right to present petitions to State Institutions”⁶

According to the above legal data points, a Somali citizen has full right to participate in protest and/or write petitions against state organs to redress grievances. In this case, the government security institution does not want to know about social development meetings and demonstrations prior to its implementation. Somali people have endured 21 years of central controlled government where the government institutions control the movements of the people. From that experience, the writers of this constitutional paper refused to put limits on this right and freedom bestowed to the Somali citizen. In the first caption, the Somali citizen is conferred the right to organize and participate in meetings and demonstrations subject to be peaceful without the authorization of the government security agencies. Maybe organizers of such an event will let the government security agencies know this prior to its execution, but that will be limited for the security agency to secure the area where the people will gather.

Back to history, in 1961, the Somali people approved the independence constitution in the formation of a unitary government in the unification of the British and Italian Somaliland. In 1979, the military regime created a new constitution to strengthen the dictatorship style of a presidential system. In August 2000, a reconciliation conference was held in Djibouti, and the Transitional National Charter (TNC) was born. In February 2004, the Transitional Federal Charter replaced the TNC. Finally, in August 2012, a national constituent Assembly adopted a draft constitution titled 'the provisional federal constitution of Somalia'.⁷ This constitution has officially repealed the Transitional Federal Charter (TFC) (see details in article 143, the provisional constitution of Somalia).

In the Somali Constitution of 1961, article 25 is written as follows:

1. *Every person shall have the right to assemble in a peaceful manner for a peaceful purpose.*
2. *The law may provide the previous notice of public meetings be given to the authorities. Meetings may be forbidden only for reasons of public health, safety, morality, order or security.*⁸

In 1979, the revolutionary government officials promulgated 'the Constitution of the Somali Democratic Republic. Although this constitution came as the complementary of the dictatorship regime, article 24 entitled "*Freedom of processions, publication and opinion*" and shown below legal data points:

1. *Every citizen shall be free to participate in an assembly, demonstration, or in their organisation.*
2. *The citizen shall further be, entitled to express his opinion in any manner, -freedom of publication and speech.*
3. *The exercise of the freedoms mentioned in paragraphs 1 and 2 of this article shall not contravene the constitution, the laws of the*

country, general morality and public order and shall not prejudice the freedoms of other citizens⁹.

In fact, in the revolutionary era, there was no freedom for assembly and demonstrations because the country was under a strong dictatorship controlling various aspects of the people's life, showing no mercy.

Back in the 2000s, the people struggled to create a government of unity. Transitional Federal Charter was adopted in 2004 to become the base for the reconciliation and reunification of the fragmented nation. Within this charter, article 19 gives below rights to the Somali citizens:

Right to assemble and freedom to strike.

1. Every person shall have the right to: -

(a) Assemble freely with other persons and in particular to form or belong to trade unions or other associations for the protection of his/her interests;

*(b) Mobilize and **participate in any meeting or demonstration**;*

*(c) Freely express his/her opinion orally, in written form, or in any other manner, **without censorship**.*

2. The workers of the Transitional Federal Government of Somalia shall have the right to form Trade Unions for the protection of their interests as specified by law¹⁰.

With the experience of government force to pressure people not to participate in public demonstrations if it is against the political interests of the public officials and the scrutiny censorship rendered, the translational federal charter, which was written during the peace reconciliation conference held in Kenya in late of 2004, offered excessive freedom for the Somali citizen to heal the wounds from the dictatorship regime. See section (b) of the above article that every citizen has the right to participate in

any meeting and demonstration, whether it is against the government officials or not, even if it may cause or orchestrate offenses against other people. Here people are given the discretion to feel like rightful citizens, and the only way to gather people to join the reformation of the government of unity was to display certain unlimited rights to earn their trust.

In the legal data points of article 19 from the transitional federal charter, a strike is included to form part of the title, unlike the article headings used for the prior constitutions. The right to strike is shown in the current provisional constitution of Somalia article 24/3¹¹.

2.2 Ethiopia

In Ethiopia, same to the provisional constitution of Somalia, the right to assembly, demonstration and petition comes under the fundamental rights and freedoms. There is little difference: in the Somali provisional constitution, the assembly, demonstration and petition are supplemented with the word 'protest'.

“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. Appropriate regulations may be made in the interest of public convenience relating to the location of open-air meetings and the route of movement of demonstrators or, for the protection of democratic rights, public morality and peace during such a meeting or demonstration.

2. This right does not exempt from liability under laws enacted to protect the well-being of the youth or the honour and reputation of individuals, and laws prohibiting any propaganda for war and any public expression of opinions intended to injure human dignity.”¹²

This provision confers rights to Ethiopian citizens. It also gives the citizen certain conditional duties and procedures to be followed when such demonstrations and public gatherings are held in open-air centres. This point shows how strict is Ethiopian constitution compared to the provisional constitution of Somalia.

Back to history, the first written constitution for Ethiopia emerged on July 16, 1931, during the monarchy of Haile Selassie I¹³. A written constitution with codification containing seven chapters was drafted, and the third chapter was titled the duties and rights of Ethiopian citizens. What is worth mentioning is that the people were given the freedom of movement and the right to raise a petition against governmental subjects in conformity with the law. Specifically, article 22 of the Ethiopian constitution 1931 gives the citizens the right to freedom of movement but is subjected to unmentioned limits, which were probably in the hands of the emperor. Similarly, in articles of the same chapter, citizens are given the right to present complaints against government activities in the form of a petition following certain predetermined guidelines and procedures, the right to privacy, right of property and right against extra-legal detention and sentence. Above all, article 29 of chapter three puts all the above-mentioned rights limitations giving the emperor the right to violate these fundamental rights protected in the social contract. The freedom of assembly and demonstrations are never mentioned in this old document¹⁴.

In 1955, the revised version of the Ethiopian constitution vested the citizens with the right to assemble peacefully without arms within the limits of the legal provisions laid down for the assembly¹⁵. The reason for the revision and improvements is said to be that Haile Selassie I wanted to show the world that Ethiopia is one of the civilized nations and that he is among the pioneers of democratic Ethiopia. For sure, the official visits of the emperor to Europe inspired him to move toward modernization and recognizing the rights of the citizens¹⁶. In 1987, Ethiopia got its third

constitution, with a national referendum in the same year approving the legitimacy of the constitution. This constitution opened the doors for the establishment of the People's Democratic Republic of Ethiopia¹⁷. In article 47, the people of Ethiopia were granted the freedom of speech, press, assembly, peaceful demonstration and association¹⁸. In observation of the legal data points, the 1987 constitution gives citizens more rights than those shown in the previous constitutions. When the empire of Haile Selassie rule came to an end in 1974, the people of Ethiopia suffered massive famine, which took the lives of thousands of people. After the empire was removed from power, a military regime emerged to rule the country. In 1977, Colonel Mengistu Haile Mariam became the leader of Derg pro-Soviet military regime and the country had also gone into violence and continued famine. In 1987, Mengistu was elected as president of Ethiopia, and a new constitution came into existence.¹⁹. Mengistu Haile Mariam's regime endured ongoing insurgency and riots. For him to remain in power, thousands of people were killed, and many more than those killed with bullets died of hunger. This indicates that the written constitutional provisions were not executed, and the people of Ethiopia reacted negatively, resulting in overthrowing of the regime, which had lasted for seventeen years of brutality, favouritism, and inequality²⁰. The military regime was toppled, and the Ethiopian People's Revolutionary Democratic Front (EPRDF) came into power; the country's political system was drastically altered to federal but utilitarian where ethnic power sharing was introduced to create balanced political institutions to operate throughout the country. The EPRDF accelerated the introduction of a new federal constitution, which was later adopted in 1995²¹.

2.3 The Constitution of Uganda

The freedom of assembly is put in article 29 together with other data points relating to the assembly, such as freedom of expression, freedom to distinguish right from wrong using their moral ethics, freedom of

movement and freedom to join an association. Clause 1/d gives the freedom of assembly and demonstration without putting on the organizers the duties to make prior notifications to the security authorities. Still, there appears to be conditional limitations on this provision, that is, provided the demonstration is peaceful, and the participants are not armed with weapons.

“29. Protection of freedom of conscience, expression, movement, religion, assembly and association

1. Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media;

b. freedom of thought, conscience and belief, which shall include academic freedom in institutions of learning;

c. freedom to practise any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this constitution;

d. freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition; and

e. freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

2. Every Ugandan shall have the right to move freely throughout Uganda and to reside and settle in any part of Uganda;

b. to enter, leave and return to, Uganda; and

c. to a passport or other travel document.”²²

In 2019, the Uganda government launched new regulations forbidding and preventing people from using internet blogs, websites and social media. This fight against the freedom of expression is totally against the

constitution of Uganda, according to article 29/1. The new rules of censorship for the media outlets and stopping the free journalists from talking about the president of Uganda are something beyond the written lines in the national constitution.²³ The government has deliberately closed free and privately-owned radio stations, blaming them that they were opponents to the state president and that unbalanced news was aired. In July 2018, Kyagulanyi was arrested by the government forces for leading a protest against improper tax the government imposed on the use of social media. This is another step that the government of Uganda has trampled on the freedom of assembly and demonstrations.²⁴

Back to history, Uganda acquired its independence from British Protectorate in October 1962. The first Constitution of Uganda was drafted in 1962 and comprised nine chapters with titles of Uganda and its territory description, its presidency, government branches, finance and extra, heading title with the name of fundamental rights, or the rights and duties of the citizen were not written in this document unlike modern constitutions²⁵.

The 1962 constitution of Uganda has gone into a couple of amendments which rendered later in 1966 the proposal of a new constitution which was later implemented in 1967²⁶. General Idi Amin took over the ruling power of Uganda by force in 1971²⁷. In 1979, when the regime of Idi Amin was toppled, the country stepped into new pages of debates, and the people of Uganda preferred to elect a national constituent assembly to represent them legally in the process of drafting the national constitution and in 1995 new constitution was presented and adopted²⁸. This constitution was later revised in 2017; it displays very large legal data points compared to the legal provisions for Somalia and Ethiopia. Broadly, article 29 of Uganda's constitution brings together many different variables of fundamental rights, including personal rights to distinguish the right from the wrong, the right to express opinion and speech, the right to move from one place to another place, freedom of

religious practices, people to get together in one place for a common purpose and the right to create association and/or to become a member of any association. Thus, the right to the freedom of assembling is marked in section 'd' of article 29.

3. Analysing and Comparing Legal Provisions of the Three Countries

Article 20 of the provisional constitution of Somalia promulgates that the citizen has the right to organize an assembly without prior authorization. Not only that this article gives the freedom for assembly and demonstration but also it provides the rightfulness for petition. In this regard, the constitution is very generous to the Somali people because it gives them the freedom to come together the first time and then make the action of disapproval of what they do not like, and this should be shown and/or displayed in a very peaceful manner. Apart from that, the political culture of the dictatorship era works as an invisible hand which, in its turn, deteriorates the current and updated laws. It is unacceptable to ignore the provisional constitution of Somalia rather than remain with outdated procedures inherited from the military era.

In Ethiopia, article 30 of the 1995 constitution does not interrupt the individual citizen freedom; rather, the law governs to increase the safety and protection of the people attending the assembly and demonstration. The second section of article 30 of the Ethiopian constitution puts some duties on the individual citizens and good space to make movements. People are asked to participate in attaining individual honour and reputation, and laws governing the prohibition of propaganda are complied with without exemptions. In Uganda, Article 29 of its constitution is the longest article among the constitutions discussed in this study. The article consolidates various legal data points, unlike those shown in other articles. It included freedom of conscience, movements, religion, association and expression.

When glancing at the legal data points of all mentioned articles, it seems that written articles only give abstractedness and generality and the need for people to comply with public order and morals. Specifically, in article 20 of the provisional constitution of Somalia, there are no conditions on the organization of assembly, neither is there a given procedure to follow; rather, it is implied that the procedure will be detailed in later regulations or other laws relating to security affairs. In the Ugandan Constitution of 1995, the words 'association', 'conscience', 'expression', 'movement', 'religion', and 'assembly', companies to form the legal data point. Something to note is that assembly is in 'd', not 'A', 'B' or 'C', which only shows the level of consideration such right has within the governmental structure. Remember, in Somalia and Ethiopia, the rights for assembly and demonstrations were given much consideration, and separate articles were addressed to uphold public confidence in this social document.

Provisions on the Ground

To glimpse the realization of these provisions on the ground, let us look at the scores of the three countries in the Human Freedom Index. The Human Freedom Index is a global measurement of personal, civil, and economic freedom. It presents a broad measure of human freedom; it contains different varieties to count, including the freedom of assembly and expression, while the demonstration is a form of public expression and the rule of law. The ranking and scores of the three countries show much weakness, as shown in the below table. Technical assessments on the level of freedom of association and expression are guaranteed, and the extent to fulfil the rule of law, are the varieties, with others, of the Human Freedom Index²⁹.

In the indicator of freedom of assembly, Somalia is the lowest and scores 3.2 (with a range of 0 is the lowest and 10 is strongest), while Ethiopia is the best and scores 4.2. Regarding freedom of Expression, Somalia is the lowest, and Uganda is the best of the three. The third indicator we

consider is the rule of law because it is an essential condition of freedom. Ethiopia became the best of the three countries and got 3.4, while Somalia registered the lowest and got only 1.5 points.

*Table 1:
Measurements of Freedom Index with some Varieties of 2019³⁰.*

Country	Rank	Human Freedom	Freedom of Assembly	Freedom of Expression	Rule of Law
Somalia	159	4.93	3.2	3.5	1.5
Ethiopia	132	5.95	4.2	4.0	3.4
Uganda	122	6.32	3.8	5.0	3.2

Source: The Human Freedom Index 2021

The three countries are at the bottom of the list of countries in the Human Freedom Index of 2021, which is the world measurement of freedom index. In the human freedom index, Uganda is the best of them with a score of 6.32, on a scale of 0 to 10, where 10 represents more freedom, and ranked 122 globally, while Ethiopia scores 5.95 and ranks 132. Somalia is the lowest of the three countries, with a score of 4.93 and ranked 159 globally. This indicates that they suffer from a severe deficiency of the freedom of assembly and demonstration, the topics of this study.

4. Conclusion

Freedom of assembly and demonstration are among the most pressing problems that existed in the past and remain in many countries at present. In Somalia, Ethiopia and Uganda, the freedom of assembly and demonstration are among the fundamental human rights protected by their constitutions. Yet, these rights are infringed by the governments.

After a glimpse of the legal articles and the behaviour of the government institutions in the target countries, it became very clear that the written

social contracts (constitutional articles) covering the rights for assembly and demonstration are not executed rather government forces violate the legal provisions. As displayed in table 1, Somalia is measured with rank of the worst place human to live due to poor human freedom, limited freedom for assembly, lower rank for the freedom of expression and low level of rule of law. The referred varieties show better in Uganda and Ethiopia, comparative to Somalia, which are considered to have better human freedom compared to the situation in Somalia.

In Somalia, unlike other target countries, in accordance with the written legal provisions, people have enough space to exercise their constitutional rights for assembling and demonstrating. Still, in practice, things work a little differently, and ‘invisible forces’ work to push things to the autocracy region.

The way out of the human rights challenge in these countries is, simply, every country must start to comply with the written provisions of its constitution. Therefore it is up to societies to put more effort into making their governments adhere to the written words of the constitutions, specifically those provisions protecting the basic rights of the citizens are fulfilled.

In Somalia, the society in general, specifically the civil society, shall work to make changes toward the positive side and pursue that people from the government become accountable to the people of Somalia. The people must adopt how to assemble and demonstrate peacefully, reaching the greater good, and express their feelings against malpractices, and the government must accept the criticism.

Additionally, more studies should be considered to determine the extent to which government institutions preserve human rights and implement the constitutional articles which they were supposed to apply, enforce and safeguard.

Notes:

- ¹ Monnier, R., 2006. Peter Baehr, Melvin Richter (ed.), Dictatorship in History and Theory. Bonapartism, Caesarism, and Totalitarianism. Annales historiques de la Révolution française, (343), pp.162-163.
- ² Parthasarathi Loganathan' Scope of fundamental rights in our democracy', (08, September 2020)www.lawyersclubindia.com/articles/scope-of-fundamental-rights-in-our-democracy-11908.asp accessed December 19, 2021
- ³ Bdnews24.com, February 19 2021, <https://bdnews24.com/>, accessed 18/12/2021,
- ⁴ Constitute, PDF generated in 26 August2021, [Constitute \(constituteproject.org\)](http://constituteproject.org), accessed in 15/11/2021,
- ⁵ CNN November 24 2020, <https://edition.cnn.com/2020/11/23/africa/ugandan-protest-death-toll-intl/index.html>, accessed in 20/11/2021
- ⁶ Federal Provisional Constitution of Somalia, 2012, p5
- ⁷ CONSTITUTIONNet, <https://constitutionnet.org/country/somalia<2016>> accessed date: 14/09/2022
- ⁸ Somali Constitution, 1960, p11
- ⁹ The Constitution of Somali Democratic Republic, 1979, p9-10
- ¹⁰ The Transitional Federal Charter of the Somali Republic, February 2004, Nairobi, p11
- ¹¹ The Federal Republic of Somalia, provisional constitution, 2012, Mogadishu, p6
- ¹² Ethiopia's constitution, 1994, p12
- ¹³ Gashaw Ayferam, Constitution, constitutionalism and foundation of democracy in Ethiopia, 2015, ResearchGate, p588
- ¹⁴ Ethiopian Constitution, 1931, p2-3
- ¹⁵ The 1955 Ethiopian Constitution, p178, article 45
- ¹⁶ Ayferam (n24)p591
- ¹⁷ Ayferam (n24)p594
- ¹⁸ The Constitution of the People's Democratic Republic of Ethiopia, article 47, p192

- ¹⁹ Jon Abbink, *The Ethiopian Revolution after 40 Years (1974-2014): Plan B in Progress*, 2015, p342-344
- ²⁰ Heritage Foundation, *In Ethiopia, Mengistu's Final Solution*, Washington , 2002 < <https://www.heritage.org/africa/report/ethiopia-mengistus-final-solution>> accessed 23/09/22
- ²¹ Habtamu Nigussie, *A brief account of Ethiopian political history 3*, Date: NA, Madawalabu University, p96-97
- ²² *Uganda's Constitution of 1995 with Amendments through 2017*, p31-32
- ²³ World Report, <https://www.hrw.org/world-report/2020/country-chapters/uganda#>, accessed 17/12/21, 2020
- ²⁴ *Ibid*, p3
- ²⁵ *The Constitution of Uganda, 1962*, <<http://www.buganda.com/const62m.htm>> accessed 30/09/2022
- ²⁶ Constitutionnet, *Constitutional History of Ugandan 1967* < <https://constitutionnet.org/country/uganda>> accessed 30/09/2022
- ²⁷ Constitutionnet, 1971
- ²⁸ Constitutionnet, 1979-1995
- ²⁹ Our World in Data, *Democracy*, (2021) < <https://ourworldindata.org/democracy>> accessed 01/10/2022
- ³⁰ *The Human Freedom Index*, (2021) <https://www.fraserinstitute.org/sites/default/files/human-freedom-index-2021.pdf> accessed 19/10/2022

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