

# Functional Domains of IGR Forums, House of Federation and Ministry of Peace in Ethiopia: The Need for Clarity

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## Abstract

Intergovernmental relations have been attached with the House of Federation and the Ministry of Peace until the enactment of the new Intergovernmental relations (IGR) legislation. The new legislation establishes six major intergovernmental consultative forums. It states their areas of engagement and indicates the distinct roles of each institution. The newly established IGR forums can create cooperative and uncompetitive relations between the federal government and regional states thereby changing the contour of the Ethiopian IGR system. This article examines whether the enactment of the new IGR law overlaps with the power and functions of the House of Federation and Ministry of Peace which have been facilitating federal-state or interstate relations. I argue that there are power overlaps and fusion of responsibilities between the House of Federation, the Ministry of Peace, and the newly established IGR forums. In this regard, an attempt is made to draw a clear functional realm among these institutions in connection with their mandates in facilitating smooth federal-state or interstate relations, and also to maintain transparency and accountability within these institutions relative to roles and tasks. The delineation of their power and functions is important to further enhance the IGR system in the Ethiopian federation.

**Key terms:** IGR forums · functional interface · power overlaps · IGR law · Ethiopia

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## 1. Introduction

Ethiopia has recently endorsed its IGR framework law. The new IGR law<sup>1</sup> contains comprehensive rules and principles to regulate vertical, horizontal, and sectoral relations and it fills the gaps in institutionalizing formal IGR. The Proclamation institutes various IGR forums in which several issues of shared concern are discussed and possibly resolved. The IGR legislation offers detailed provisions regarding intergovernmental relations, institutions and related matters so that the different spheres of government cooperate, negotiate and consult with each other while respecting their respective powers and functions. It outlines the structure, objectives, composition, and function of different intergovernmental consultative forums.

The new IGR legislation specifies its objectives and expressly defines the matters addressed by each IGR forum. It underlines that “no law, regulation, directive or customary practice in contravention of the Proclamation may be applicable to issues provided therein.”<sup>2</sup> This provision appears to preclude other institutions that have been in charge of facilitating and serving as a focal point for intergovernmental relations if the stipulation is interpreted to have exclusively reserved intergovernmental matters to the newly established IGR forums.

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### Frequently used Acronyms:

IGR	Intergovernmental Relations Forums
HoF	House of Federation
HoPR	House of Peoples' Representatives
SNNP	Southern Nations, Nationalities and Peoples

<sup>1</sup> Proclamation No. 1231/ 2021, The System of Inter-Governmental Relations in the Federal Democratic Republic of Ethiopia's Determination Proclamation No. 1231/ 2021, Federal Negarit Gazeta, 27th Year No. Addis Ababa 11<sup>th</sup> January, 2021.

<sup>2</sup> Ibid, Article 31(1).

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On the other hand, there are formally established institutions that have been involved in the process of creating cooperative relations between the federal government and regional states. These institutions are the House of Federation and the Ministry of Peace (previously known as, the Ministry of Federal Affairs).<sup>3</sup> For instance, it is the constitutional power and mandate of the House of Federation “to strive and find solutions to disputes or misunderstandings that may arise between the States.”<sup>4</sup> This power and function of the HoF have been extended through a proclamation that defines the duties and functions of the House of Federation (i.e. Proclamation No. 1261/2021) which came into force after the enactment of the IGR Proclamation.<sup>5</sup> Under this law the HoF has the authority to find solutions to disputes or misunderstandings that may arise between the federal government and states, including interstate misunderstandings or disputes.<sup>6</sup>

Under Proclamation No. 1263/2021 –that states the duties and powers of FDRE’s executive organs– the Ministry of Peace (one of the federal Executive Organs) is designated to serve as a focal point for smoothening federal-state relationships to strengthen the Ethiopian federal system.<sup>7</sup> The Proclamation authorizes the Ministry of Peace to play a crucial role in negotiation, facilitation of cooperation, and cultivating good relations and cooperation between the federal government and the States.<sup>8</sup> Moreover, the Ministry is allowed to facilitate resolution of disputes that arise between the states without prejudice to the power of the House of Federation.<sup>9</sup> Even after the coming into

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<sup>3</sup> Solomon Negussie (2008). *Fiscal Federalism in the Ethiopian Ethnic-based Federal System*, Rev. ed. Wolf legal publishers: Netherlands, p. 98.

<sup>4</sup> See, the FDRE Constitution, Article 62(6)

<sup>5</sup> Proclamation No. 1261/2021 A Proclamation to Define the Powers and Functions of the House of Federation Proclamation Federal Negarit Gazeta, 27th Year No .43, Addis Ababa 19th August, 2021, and see also the IGR Proclamation No. 1231/ 2021, *supra* note 1, enacted on 11<sup>th</sup> January, 2021.

<sup>6</sup> *Ibid*, Article 33.

<sup>7</sup> Proclamation No. 1263 /2021 A Proclamation to Provide for the Definition of the Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, Federal *Negarit Gazeta*, 28<sup>th</sup> Year No. 4 , Addis Ababa, 25th January, 2022, Article 41(i). See also the former Proclamation No. 1097/2018, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation, Federal *Negarit Gazeta*, 25<sup>th</sup> Year No.8, Addis Ababa, 29th November, 2018, Article 10(1)(g), 13(1).

<sup>8</sup> Proclamation No. 1263 /2021, Article 41(1)(i).

<sup>9</sup> *Id.*, Article 41(1) (j).

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force of the new IGR law, the Ministry of Peace has negotiated and found solutions to the disagreement between the Afar and Somali regional states.<sup>10</sup>

Proclamation No. 1263 /2021 that defines the powers and function of the Federal Executive Organs, which came into force after the enactment of the new IGR proclamation, reauthorizes the Ministry of Peace to play roles in strengthening the federal-states relationship and serving as a site for IGR.<sup>11</sup> The power and functional congruence existing between the IGR forums, the HoF and the Ministry of Peace in facilitating IGR leads to the question of whether all these institutions in fact serve as sites for IGR and work in concert to advance intergovernmental interactions and discussion. Moreover, reauthorizing the HoF and Ministry of Peace to facilitate intergovernmental relations after formal IGR forums are established evokes various issues that need to be examined.

First, the HoF and Ministry of Peace may continue to facilitate interactions in areas that are not covered under the new IGR law. Or, re-empowering the HoF and Ministry of Peace to facilitate relations in situations where formal IGR forums are established to institutionalize IGR might imply that the concerned authorities are not enthusiastic about the establishment of the IGR forums and newly IGR forums which are at present largely inactive.

Hence, there is the need to examine the functional empowerment of these institutions to determine the actual role they play in facilitating interactions and collaborations between institutions of the different levels of government both vertically and horizontally. In this regard, the main question is whether the new IGR legislation is congruent with the powers and functions of the HoF and Ministry of Peace in promoting smooth intergovernmental relations.

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<sup>10</sup> See the Press Statement the Ministry of Peace release over the peaceful conclusion of the disputes between the Afar and Somali regional states; 08 April 2021. Fana Broadcasting Corporate S.C, <https://www.facebook.com/123960474361367/posts/3925382204219156/?sfnsn=mo> and also Walta Media and Communication Corporate, <https://www.facebook.com/489211707826282/posts/4175793315834751/?sfnsn=mo> The news is read as follows. “የአፋር እና የሶማሌ ብሔራዊ ክልላዊ መንግሥታት በቅርቡ ተከስተው የነበሩ ግጭቶችን በሰላም ለመፍታት ተስማሙ።። መጋቢት 30 /2013 (ዋልታ) - የአፋር እና የሶማሌ ብሔራዊ ክልላዊ መንግሥታት በርዕሳነ መስተዳድሮቻቸው የተመራ የከፍተኛ አመራሮች ቡድን በቅርቡ በሁለቱ ክልሎች አዋሳኝ ቀበሌዎች የተፈጠሩ ግጭቶችን በሰላም ለመፍታት ስምምነት ላይ ደርሰዋል።። ርዕሳነ መስተዳድሮቻቸው በሰላም ሚኒስትር ወይዘሮ ሙፈሪሃት ካሚል ሰብሳቢነት ነው ዛሬ ስምምነት ላይ የደረሱት።። በሰላም ሚኒስትር የሁለቱ ክልሎች ከፍተኛ አመራሮችና የፌዴራል መንግሥት የጸጥታ አካላት በተገኙበት በሁለቱ ክልሎች አዋሳኝ ቀበሌያት የተከሰቱ ግጭቶችን በአፋጣኝ ለማስቆምና በቀጣይ ችግሮችን ለመፍታት መስማማታቸውንም ከሰላም ሚኒስትር ያገኘው መረጃ ያመለክታል።”

<sup>11</sup> Proclamation No. 1263 /2021, Art 41(1(i)).

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The next section of this article deals with the conceptual and analytical framework of intergovernmental relations and their structure. Section 3 discusses the structures, areas of focus, and the composition of the newly established IGR forums. Against this backdrop, the fourth section examines and scrutinizes whether the power and functions assigned to the newly established IGR forums are in consonance with the mandate and function of the HoF in facilitating and advancing intergovernmental relations and dialogues. To this end, the section reviews and compares the roles of these institutions and it examines the points where these roles converge or diverge in facilitating cooperative relations between the federal government and the states. The fifth section deals with the power and duties of the Ministry of Peace *vis-à-vis* the power and function of the newly established IGR forums in facilitating intergovernmental relations. An attempt is made to indicate the IGR matters that still remain under the ambit of Ministry of Peace.

## **2. Intergovernmental Relations and Institutions: A Conceptual Framework**

Federations comprise multiple levels of government imbued with functional independence and interdependence that necessarily interact.<sup>12</sup> In many federations, specific constitutional powers, with varying scopes of jurisdictional authority, are allocated to each level of government. Yet the allocation of power and functions is not watertight.<sup>13</sup> As Watts notes, power overlaps and functional interdependence are inevitable in any federation.<sup>14</sup> The functional interdependence, which usually exists between the different tiers of government, requires the institutionalization of various intergovernmental relation processes, institutions or councils to facilitate collaboration and coordination of shared governmental activities.<sup>15</sup>

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<sup>12</sup> Robert Agranoff (2006). "Intergovernmental Policy Management: Cooperative Practices in Federal Systems" in the Michael A. Pagano & Robert Leonard (eds.), *The Dynamics of Federalism in National and Supranational Political Systems*, Palgrave Macmillan, New York, 248-283, p. 248.

<sup>13</sup> Jennifer Wallner (2017). *Ideas and Intergovernmental Relations in Canada*, 50(3) PS: America Political Science Academy, 717-722, p.717; Bertus De Villiers and Jabu Sindane (2011). *Cooperative Government: The Oil of the Engine*, Konrad Adenauer Stiftung.

<sup>14</sup> Ronald L. Watts, (2006). 'Comparative Conclusions' in Brown, DM, Kincaid, J., Majeed, A., Watts, RL, (eds.), in *Distribution of Powers and Responsibilities in Federal Countries*, McGill-Queen's University Press, Canada, 322- 350, p.323.

<sup>15</sup> Ibid.

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In the words of Cheryl Saunders, "however careful the allocation of powers is, substantial interaction, collaboration and cooperation between governments is inevitable, because of the complexity of a social organization, increased economic integration and the exigencies of politics."<sup>16</sup> Lori also argues that interaction between the different spheres of government and their institutions is likely to occur whenever the constitution assigns functions to both levels, fails to allocate a policy area clearly and exclusively, or when governments lack the resources to perform their allotted tasks.<sup>17</sup>

The empirical record of the federal political systems, over the past several decades, has revealed that policy interdependencies have increased, formal separation of jurisdictions has been blurred and incentives for interaction between the different spheres of government have become intensified.<sup>18</sup> This implies that federalism's default position is one of overlapping federal and state governance, which requires extensive interaction for the coordination of policy programs and coordinated application of powers by formally autonomous governments.<sup>19</sup> Given the allocation of shared powers and functions to the different orders of government, political decisions made or administrative actions taken by a sphere of government may have a spillover effect in all or some of the sub-national states. Hence, there should be intergovernmental toolkits to deal with externalities or gain surplus from coordinated action.<sup>20</sup> Besides, the challenges facing modern-day governments (due to the increase and intensification of the roles and size of government), coupled with the scarcity of resources, demand all levels of governments to collaborate, consult and integrate their activities for the interest and benefits of the general public.<sup>21</sup>

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<sup>16</sup> Cheryl Saunders (2002). "Collaborative Federalism", *Australian Journal of Public Administration*, Vol. 61 No. 2, pp. 69-77, p. 69.

<sup>17</sup> Lori Thorlakson (2003). "Comparing Federal Institutions: Power and Representation in Six Federations", *West European Politics*, Vol 26 No. 2, pp. 1-22, p. 7.

<sup>18</sup> Nicole Bolleyer (2006). "Federal Dynamics in Canada, The United States, and Switzerland: How Substates' Internal Organization Affects Intergovernmental Relations", *Publius: Journal of Federalism*, Vol. 36 No. 3, pp. 471-502, p. 471.

<sup>19</sup> Trevor W. Morrison (2009). "The State Attorney General and Pre-emption" in William W. Buzbee (eds.) *Pre-emption Choice: The Theory, Law, and Reality of Federalism's Core Question*, Cambridge University Press, Cambridge, 81-97, p. 84.

<sup>20</sup> Nathalie Behnke & Sean Mueller (2017). "The Purpose of Intergovernmental Councils: A Framework for Analysis and Comparison", *Regional and Federal studies*, Vol. 27, No 5, pp 507-527, p. 508.

<sup>21</sup> Bertus De Villiers and Jabu Sindane (2011). *Cooperative Government: The Oil of the Engine*, Konrad Adenauer Stiftung, p 8.

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The foregoing discussions portray that intergovernmental relation is central to, the integral component of and the working principle of most federations.<sup>22</sup> Accordingly, each federation –guided by particular circumstances and conditions– formulates its distinct path to organize intergovernmental institutions, structures and processes. The variations in structuring intergovernmental relation institutions are associated with “the society of which they are a part, the constitutional regime within which they are set, the governmental institutions of which they are in part the expression, and the internal and external conditions which shape the life of the given country at a particular time.”<sup>23</sup> Thus, federations, both old and new, have formal and informal councils, committees, and conferences to share information, discuss common problems and contemplate coordinated or joint actions.<sup>24</sup> Some also argue that “a second chamber in a federal system has the capacity to serve as a site of legislative IGR.”<sup>25</sup> In sum, as seen in many federations, the federal second chambers, some agencies, or functional authorities serve as intergovernmental relation forums and institutions.<sup>26</sup>

Most federations are characterized by a dense network of relations between governments in which intergovernmental relations and negotiation take place between heads of government, ministers, other elected officials, senior civil servants, and policy advisors of the central and regional units of government.<sup>27</sup> One can discern that, at the highest level, in most federations, it is heads of government and some ministers that are deeply involved in intergovernmental relations.<sup>28</sup> In other federations, heads of government usually have intergovernmental relations offices close to them and have regular meetings,

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<sup>22</sup> Wallner, *supra* note 13, p. 717; Richard Simeon & Beryl A. Radin (2010), “Reflections on Comparing Federalisms: Canada and the United States”, *Publius: Journal of Federalism*, Vol 40, No 3, pp 357-365, p. 362; See also Dale Krane and Richard H. Leach, (2007) “Federalism and Intergovernmental Relations: Theories, Ideas, and Concepts”, 65 *Pub. Adm & Pub. Pol.*, p 491.

<sup>23</sup> *Id.*, p. 124.

<sup>24</sup> John Phillipmore (2013). "Understanding Intergovernmental Relations: Key Features and Trends." *Australian Journal of Public Administration*, Vol 72, No. 3, 228-238, p. 231.

<sup>25</sup> Yonatan T. Fessha (2021). Second chamber as a site of legislative intergovernmental relations: An African federation in comparative perspective, *Regional & Federal Studies*, Vol 31(4), 495-517, p. 497.

<sup>26</sup> Behnke & Mueller, *supra* note 20, p. 509.

<sup>27</sup> George Anderson. (2008). *Federalism: An Introduction*, Oxford University Press, Oxford New York, p. 68.

<sup>28</sup> *Ibid.*

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which can help resolve problematic issues and develop friendly relationships.<sup>29</sup> Finance ministers play a significant role in intergovernmental relations and negotiations in the course of dealing with fiscal federalism and other economic issues. This envisages highly developed links between the federal government and the state's finance officials and specialized staff for this function.<sup>30</sup>

It is important to note that some federations have a constitutional base relating to the institutions, structure and processes that foster intergovernmental cooperation and coordination, while most do not.<sup>31</sup> In the older federations, such as the USA, Canada, and Australia, due to the prevalence of coordinated government, their constitutions generally establish very few IGR institutions to deal with relations and interactions between the federal government and states.<sup>32</sup> However, the younger federations, such as Germany, India, and South Africa –drawing lessons from the gradual growth and intensification of concurrency in the older federations – have established various IGR institutions and mechanisms.<sup>33</sup>

Yet, compared to the German and Indian federations, the South Africa federation recognizes the importance of IGR, and its constitution requires all spheres of government to ‘co-operate with one another in mutual trust and good faith.’<sup>34</sup> Besides, the South African Constitution sets basic IGR principles to concretize cooperative governance, develop viable intergovernmental relations and create intergovernmental conflict resolution mechanisms. To this end, the South Africa Constitution requires the national Parliament to provide the processes, structures, and institutions for promoting relations and appropriate mechanisms and procedures to expedite settlement of

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Taiwo Akanbi Olaiya (2016). “Federalism and Intergovernmental Relations in Africa”, *Public Administration Research*; Vol. 5, No. 2, 87-103, p. 93.

<sup>32</sup> Phillimore, *supra* note 24, p. 231.

<sup>33</sup> Ibid.

<sup>34</sup> Rassie Malherbe (2006). “Does the Intergovernmental Relations Framework Act 13 of 2005 Confirm or Suppress National Dominance”, *Journal of South Africa Law*, pp. 810-818. p. 811, Modimowabarwa Kanyane (2016) “Interplay of intergovernmental relations conundrum” in the Daniel Plaatjies *et al.* (eds.) *State of the Nation South Africa 2016: Who is in Charge? Mandates, Accountability and Contestations in the South African State*, Cape Town: Hsrc Press 92-116, p. 94, D.M Powell, (2001) “South Africa’s Three-Spheres System: The Challenge for Governance”, in the Norman Levy and Chris Tapscott (eds.) *Intergovernmental Relations in South Africa: The Challenges of Co-Operative Government*, 254-273, p. 258.



intergovernmental disputes.<sup>35</sup> Hence, an intergovernmental relation framework Act<sup>36</sup> enacted by the National Parliament provides the details regarding intergovernmental relations, institutions and matters associated with it.<sup>37</sup> The Act outlines the structure, objectives, composition, and function of different intergovernmental consultative forums.<sup>38</sup>

Unlike South Africa, the FDRE Constitution does not give sufficient legal platform to regulate and institutionalize intergovernmental relations. Nevertheless, following the political transition in 2018, Ethiopia endorsed its first intergovernmental relations framework legislation, and this is a positive step in the Ethiopian federation.<sup>39</sup> The new IGR law provides a comprehensive legal framework to govern and institutionalize intergovernmental interactions and collaborations. Some institutions have been re-empowered to engage in promoting intergovernmental cooperation and interactions between the federal government and regional states and amongst the states. These formally established institutions are further empowered to continue facilitating collaboration between the federal government and the states and among the regional states. Thus, in spite of the weakly designed Constitutional provision, the Ethiopian federation manages its intergovernmental relations through various proclamations, and established political practices.<sup>40</sup> The following section discusses the role of the HoF and the Ministry of Peace *vis-à-vis* the newly established IGR Forums in embedding stable cooperation and effective interactions between the federal government and the regional states.

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<sup>35</sup> Lianne Malan (2005). “Intergovernmental Relations and Co-operative Government in South Africa: The Ten-Year Review”, *Politeia*, Vol. 24 No. 2, 226-243, p. 227.

<sup>36</sup> See the Republic of South Africa Intergovernmental Relations Framework Act (IGRFA) (No. 13 of 2005)

<sup>37</sup> Bertus De Villiers (2012). Codification of intergovernmental relations by way of legislation: the Experiences of South Africa and Potential lessons for young multi-tiered systems, 671-694, p. 678

<sup>38</sup> See the Intergovernmental Relations Framework Act 13 of 2005, Chapter Two.

<sup>39</sup> Proclamation No. 1231/ 2021, the System of Inter-Governmental Relations in the Federal Democratic Republic of Ethiopia’s Determination Proclamation, Federal Negarit Gazette, 27<sup>th</sup> Year No. 7, Addis Ababa 11<sup>th</sup> January, 2021.

<sup>40</sup> Assefa Fiseha (2009). The System of Intergovernmental Relationship (IGR) in Ethiopia: In Search of Institution and Guidelines, *Journal of Ethiopia Law*, Vol. 23, No.1, 96-131, p. 119.

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### 3. IGR Forums in Ethiopia: Power, Functions, and Composition

The new IGR legal framework establishes several IGR forums that tie the federal government and the regional states (among the regional states). It is worth underlining that the IGR legislation contemplates several intergovernmental forums with clear objectives on which they focus and define the roles they discharge. The forums are the National Legislative Forum, the National Executive Forum, the National Judicial Forum, House of Federation and Regional States forums, National Sector Executives Forum, All-embracing, and sector-driven relations forum between (among) regional states.<sup>41</sup> The composition, role, and functioning of each forum are sufficiently defined. Though all of the forums seem consultative forums, they vary in design, composition including the authority they enjoy and the matters they see.

As discussed below from Sections 3.1 to 3.6, the new IGR legislation provides a comprehensive legal framework to institutionalize and govern intergovernmental interactions and collaborations. There are visible efforts to integrate intergovernmental relations and cooperation in the federal system, political practice and institutional construction of the Ethiopian federation. The IGR legislation offers sufficient legal and institutional spaces through which the federal government and regional states cooperate, negotiate, and consult with each other while respecting the powers and functions of each sphere of government. The new IGR law, specifying its aims explicitly, outlines the IGR forums and their engagement in intergovernmental relations. It contains the structure, objectives, composition, and function of different intergovernmental consultative forums. It can be argued that the IGR law has established well-designed, properly regulated and highly institutionalized IGR forums, which can contribute to the stability and healthy development of the Ethiopian federation. The intergovernmental forums, alliances, and collaborations enable both tiers of government to develop national solutions for issues that have national significance. They also address concerns of two or more regional states in the context of their effective participation.

#### 3.1 The National Legislative Forum

The *National Legislative forum* is established to carry out the relations between the federal and regional state legislative bodies. In this forum, only the legislative bodies of the two tiers of government meet to discuss and consult shared matters. The forum comprises speakers of the two federal

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<sup>41</sup> Proclamation No. 1231/ 2021, Article 6.

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houses (HoPR and HoF) and all state legislative bodies, including the Addis Ababa and Dire Dawa City Administration Councils, as well as, the speakers of the SNNP Regional State Council of Nationalities and Harari National Council.<sup>42</sup> The establishment of such a forum implies the presence of shared legislative power between federal and regional state legislative organs.

For instance, the federal government and regional states exercise concurrent powers regarding civil and criminal laws as well as the state of emergency.<sup>43</sup> The Constitution explicitly confers the power to enact criminal law to the federal government, while allowing the regional states to pass penal law on matters that are not expressly covered in the federal penal code (FDRE Constitution art 55(6)). Likewise, the federal parliament may enact civil laws concerning subjects that the HoF deems necessary to sustain one economic community. If exercised, such matters result in concurrent legislation.

Both the federal government and the regional states have the power to jointly levy and collect profit, sales, excise, and personal income taxes on enterprises they jointly establish.<sup>44</sup> At the same time, the federal government and states are jointly empowered to levy and collect taxes on the profits of companies and on dividends due to shareholders. They further jointly levy and collect taxes on incomes derived from large-scale mining and all petroleum and gas operations, and royalties on such operations.<sup>45</sup> The power to levy and collect taxes on these tax sources overlaps; and this implies that the federal and regional state legislative organs have shared legislative power on the issues.

Under these circumstances, the National Legislative forum enables the federal and regional state legislative organs to enact harmonized laws on their shared legislative powers. Guided by this logical foundation, the forum is sanctioned to work for the enactment of harmonized, coordinated, and complementary laws with the law of the other level of government.<sup>46</sup> In extension, the legislative body of each level of government is mandatorily required to consult and assist another level of legislative body to have a

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<sup>42</sup> Unlike other regional states, the SNNP and Harari regional states have bicameral houses.

<sup>43</sup> Solomon, *supra* note 3, p. 65.

<sup>44</sup> *See* The FDRE Constitution, Art 98(1)

<sup>45</sup> *Id.*, Art. 98 (2) and (3)

<sup>46</sup> Proclamation No. 1231/ 2021, Article 8(1).

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common understanding over the law being enacted before it moves to materialize its legislative competence.<sup>47</sup>

The forum is tasked to identify issues of cross-national implications and makes deliberation on those issues and thereby suggest the enactment of laws that ensure the common interests of the people and strengthen co-existence.<sup>48</sup> A series of consultations are made in the forum towards shared understanding of the laws, policies, and strategies of the federal government and to bring proximity in the implementation of the same across regional states.<sup>49</sup> The forum is also mandated to ensure the execution of agreements concluded between the executive bodies with the constitutional provisions, oversee the implementation and performance of those joint executive deals.<sup>50</sup> If the forum finds the agreement concluded between the executive bodies contradicting the constitutional provisions, it takes or causes corrective measures to be taken. In light of the composition of the forum and its functional assignment, it can be argued that the forum is sufficiently equipped and becomes an essential institutional platform for coordination and managing overlap of powers (interdependence) between the legislative bodies of both levels of government.

However, nearly two years after its establishment, the forum recently hosted its first meeting. In its first meeting, the forum did not start exercising its assigned duties.<sup>51</sup> Members discussed the need to have an IGR law and to create shared understanding on the same. They also deliberated on the need to establish a secretariat office that facilitates legislative IGR and how the future National Legislative Forum meetings are going to be hosted and who can own them. All these issues are already addressed in the IGR law and have remote connection with the exercise of shared legislative powers. Although the National Legislative Forum is empowered to ensure the involvement of regional state legislative councils or facilitate their inputs in the federal law-making process, it has not yet attained the desired result of facilitating legislative intergovernmental relations.

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<sup>47</sup> Id., Article 8(2).

<sup>48</sup> Id., Article 8(2).

<sup>49</sup> Id., Article 8(4).

<sup>50</sup> Id., Article 8(5).

<sup>51</sup> See the official website of the House of Peoples Representative posted on 29, January 2022

[https://m.facebook.com/story.php?story\\_fbid=304674755032859&id=100064710097423&sfnsn=mo](https://m.facebook.com/story.php?story_fbid=304674755032859&id=100064710097423&sfnsn=mo) and also see Fana Broadcasting Corporate website posted on 29, January 2022

<https://www.facebook.com/123960474361367/posts/4866574600099907/?sfnsn=mo>

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### 3.2 The National Judicial Forum

The other IGR is the *National Judicial Forum*, which is designed to regulate the relations between the Federal and State judicial bodies. The rationale for the establishment of the National Judicial consultative forum is the existence of concurrent judicial power between federal and state judicial organs. The FDRE Constitution assigns concurrent judicial jurisdiction to the federal and state courts;<sup>52</sup> and federal judicial power is exercised not only by federal courts but also by state courts. The state Supreme and High courts, in addition to matters exclusively given to them, have the power to exercise Federal High and First-Instance Courts jurisdiction, respectively, until the federal government establishes High and First-Instance Courts in different parts of the Country.<sup>53</sup> In effect, the States Supreme and High courts apply and interpret the existing federal laws in the course of handling delegated federal matters.<sup>54</sup> As the State Supreme and High courts are charged to enforce federal laws, this is an acknowledgment that there are matters that need the attention and alliance of both the federal and state judicial bodies. They should make consultations to ensure a harmonized interpretation of the federal laws in the state courts.

Another equally important point that demanded the establishment of consultative forums is the issue of determining the financial cost necessary to carry out delegated federal judicial power. As a rule, the Constitution requires the HoPR to allocate compensatory budgets for states whose Supreme and High courts exercise the jurisdictions of the Federal High and First-Instance Courts concurrently.<sup>55</sup> Hence, the federal government shall defray the costs state courts incur, and the regional states should not bear the budget for activities that they are not constitutionally assigned to undertake exclusively.<sup>56</sup>

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<sup>52</sup> See the FDRE Constitution. Article 80, and see also Assefa Fiseha and Zemelak Ayele (2017) 'Concurrent Powers in the Ethiopian Federal System', in the Nico Steytler (ed.) *Concurrent Powers in Federal Systems Meaning, Making, Managing*, 241-260, p.247

<sup>53</sup> Id., Article, 78(2), and see also Gedion T. Hessebon and Abduletif k. Idris (2017), 'The Supreme Court of Ethiopia: Federalism's Bystander', in Nicholas Aroney and John Kincaid (eds.) *Courts in Federal Countries: Federalists or Unitarists?* 165-192, p. 178.

<sup>54</sup> It should be noted that space of delegation of federal courts jurisdiction to the regional state courts is restricted to state High courts. The Constitution does not contain a structural and recognized place for regional first instance courts on the delegated power.

<sup>55</sup> The FDRE Constitution, Article 79(7).

<sup>56</sup> Solomon, *supra* note 3, p. 236., and Assefa Fiseha and Zemelak Ayele (2017) 'Concurrent Powers in the Ethiopian Federal System', in Nico Steytler (ed.) *Concurrent Powers in Federal Systems Meaning, Making, Managing*, 241-260, p.247

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Estimating compensatory budget involves intergovernmental financial relations. The Federal and State Supreme Courts should thus establish processes and institutions to regularly deal with financial issues that arise from delegated federal judicial powers. The Federal and State Supreme Courts should negotiate and determine the required financial expenditure necessary to carry out delegated judicial powers. Estimating the compensatory budget needs the attention and coordination of both the Federal and State Supreme Courts.

It is important to note that the establishment of the National Judicial Forum seems to substitute the seemingly judicial intergovernmental interaction, otherwise named as Plenum of the Federal Supreme Court. The Plenum of the Federal Supreme Court was established with the intent to facilitate interaction between the federal and state judicial organs as per Proclamation No. 25/1996, which defined the jurisdiction of the Federal Courts following the introduction of the federal system.<sup>57</sup> The Plenum comprised the President, Vice-Presidents, and all judges of the Federal Supreme Court, the Federal High and First Instance Court Presidents, and the state Supreme Courts President. In the Plenum, the resolution was adopted by a majority vote. In case of a tie, the chairman, Federal Supreme Court president, had a casting vote. The Plenum seemed to have had the power to handle various issues including the federal and state judicial organs' financial relations and to coordinate the inevitably overlapping judicial powers. It also could facilitate dialogue between the federal and state Supreme Courts to manage delegated federal judicial power and other administrative matters in connection with that.<sup>58</sup>

The federal courts' Presidents and Federal Supreme Court judges had dominated the forum. The figure showed that the Federal Supreme Court has had fifty-one judges and eight federal courts Presidents.<sup>59</sup> The participation of fifty-one judges and eight federal courts Presidents, *vis-à-vis* eleven participants from state judicial organs in the Plenum, gives federal judicial organs an overwhelming position.<sup>60</sup> This scheme negates the status that must exist for effective judicial intergovernmental conversations.

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<sup>57</sup> See, Proclamation No. 25/1996, Federal Courts Proclamation, Federal Negarit Gazeta, 2nd Year No. 13, Addis Ababa, 15 February 1996, Article 31.

<sup>58</sup> Nigussie Afesha (2021). *Intergovernmental Relationships in Ethiopia Federation: A Comparative Study- Special Reference to South Africa and India* (August 2021), Unpublished Doctoral Dissertation, Andhra University.

<sup>59</sup> Ibid.

<sup>60</sup> Some may contest the argument raised in connection with the overrepresentation of the federal judicial organ in the Plenum because members of the federal representatives participating in the Plenum have individual autonomy and are not expected to vote in

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Under the revised Federal Courts Proclamation, revision in the level of participation has not been made in the Plenum of the Federal Supreme Court.<sup>61</sup> The Plenum has not delivered the desired result of facilitating judicial intergovernmental relations. A given forum is deemed to be an IGR forum and serves as a site for judicial IGR when it envisages equitable representation of the federal and state judicial organs in if it allows a co-equal status in the decision-making process of inter-judicial interaction.<sup>62</sup>

Unlike the Plenum, the National Judicial Forum comprises Presidents of the Federal and State Supreme Courts.<sup>63</sup> The federal and state judicial organs are given equal place and representation in the forum, and this enables them to negotiate on matters that concern the judicial organs of the two tiers of government. In this regard, the forum is tasked to carry out several works such as strengthening the justice and judicial system in the Country, achieving harmonized interpretation of the federal laws at regional state courts, and other related matters.<sup>64</sup> The forum also strives towards building up an independent and impartial judicial system that earns the public trust at large, which is a fundamental component in strengthening the justice and judicial system in the Country.<sup>65</sup>

The National Judicial Forum enables members to discuss several issues associated with federal judicial powers given to the state courts through delegation and other related administrative matters related.<sup>66</sup> This stipulation embodies a workable tool to compute the number of federal cases adjudicated

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a bloc. The current design of the Plenum does not press representatives of the federal and state judicial bodies to speak in unison. Some members might create a unified front even though the members might belong to different levels of the judicial organs. This means that when the members vote on matters affecting either the federal or state judicial organs, they may cast an independent vote. This line of argument may emanate from the constitutional provision that stipulates “[j]udges shall exercise their functions in full independence and shall be directed solely by the law” (See the FDRE Constitution, Art 79(3)). Save the above argument, the equal representation of the federal and state judicial organ intergovernmental relations forum is one of the key cardinal principles that need to be maintained to establish trust and partnership between the organs of the two levels of government.

<sup>61</sup> Proclamation No.1234/2021, Federal Courts Proclamation, *Federal Negarit Gazeta*, 27th Year No. 26, Addis Ababa, 26th April, 2021, Arts 41-43.

<sup>62</sup> Nigussie, *supra* note 58, p. 222.

<sup>63</sup> Proclamation No. 1231/ 2021, Article 11(1).

<sup>64</sup> *Id.*, Article 12(3).

<sup>65</sup> *Id.*, Article 12(4).

<sup>66</sup> *Id.*, Article 12 (5).

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in the state Supreme and High courts and sets standard criteria to calculate the cost incurred by the state Supreme and High courts while exercising delegated federal judicial power. The federal and state judicial organs cooperatively estimate the compensatory budget allocated for the state supreme courts and decide how a proposed compensatory budget is apportioned among the state Supreme courts.

So far, it is the Federal Supreme Court that exclusively decides the proposed compensatory budget given to the Supreme Courts of regional states, and this power includes the apportionment of the budget among the state Supreme courts.<sup>67</sup> The IGR legislation is thus found necessary to expressly provide regular inter-judicial relations that would facilitate the execution of multifaceted judicial activities by integrating capabilities of the federal and the state judicial bodies'. This, *inter alia*, envisages consultations on the exchange of best experiences to enhance levels of performance. However, the forum has not been functional thus far.

### 3.3 The National Executives Forum

The *National Executives Forum* is established with the explicit aim to facilitate collaboration, interactions, and cooperation between the federal and state executive organs. The forum mainly includes the Prime Minister as chairman, selected federal ministers, and Heads of Government of all States, including the Mayors of Addis Ababa City and the Dire Dawa Administrations. Of the twenty-two (22) federal ministries, the ministries in the National Executives Forum are the Minister of Finance, Minister of Peace, Ministry of National Planning and Development, Minister of Women and Social Affairs and the Minister of Justice. The selection of these ministries seems to have some linkage with the intended functions and the focus of the forum.

It is to be noted that the federal government is represented by seven members while each regional state has one. This raises the issue whether this violates equitable representation and co-equal status of federal and state executive organs in an intergovernmental decision-making process. One may also raise the question whether it is a deliberate design to counterbalance the state executive organs. This, in some way, reinforces the fear of some state political actors who argued, at the initiation stage of the IGR law, that the enactment of the IGR law further intensifies centralization in Ethiopia.<sup>68</sup>

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<sup>67</sup> Nigussie, *supra* note 58, p 374.

<sup>68</sup> Assefa, *supra* note 40. 96.

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The National Executives Forum is entrusted to foster cooperation, coordination, and evaluation of shared policies and is expected to discuss major issues.<sup>69</sup> It is assigned to carry out discussions and consultations on several points. Some of the areas of focus are discussions and consultations on issues common to the two levels of government as well as policy proposals of national significance and matters of a general character.<sup>70</sup> It also deliberates on national policies, strategies, programs, and plans, including the creation of a common understanding between them on vital issues of national importance.<sup>71</sup> The IGR legislation further states that the federal and state executive organs shall deliberate on sustainable peace, democracy, good governance, and rapid and fair socio-economic development issues that have cross-national implications.<sup>72</sup> While the federal government carries out its mandate and responsibilities in the states, the Forum shall deliberate with the concerned states and listen to their views and opinion.<sup>73</sup> This initiative is indeed a breakthrough move to the Ethiopian federalism system, known for its top-down strategies and programs and policymaking. It also changes the contour of sectoral intergovernmental relations in many respects.

Unlike the previous forums, National Executives Relations Forum has so far met three times. The meetings of the forum was held at different locations.<sup>74</sup> In the two consecutive meetings of the National Executives Forum, the participants (stated in the IGR legislation) discussed issues related to the ‘law enforcement operation’ activities in Tigray regional state. As the name indicates, the forum ought to be a consultation session in which only federal executive and regional executive bodies can take part. Unlike the first and second meetings, the higher-level leaders of the Prosperity Party –who are not members of the federal executive body nor regional executive body– attended in the meeting of the National Executives Forum in clear contradiction with what the IGR law stipulates.<sup>75</sup> In this forum as well, the agenda was, as usual, a review of the law enforcement operation exercise in the Tigray regional state.

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<sup>69</sup> Proclamation No. 1231/ 2021, Article 10.

<sup>70</sup> *Id.*, Article 10 (1).

<sup>71</sup> *Id.*, Article 10 (2).

<sup>72</sup> *Id.*, Article 10 (3).

<sup>73</sup> *Id.*, Article 10 (6).

<sup>74</sup> The first was held in Bahir Dar, the second in Guba and the third in Addis Ababa.

<sup>75</sup> See Fana Broadcasting Corporate official website posted on 27, January 2022 <https://www.facebook.com/123960474361367/posts/4857539884336712/?sfnsn=mo> (Last accessed on 15, May 2022).

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From the three consecutive meetings, it seems clear that the major functions assigned to the Forum in cultivating cooperative governance are side-lined. If the move of the Prosperity Party during the third meeting of the Forum is not constrained forthwith, the overwhelming political domination of the Prosperity Party is likely to render the Ethiopian IGR system ineffective. It follows that, as in the EPRDF reign, government institutions will not be independent to implement the FDRE Constitution and genuinely constrain the political party in power from making constitutional abuses and taking arbitrary actions. Like the other forums, this forum has remained in disuse so far seen against the tasks assigned to it.

### **3.4 The Forum of the House of Federation and Regional States**

The fourth intergovernmental forum, i.e., the *Forum of the House of Federation and Regional State* aims at resolving misunderstandings or disputes that could arise between the states. The forum comprises speakers of the House of Federation and all regional states, heads (regional state presidents<sup>76</sup>) of Governments of the all Regional States, mayors of the Addis Ababa and Dire Dawa City Administrations as well as three federal ministries, namely the Ministry of Finance, Ministry of Peace and Ministry of Revenues.<sup>77</sup> Akin to the other IGR forums, such forum is also entitled to invite representatives of other bodies or institutions whom it considers necessary to participate in its sessions, be it in the capacity of a member or informant.<sup>78</sup> Among other duties and responsibilities, the forum is assigned to deliberate on the causes that might trigger conflict between the regional states and various communities and their disposal.

The forum is required to formulate a mechanism that would enable to rectify such conflicts so as not to create a lasting contradiction and further strengthen fraternal ties between the States and various communities.<sup>79</sup> This may include creating conducive conditions in which disputant parties discuss their differences and resolve them peacefully. What is missing in the legislation is the power to resolve disagreements or deadlocks that occur between the federal government and the states. Since the existing IGR legislation is silent regarding who can settle disputes or misunderstandings that arise between the federal government and the states, it can be argued that these matters are resolved mainly through intergovernmental relation settings organized and hosted by the House of Federation. This forum also has not

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<sup>76</sup> See the Amharic version of Proclamation No. 1231/ 2021, Article 16(1) (c).

<sup>77</sup> Proclamation No. 1231/ 2021, Article 16(1).

<sup>78</sup> Id., Article 16(1)

<sup>79</sup> Id., Article 17(4)

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been operational, and indicated above, the resolution of disputes or misunderstandings which arise between the states is undertaken by the Ministry of Peace.

### **3.5 Regional States Relation Forum**

The *Regional States Relation Forum*<sup>80</sup> is a horizontal relation forum that encompass all regional states. It comprises heads of all the regional state governments, including Mayors of the Addis Ababa and Dire Dawa City Administrations.<sup>81</sup> The forum is entrusted with several duties and responsibilities. It evaluates the positive and adverse bearings observed in the implementation of the national policies, strategies, or plans; and submits amendment proposals to the federal government, when it is deemed necessary.<sup>82</sup> The forum also deliberates on those issues that require the special attention of the federal government and reports their common position to the pertinent federal body.<sup>83</sup> The other important task of the forum is to create intergovernmental relation implementation protocols so that a case determined in a given state will be implemented in other states without any difficulty.<sup>84</sup> The IGR Proclamation fills the gaps due to lack of constitutional or statutory provision that obliges the states to respect each other's public acts, records, and judicial proceedings thereby facilitating healthy relations and harmony between the regional states.

The forum is also tasked to devise a joint mechanism for comparable performance –regarding development, good governance, handling and protection of fundamental human rights and freedoms– that facilitate conditions for sharing experience.<sup>85</sup> This task of the forum reflects the acceptance and recognition of differences across the states concerning their socio-economic development and institutional competence in performing their constitutionally allocated functions. The Forum enables states to share their experiences and to narrow down the disparity seen in their performance regarding development, good governance and protection of fundamental human rights and freedoms. Moreover, it serves as forum in the formulation of programs and projects that would interconnect regional states and resolution of cross-boundary predicaments; and the forum discusses the

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<sup>80</sup> Proclamation No. 1231/ 2021, Article 18.

<sup>81</sup> Id., Article 18 (1).

<sup>82</sup> Id., Article 19(1).

<sup>83</sup> Id., Article 19(4).

<sup>84</sup> Id., Article 19(2).

<sup>85</sup> Id., Article 19(3).

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vitality of such programs and projects, and conveys its recommendation to the appropriate body.<sup>86</sup>

Apart from the Regional States Relations Forum, two or more neighbouring regional states can create joint horizontal States Relations forums. In such a case, members of the forum are heads of government of the neighbouring regional states. Besides, there could be a horizontal sectorial Executive Forum, which could be formed by neighbouring Regional States' Sectorial Executive Offices. The specific duties and responsibilities of these two forums, i.e., the joint Heads of Governments or Sectorial forums, are determined by directives.<sup>87</sup> Neither the all-inclusive Regional States Relation Forum nor the joint horizontal forum of neighbouring regional states are operational.

### **3.6 The National Sectorial Executives Forum**

The final forum relates to sector-driven relation forums which can be formed between the Federal executive bodies with their counterparts in the States: namely the Joint and National Sector Executives Forums.<sup>88</sup> The National Sectorial Executives Forum comprises heads of the federal and all Regional States Sectorial Executive Offices, including Addis Ababa City and Dire Dawa City Administration Sectorial Offices.<sup>89</sup> However, if the situation so demands, the forum invites other bodies, agencies, or institutions to participate in its sessions, be it in the capacity of a member or informant.<sup>90</sup> As the National Sectorial Executives Forum is designed as a vital sectorial intergovernmental forum, it is entrusted to undertake essential responsibilities that have national importance (and dimension) and to facilitate the carrying out of sectorial development and functional governance activities.<sup>91</sup>

In the forum, members make consultations on outstanding issues of national importance in each policy sector.<sup>92</sup> Deliberation is made on the preparation and implementation of sector-driven policies, strategies, and plans of the Federal Government, wherein the views and opinions of the regional states are listened to.<sup>93</sup> The forum creates the system in which concurrent, and framework powers are integrated and executed in collaboration with one

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<sup>86</sup> Id., Article (19)(5).

<sup>87</sup> Id., Article 20.

<sup>88</sup> Id., Article 13 and 15.

<sup>89</sup> Id., Article 13(1).

<sup>90</sup> Id., Article 13(2).

<sup>91</sup> Id., Article 14.

<sup>92</sup> Id., Article 14(1).

<sup>93</sup> Id., Article 14(2).

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another.<sup>94</sup> It discusses the quality of service delivery and the level of performance of every sector, and the formulation of shared mechanisms to enhance the quality of services they provide for the public.<sup>95</sup> It also deliberates on the preparation, implementation, follow-up, and evaluation of the sector-driven nationwide plans and programs executed at the regional level.<sup>96</sup>

The forum devises and holds consultations on how exchange of best experiences is undertaken to make the levels of performance closer with one another and follow up the implementation thereof.<sup>97</sup> It further devises a peer-evaluation system that would enable one to bring the performance results which are registered in the Regional States to a similar level, carry out consultations on the method of its application and thereby follow up the implementation thereof.<sup>98</sup> It also discusses, as deemed necessary, such other related affairs as might strengthen the sectorial duties and render directives to that effect.<sup>99</sup> The Joint Sectorial Executive Bodies or Forum is established by two or more Sectorial Executive Bodies whenever they find it necessary. Members of the Joint Sectorial Executive Forum could determine specific duties and responsibilities of the forums in pursuance of the spirit contained in the IGR Proclamation.<sup>100</sup> However, such IGR forums have also remained non-functional.

In light of the brief observation discussed above regarding the IGR forums established under the IGR Proclamation, the following section discusses the roles of the HoF as a site of IGR against the power and functions of the aforementioned IGR forums. The question is whether the HoF is designed as a forum for IGR and whether it continues to serve as an IGR forum in the context of several IGR Forums. This evokes the issue whether there are any intergovernmental relation matters that are not covered by the existing IGR legislation but undertaken by the HoF? These issues relate to the delineation of power overlaps and fusion of responsibilities between the House of Federation and the newly established IGR forums.

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<sup>94</sup> *Id.*, Article 14(3).

<sup>95</sup> *Id.*, Article 14(4).

<sup>96</sup> *Id.*, Article 14(5).

<sup>97</sup> *Id.*, Article 14(6).

<sup>98</sup> *Id.*, Article 14(7).

<sup>99</sup> *Id.*, Article 14(8).

<sup>100</sup> *Id.*, Article 15.

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## 4. The House of Federation's Role as a Site for IGR vis-a-vis IGR forums

The House of Federation, the second House of the federal parliament, seems to be the guardian of the Ethiopian federation in view of its broad constitutional authority to resolve ‘disputes or misunderstandings that may arise between States.’<sup>101</sup> Such power of the House is also embodied in Proclamation No. 1261/2021 that redefines the powers and responsibilities of the HoF.<sup>102</sup> Under this law, the HoF “shall strive to resolve inter-state or Federal-State government disputes and misunderstandings.”<sup>103</sup> Thus, it can be argued that most ‘disputes or misunderstandings’<sup>104</sup> (such as various forms of misunderstanding, ordinary disputes, or border disputes) which may arise between the federal government and states or between (among) the States are solved under the auspices of the HoF. In connection with this, the House needs to install traditional and modern ways of conflict prevention and resolution mechanisms, including devising and institutionalizing working procedures to resolve misunderstandings or disputes.<sup>105</sup> This gives the impression that the HoF needs to build a feasible setting to resolve multi-dimensional misunderstandings or disputes that could arise between the different levels of government.

### 4.1 Overlapping mandates as a site for IGR

The new IGR Proclamation institutes an IGR forum (i.e. “the House of Federation and the Regional States Relations Forum”) that works on resolving misunderstandings or disputes that could arise between the states. This forum,

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<sup>101</sup> The FDRE Constitution, Article 62(6). See also Dejen Mezgebe (2015), “Decentralized governance under centralized party rule in Ethiopia: The Tigray experience,” *Regional & Federal Studies* 25, No. 5: 473-490, p. 483; Tesfa Bihonegn (2015) “The House of Federation: the practice and limits of federalism in Ethiopia's second federal chamber”, *Journal of Eastern African Studies*, Vol 9 No. 3, pp. 394-411, p 402; Ronald L. Watts (2008), *Comparing Federal Systems*, (3rd ed.), McGill-Queen's University Press, Montreal & Kingston, p. 154; Adem Kassie Abebe (2013) “Umpiring Federalism in Africa: Institutional Mosaic and Innovations”, *African Studies Quarterly*, Vol.13, No.4, pp. 53-79, p. 65; Tom Patz, (2005) 'Ethiopia,' in the Ann Griffiths (ed.) *Handbook of Federal Systems*, Montreal & Kingston: McGill-Queen's University Press, Vol. 20 No. 5, pp. 135-148, p. 139.

<sup>102</sup> Proclamation No. 1261/2021 A Proclamation to Define the Powers and Functions of the House of Federation Proclamation Federal Negarit Gazeta, 27th Year No. 43, Addis Ababa 19th August, 2021, Article 33.

<sup>103</sup> Proclamation No. 1261/2021, Article 33.

<sup>104</sup> Id., Article 33.

<sup>105</sup> Id., Article 45

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as mentioned in Section 3 is, *inter alia*, entrusted to deliberate on the causes that might trigger conflicts between the States and various communities and their disposal.<sup>106</sup> To this end, the forum is instructed to formulate mechanisms that would enable it to rectify conflicts between the States and various communities to give lasting solutions and further strengthen fraternal ties between them.<sup>107</sup> The question is whether this mandate of the ‘the House of Federation and the Regional States Relations Forum’ contravenes the mandate given to the HoF in resolving misunderstandings or disputes that may arise between the states.

HoF's involvement in the conduct of intergovernmental relations and negotiation emanate partly from the Constitution and are further reinforced by a Proclamation that defines its power. Thus, the ‘House of Federation and the Regional States Relation Forum’ neither substitutes nor abridges the constitutional mandate of the House to resolve misunderstandings or disputes between the regional states. Hence, the power and function given to the “the House of Federation and the Regional States Relations Forum’ contravenes the constitutional mandates given to HoF and it shall be of no effect. In effect, the HoF can continue working as an IGR forum, at least, to resolve any kind of misunderstanding, ordinary dispute, or border dispute that arises between the regional states. In this regard, Asnake argues that “the HoF has emerged as a key federal institution of conflict resolution.”<sup>108</sup>

It can also be argued that the HoF and the Regional States Relations Forum undertakes conflict-related tasks before the materialization of disputes or misunderstandings. The focus of such IGR forum could be to arrest conflict-prone behavior and address the causes that trigger disputes or misunderstandings that can arise between the regional states. If conflict or misunderstanding occurs between the regional states or between the federal government and the states, it falls under the constitutional mandate of the HoF, and it should be handled by it, HoF.

#### **4.2 HoF’s inadequate performance in IGR**

It is to be noted that HoF has remained passive for a long time and played a limited role in the peaceful settlement of disputes and the prevention of deadlocks. For instance, there was potential tension and misunderstanding

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<sup>106</sup> Id., Article 17(4)

<sup>107</sup> Id., Article 17(4)

<sup>108</sup> Asnake Kefale (2020). “Federal Democratic Republic of Ethiopia Political Reforms and Federalism” in Ann Griffiths et.al, (eds.). *The Forum of Federations Handbook of Federal Countries 2020*, Palgrave Macmillan, Switzerland, pp. 135-149, p. 139.

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between the federal government versus the Tigray regional state, on one hand, and the Amhara Regional states versus again the Tigray regional state. The tension was aggravated following the decision of the Tigray regional state to hold its sixth regional election and practical moves in that respect. This decision of the Tigray Regional State came after the postponement of the sixth national and regional elections scheduled for August 2020 by the federal government due to Coronavirus outbreak. The Tigray regional state pursued with the election processes without the permission of the National Electoral Board and in transgression of the HoPR decision regarding the postponement of the national and regional elections. Yet, none of the political leaders showed interest in bringing the issues to the HoF.

Again, in the Amhara versus Tigray regional state disputes or misunderstandings, residents of border areas of both regional states have submitted written petitions to the HoF. Moreover, the Somali Regional State President accused TPLF, alleging that some members of the party and its military generals committed ‘gross human violation’ and ‘mass’ killing.<sup>109</sup> The President thus demanded formal apology from TPLF for the alleged ‘gross human violation’ and ‘mass killing’ that occurred in various parts of the regional state during the TPLF-led Ethiopian People’s Revolutionary Democratic Front (EPRDF) rule.<sup>110</sup>

One may raise the issue whether submission of a written application is a mandatory requirement for HoF’s engagement towards resolving interstate or federal-state government disputes or misunderstandings. An issue also arises as to why the HoF opted to remain passive in the issues and insisted on the fulfilment of procedural requirements. Opinions are divided in this regard. Some argue that the HoF has nothing to do with these issues until cases are formally submitted to it by either the federal or state governments.<sup>111</sup> Others argue that it is not the procedural requirement that inhibits the HoF from reviewing the cases; instead, it is the lack of political commitment and

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<sup>109</sup> See the statement the President of the Somali Regional State, Mustafa Omer, on the Ethiopia broad Casting television on April 21, 2020, and the Somaliland Standard new agency, “Ethiopian Somali President demands apology from TPLF for mass killings”, <https://somalilandstandard.com/ethiopian-somali-president-demands-apology-from-tplf-for-mass-killings/>, (Last Accessed, July 29, 2020).

<sup>110</sup> Ibid.

<sup>111</sup> Interview with Mr Yakob Bekele, Director of Intergovernmental Transfers and Equitable Regional Development Directorate, in House of Federation, Addis Ababa, (Oct. 03, 2019).

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willingness from both sides that escalated the disagreement and aggravated the tensions.<sup>112</sup>

A respondent in an interview also stated that the federal government was uninterested in the resolution of the procedural challenge that prohibits the HoF from calling concerned parties for discussion.<sup>113</sup> The inadequate performance of the HoF opened the door for religious fathers and elders to involve in resolving the polarized position of the contending parties and deescalating the tension and misunderstanding between the federal government and the Tigray Regional State. Despite such attempts to settle the matter peacefully, the situation escalated, and conflict broke out. This failure in IGR can, *inter alia*, be attributed to gaps in the political culture of intergovernmental dialogue, institutional ineffectiveness in IGR, dependence on the party apparatus for solving disputes, and looking for a political solution for every conflict or misunderstanding than a legal solution.<sup>114</sup>

### **4.3 Political and legal solutions in inter-regional state disputes**

In the Somali region versus Oromia regional state dispute, there were series of problems with the border areas of the two regional states. The political leaders of the regional states had tried to discuss and resolve the issue. The then president of the Oromia regional state, Lema Megeresa, issued and submitted a formal letter to the HoF to resolve and decide over disputes that erupted on the border areas of these regional states, which became the cause for the displacement of many Ethiopians. The case was referred to and discussed at the standing committee of the HoF. The standing committee of the HoF referred the case back to the speaker of the House and the higher executive officials to be resolved politically instead of referring the matter to the experts of the HoF for further investigation and study with the assumption that it needs a political decision than a legal one.<sup>115</sup>

This case reveals that submitting a written application for a solution to interstate disputes or misunderstandings is not a mandatory requirement. The formality requirement raised by the HoF personnel is a pretext. This case

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<sup>112</sup> Interview with Ato Lema Gezume, Speaker of the House of the Council of Nationalities, in SNNP Regional State, Hawassa, (Oct. 25, 2019).

<sup>113</sup> Interview with Mr Tsegabirhan Tadesse, Director of Intergovernmental Relations Strengthening Directorat, in Ministry of Peace, Addis Ababa, (Oct. 03, 2019).

<sup>114</sup> See, for example, Dejen *supra* note 101, p. 483

<sup>115</sup> Interview with Mr Yakob Bekele, Director of Intergovernmental Transfers and Equitable Regional Development Directorate, in House of Federation, Addis Ababa, (Oct. 03, 2019).

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further shows that there has been overextended use of the party apparatus for resolving disputes or misunderstandings, and institutions tasked to handle these kinds of matters have been continuously side-lined from the issues. In this regard, one has to note that there was more party engagement than institutional engagement in the Ethiopian federal dispensation for a long time.<sup>116</sup> This situation has established party supremacy thereby resulting in weak government institutions by default.<sup>117</sup> This situation reveals that informal political negotiations have solved several constitutional and political issues instead of using formal institutions and procedures. This situation needs to be revisited, and corrective measures should be taken to capacitate the existing institutions.

In this regard, the recently enacted Proclamation (Proclamation No. 1261/2021) reverses the age-long passiveness of the HoF in resolving interstate and Federal- regional state disputes. The Proclamation empowers the HoF to take the initiative towards resolving misunderstanding or dispute that arises between the federal government and the regional states or among the states if disputant parties have not begun a discussion or if one of them have not submitted an application to it seeking a solution.<sup>118</sup> Submission of the formal and written petition is no more a prerequisite to consider and entrain disputes or misunderstandings that arises between the regional states or between the federal government and the states.

It is important to note that the role the HoF plays and its involvement in resolving disputes or misunderstandings vary depending on the nature, gravity, and intensity of disputes or misunderstandings. If non-border disputes arise between the federal government and regional states or amongst the states, the concerned parties are expected to settle their misunderstandings through discussion, and the HoF must assist the parties to resolve their difference.<sup>119</sup>

However, if the concerned parties cannot resolve their misunderstandings through discussion, the HoF strives to find a solution in ‘any mechanism possible’.<sup>120</sup> It is evident that the HoF should devise proper tools and procedures to facilitate a resolution of intergovernmental misunderstandings or conflicts and institutionalize the same. This may include creating a

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<sup>116</sup> Interview with Dr. Temesegen Burka, Coordinator of Research, in Prosperity party, Addis Ababa, (Dec. 23, 2019).

<sup>117</sup> Ibid.

<sup>118</sup> Proclamation No. 1261/2021, Article 35(3)

<sup>119</sup> Id., Article 44(1).

<sup>120</sup> Id., Article 44(2).

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conducive environment in which the disputant parties discuss and resolve their differences amicably. A series of intergovernmental discussions and negotiations are likely to be held until the misunderstanding or disputes are fixed. However, if the concerned parties are not able to resolve their disputes or misunderstandings through discussion, or the discussion held between the two have ended in disagreement, the HoF seeks solutions to disputes that may arise between the federal government and the State without prejudice to the principles of the division of power stipulated in the Constitution.<sup>121</sup> By implication, the HoF decides over the dispute with due respect to the constitutional status, institutional integrity, powers, and functions of the federal government and the regional states.

The other instance that calls for intergovernmental relationships relates to border disputes that may arise between regional states. The Constitution provides that all State border disputes shall be settled by agreement of the concerned States.<sup>122</sup> If the states reach an agreement to resolve their dispute through discussions, the House shall strive to ensure the fruition of their discussions. It shall also follow up the progress of the discussion.<sup>123</sup> Here, the duty to negotiate in good faith to resolve disputes among the disputant parties is implicit in the wording of the provision.

Since most border disputes have arisen between political groups working under the same political party, border issues are addressed through 'conventional intergovernmental relations.' This helps in alleviating misunderstandings and tensions between the disputant parties. "However, when a situation arises that allows different political groups to control the various regional structures, border issues would be one of the daunting tasks that need to be addressed through complex intergovernmental relations."<sup>124</sup> Where the concerned regional states fail to reach an agreement, the House of Federation shall decide on such disputes based on settlement patterns and the wishes of the people concerned.<sup>125</sup> The House of Federation should render a final decision on a border dispute submitted to it within two years.<sup>126</sup>

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<sup>121</sup> Id., Article 44(3).

<sup>122</sup> The FDRE Constitution, Article 48(1).

<sup>123</sup> Proclamation No. 251/2001, Article, 24(3).

<sup>124</sup> Semahagn Gashu (2014). *The Last Post-Cold War Socialist Federation: Ethnicity, Ideology and Democracy in Ethiopia*. England: Ashgate Publishing Limited, 194.

<sup>125</sup> The FRDE Constitution, Article 48(1).

<sup>126</sup> Id., Article 48(2).

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Moreover, Proclamation No. 1261/2021 lays down substantive and procedural requirements through which disputes or misunderstandings that may arise between States are managed. The first Substantive requirement is the ‘duty of readiness’ to make a genuine discussion.<sup>127</sup> The party called for resolving disputes or misunderstandings must be ready for a genuine discussion within a maximum of thirty days.<sup>128</sup> As clearly indicated in the Amharic version of the Proclamation, the second requirement is the duty to negotiate in good faith.<sup>129</sup> This stipulation places an obligation to cooperate with other levels of government in mutual trust and partnership to reduce conflict and avoid litigation. Each tier of government must exert reasonable effort to resolve their difference through intergovernmental negotiation and political discussion adhering to agreed procedures. They must cooperate with others and foster friendly relations. In course of the discussion, the HoF is duty-bound to ensure the fruition of the discussion and follow up on the progress of the dialogue.<sup>130</sup> The disputants shall hold their meetings under the auspice of the HoF, which follows up on the fruition and progress of the same.<sup>131</sup>

In this regard, the Proclamation puts some procedural requirements that the disputant parties need to adhere to. The first procedural requirement is a submission of a written application to call for discussion.<sup>132</sup> Once the call for discussion is initiated by either the federal government or a state, the other party must be ready for a genuine conversation within a maximum of thirty days.<sup>133</sup> If the party called for discussion becomes reluctant for dialogue within the specified time interval (i.e., within thirty days) or if the dialogue between ends up in disagreement, the other party can submit the case to the House of Federation for final decision.<sup>134</sup> The HoF may, when a claim is filed to it, seek a temporary solution or cause others to find a solution in consultation with related bodies.<sup>135</sup>

It is to be noted that the HoF should, before giving a final decision, create a conducive condition wherein the concerned parties could continue their discussion or cause the parties to provide issues of their differences in writing

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<sup>127</sup> Proclamation No. 1261/2021, Article 34(2).

<sup>128</sup> *Id.*, Article 34(2).

<sup>129</sup> *See* the Amharic version of Proclamation No. 1261/2021, Article 34(2).

<sup>130</sup> Proclamation No. 1261/2021, Article 34(2).

<sup>131</sup> *Id.*, Article 34(2).

<sup>132</sup> *Id.*, Article 34(1).

<sup>133</sup> *Id.*, Article 34(2).

<sup>134</sup> *Id.*, Article 35 (1).

<sup>135</sup> *Id.*, Article 35 (2).

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within a specified time. It may also cause the parties to produce all pieces of evidence in their possession.<sup>136</sup> “It is only when negotiations and discussions have failed that a dispute might be referred to the HoF for final resolution.”<sup>137</sup> Even after the dispute has been submitted to it, the HoF strives to facilitate further discussions. This requirement indicates the priority given to the political resolution of conflicts between the different levels of government than for litigation.

The forging discussion reveals that the HoF is the sole institution tasked to see and resolve misunderstandings or disputes that could arise between the different levels of government. Thus, the HoF is the leading IGR institution charged to facilitate intergovernmental discussion and negotiation if the matter involves misunderstandings or disputes. This could be even the reason that The Ministry of Peace is also charged to resolve disputes that arise between the regional states without prejudice to the powers of the HoF. The following section shows the role of that the Ministry of Peace in facilitating intergovernmental discussion and negotiation.

## **5. The Ministry of Peace Assignment as Focal point for IGR vs. IGR Forums**

The Ministry of Peace, one of the federal Executive Organs, is designated to serve as a focal point of the federal-states relationship to strengthen the federal system in Ethiopia.<sup>138</sup> It is entrusted with the task of institutionalizing intergovernmental relations between different governments at various levels. It is also authorized to play a crucial role in intergovernmental negotiation, and facilitation of cooperation, and tasked to cultivate good relations and cooperation between the federal government and regional states.<sup>139</sup> The Ministry needs to work for the establishment of intergovernmental bonds and the non-hierarchical exchange of information between the institutions of the two levels of government.

The Ministry shall also develop good relationships and cooperation between the federal government and regional states on the basis of mutual understanding and partnership.<sup>140</sup> In so doing, the Proclamation attempts to set rules that govern intergovernmental interaction and collaboration. This

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<sup>136</sup> Id., Article 36 1 (c).

<sup>137</sup> Adem, *supra* note 101, at 66.

<sup>138</sup> Proclamation No.1263/2021, Article 41(1)(i)and (k), and Art.19(8).

<sup>139</sup> Id., Article 41(1)(i) and (k)).

<sup>140</sup> Ibid.

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component gives the impression that the principles of partnership and mutual understanding need to be taken into account because the idea of partnership presupposes, at times, dictates non-hierarchical relations which pave the way for fostering mutual understanding. A mutual understanding between the federal government and the states is created if there is regular interaction between the orders of government. These principles, at least theoretically speaking, are imperative to constrain destructive behavior during the IGR dialogue and circumvent hierarchical relations between the federal government and the regional states.

The Ministry of Peace, therefore, needs to establish a forum to process bargaining, negotiation, and persuasion between levels of government while both levels of government remain responsible to their legislatures and electorates for the actions they take. The Ministry may also work to institutionalize intergovernmental relations and devise its working procedure. In this context, extensive intergovernmental relationships could be held under the backing of the Ministry of Peace.

An issue that may arise is whether the power and function of the Ministry of Peace is revoked by the new IGR Proclamation. As highlighted in Section 3, the powers and functions given to the Ministry of Peace in connection with organizing, conducting, and hosting IGR are apportioned to the various IGR forums established under the new IGR Proclamation. By implication, the power and function of the Ministry of Peace to regulate the relations exercised between the Federal government and regional states in the vertical axis as well as those between (among) regional states themselves are revoked under the new IGR Proclamation.

The Ministry of Peace is also allowed to facilitate the resolution of disputes that arise between the regional states.<sup>141</sup> The Ministry of Peace is permitted to engage in resolving disputes arising between states without prejudicing the power of the House of Federation. This shows power overlap between the HoF and the Ministry of Peace in their conflict-handling power. One may then question how this power overlap can be reconciled. Some argue that the HoF deals with the legal aspect of a conflict, while the Ministry of Peace handles the administrative, political, and developmental affairs of the conflict. For instance, the Ministry of Peace facilitates political negotiations between disputant regional states and undertakes ‘non-binding consensus building or political negotiations.’<sup>142</sup> Unless such interpretation resolves the power overlap, “there is nothing that prohibits the HoF from adopting the same

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<sup>141</sup> Id., Article 41(1)(k).

<sup>142</sup> Assefa, *supra* note 40, p. 124

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process of dispute settlement in addition to its quasi-judicial function of constitutional interpretation and dispute settlement.”<sup>143</sup>

Moreover, there is the need to clarify the activity undertaken by the Ministry but not by the HoF regarding the resolution of disputes that arise between the regional states. Since the Ministry of Peace mediates conflicts or misunderstandings that occur between the regional states, there is the need for extensive consultation and negotiation settings. The Ministry of Peace has set up some structures and mechanisms of consultation and negotiation to efficiently resolve conflicts or disagreements that arise between the states or among the states. However, as discussed above, the powers to facilitate resolution of disputes between the regional states are under the sole domain of the HoF. Even the power to tackle conflict-triggering situations is given to the ‘House of federation and the Regional States Relations forum’. This mandate of the Ministry of Peace is again impliedly repealed by the new IGR Proclamation.

There is indeed the need for the authorization of the Ministry of Peace, without prejudice to the provisions of the relevant laws and upon the request of the regional states, to devise and implement sustainable solutions to disputes and conflicts that may arise within the States.<sup>144</sup> Disputes and conflicts that may arise within the regional states may include disputes that arise between the state with local government or among local governments. The task of maintaining sustainable solutions to disputes or conflicts that may arise between the regional state with local government or among local governments requires extensive formal and informal processes of interaction among political actors. As the IGR law limits its scope of applicability to govern the relations exercised between the Federal government and Regional states in the vertical axis as well as those between (among) regional states themselves in the horizontal line, such mandate of the Ministry of Peace is not inconsistent with the IGR Proclamation so that it keeps on working to cultivate good relations and cooperation between the regional states with local government and between (among) local governments.

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<sup>143</sup> Ibid.

<sup>144</sup> Proclamation No.1263/2021, Article 41(1)(k).

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## 6. Concluding Remarks

Installing a system of intergovernmental relations is an essential aspect of every federation. The entrenchment of robust intergovernmental relationship systems in most federations suggests that a national government and states do not operate in isolation as portrayed by the competitive model, but instead, they interact frequently. For this reason, each federation, guided by particular circumstances and conditions, has tailored its distinct path to organize intergovernmental institutions and processes and also develops its own unique IGR ecosystem that evolves over time. It follows that intergovernmental relations structures can vary considerably gradually, influenced by external and internal factors.

In Ethiopia, intergovernmental relations have been handled by the House of Federation and the Ministry of Peace until the new IGR legislation was enacted in 2021. Both institutions have tried to create cooperative relationships between the federal government and regional states as well as among the states. These institutions have been working on effective ways of managing the functional interface among the various government institutions.

Under the IGR Proclamation, intergovernmental consultative forums have enormous capabilities to create cooperative relationships between the federal government and regional states as well as to change the contour of the Ethiopian IGR system. The establishment of formal IGR forums shows that these forums collectively engage in facilitating cooperation relations between the institutions of the two levels of government.

In addition to the newly established IGR forums, HoF and the Ministry of Peace are assigned to undertake some functions in connection with IGR. It means that the systematic and thorough examination of power and functions of HoF and the Ministry of Peace against the new IGR forums reveals power overlaps in the functions of these institutions. The issue in this regard is whether the new Proclamation takes away or narrows down the involvement of other institutions in facilitating IGR entirely. One can also raise the question whether these institutions can continue their engagements and pursuits in harmony to manage and facilitate IGR without superseding the power and functions of the other institution. It can indeed be argued that the mandates and functions of the HoF concerning IGR remain unrepeated while most of the functions of the Ministry of peace are taken away by the IGR legislation and distributed to the various IGR forums. \_\_\_\_\_■

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