Barruulee Articles

Birth-Defects of A Constitution And Its Impacts on Outcome: Reflection on Ethiopian Constitution- Making Experience

The Funding of Political Parties in Ethiopia: A Review of Problems

Making Investment Work for Sustainable Development: A Pressing Need to Integrate Sustainable Development into Ethiopian Investment Law

To’annoo Dambiilee fi Qajeelfamoota Aangoo Bakka Bu’insaan Ba’anii: Haala Qabatamaa Oromiyaa

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BIRTH-DEFECTS OF A CONSTITUTION AND ITS IMPACTS ON OUTCOME: REFLECTION ON ETHIOPIAN CONSTITUTION-MAKING EXPERIENCE

Aberra Degefa*

ABSTRACT

In their struggle to restrain the destructive exercise of power of their governments, quite a big number of countries have made one constitution after another with little or no success. Some are still in a situation of perpetual quest for constitutionalism. The main argument in this article is that the process of making a constitution will have significant impact on the life and performance of a constitution. Ethiopia is one such country where a number of constitutions have been made but the quest for constitutionalism still an unanswered. With such a long history of independence and four constitutions within six decades, why has Ethiopia failed to build a stable democratic constitutional order? This article attempts to find out the possible explanations for the failure of the past Ethiopian constitutions to bring about a sustainable democratic order. But the particular focus of the article is to examine the process of making the 1995 FDRE Constitution with a view to determine the extent to which the process of making the Constitution was flawless or blemished with the birth-defects that has led to the demise of the earlier constitutions. The extent to which the defects in the process have affected the actual performances of the 1995 Constitution has been explored. In the assessment of the 1995 FDRE Constitution-making process the main requirements that are imperative for making a modern democratic constitution have been taken into account. The relevant literature has also been surveyed to show what others scholars in the area have written concerning the process of making modern democratic constitution. The finding of the assessment will help all those concerned to rectify the wrongs made during the process of making the constitution so that it may not face the fate similar to the past Ethiopian constitutions.

Key Terms: birth-defects, constitutionalism, constitution-making, Ethiopia, federalism, post-conflict society.

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1. INTRODUCTION

In its struggle to curb the destructive exercise of state power, human society has designed a tool known as constitution with the intention to use it as a shield against arbitrary and harmful exercise of state power. As shown by the experiences of so many countries of the world, the need for constitutions has evolved as a reaction to the destructive exercise of state power. The history of constitutionalism itself has always been the struggle of human society for the limitation of the destructive exercise of power by power holders. In their struggle to restrain the destructive exercise of power of their governments, quite a number of countries have made one constitution after another with little or no success. Considerable number of countries is still in a situation of perpetual quest for constitutionalism.

Ethiopia is one such countries where a number of constitutions have been made but the quest for constitutionalism has not yet answered. Ethiopia was formed initially through conquest and has been sustained by force of arms since then. Although Ethiopia claims to have a long history of independence, in terms of constitutional development, he remained stagnant. In fact the hitherto history of Ethiopian power politics indicates that all the past successive regimes assumed power through force of arms and removed from power by force of arms. The country’s more than eight decades of constitutional history shows that every regime first seized State power and then suspended the earlier constitution and made a new constitution to be viewed as legitimate regime. None of the past three Ethiopian constitutions has survived the regimes under which it was made. As a consequence, Ethiopian people are still in perpetual quest for constitutionalism and genuine democratic governance.

One may wonder why with such a long history of independence and four constitutions within six decades, Ethiopia has not succeeded to build a stable democratic and constitutional polity? The objective of this article is to look into the possible explanations for the failure of the past Ethiopian constitutions to

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1Loewenstein K., Political Power and Governmental Process (Chicago: University of Chicago, 1965).
2The 1931 and the 1955 constitutions are referred to as Imperial or Haile Sellassie’s. The 1987 PDRE Constitution as the Derg’s Constitution and the 1995 FDRE Constitution is referred to as the EPRDF’s constitution by some.
create a sustainable democratic State. The article aims at identifying the birth-defects of the past constitutions which led to their fatal outcomes. The process of making the 1995 FDRE Constitution has been examined with a view to determine whether or not the process was free from the birth-defects that led to the demise of the earlier constitutions. The extent to which the defects in the process of making the 1995 FDRE Constitution have affected the performances of the Constitution has also been explored.

The article begins with an introductory part dealing with significance of constitution-making process in building a democratic state. The impacts of flaws in constitution-making process would have on the performances of a constitution will be looked at next. The pre-1991 Ethiopian constitutional experiences have been explored to show the impacts defects in the processes of making the constitutions have made on the performances of the constitutions. Establishing the extent to which the process of making the 1995 FDRE Constitution was flawed or not and revealing the consequences thereof will be the main focus of the article. Conclusions drawn from looking at the process of making the 1995 FDRE Constitution will be given at last.

2. SIGNIFICANCE OF CONSTITUTION-MAKING PROCESS

Modern constitution-making is a democratic process which aims at representing the will of the people, achieving “a consensus on the future of the state, and to ensure respect for universal principles such as respect for human rights and democratic governance”. In post-conflict societies, a new constitution lays foundation for the state by way of changing the post–conflict society from force-based to consensus-based thus giving legitimacy to the state and the government. In a post-conflict society, constitution-making is a process of recreating the state based on consensus and equality. In its short-term goals, constitution-making in post-conflict societies contributes to peace-making and conflict resolution but in its long-term goals, it contributes to building democratic constitution and inclusive and sustainable state institutions.

In a post-conflict society that intends to create stable democratic arrangement, the tasks of a new constitution is to establish a political community and lay down rules for the allocation and exercise of state power. A political community here doesn’t necessarily mean a homogenous society with one language and culture. In the context of multi-ethnic societies that have been kept under repressive regimes, a political community implies consensus-based society where the diverse ethnic groups have agreed to live together and have developed shared beliefs/aspirations enshrined in a collectively made constitution. If such diverse ethnic groups constituting the population of a state hold divergent viewpoints capable of tearing the polity apart in opposing directions, writing of a constitution alone cannot artificially fuse such diverse groups into a political community.\(^5\)

In the context of a diverse and post-conflict society, constitution-making should go beyond mere writing of the document and establish a political community with shared visions. Constitution-makers need to know the difference between mere writing of a constitutional text and constitution-building. Constitution-building goes beyond the text and encompasses all the phases of constitution-making process from having a written constitution up to building inclusive state institutions with effective performance. Constitution-building aims at building a sustainable political community and guarantees the observance of the values enshrined in a constitution. Constitution-building implies constitutional reality that sustains the constitution.\(^6\)

For a post-conflict pluralistic society where the diverse people have been under successive repressive regimes, the making of a new constitution is like a fresh start where the constitution will serve as a means of bringing political stability and sustainable democracy.\(^7\) For any war-torn society intending to establish a new political community constitution making is an instrument for rebuilding of the society on new foundations by rectifying past historical wrongs and establishing sustainable and democratic constitutional order. Constitution-making is a fully participatory institution-building project that lays down constitutional foundation for sustainable democratic state. What constitution-

\(^5\) Ghalli, Y. & G. Galli, Constitution-Building Process and Democratization: Lessons Learned, International IDA (Hong Kong: University of Hong Kong, 2006).
\(^6\) Widner, Supra note 4.
makers do or fail to do during the constitution making process are crucial in
determining the effects and outcome of the resulting constitution.8

3. IMPACTS OF CONSTITUTION-MAKING PROCESS ON THE OUTCOME

Where constitutions are made following civil conflict or successive
authoritarian rule, constitution-making process would significantly impact the
value of the resulting constitution, state institutions and transition to
democracy.9 To begin with, democratic constitution-making and the
establishment of sustainable democratic constitutional order are inseparable.
Without undertaking proper democratic constitution-making process, a
democratic state, a sustainable constitution with democratic content, and
inclusive state institutions cannot be established and nurtured. If a certain
constitution-making process is undemocratic, neither can the content genuinely
be democratic and nor can one expect democratic practice.10

A democratic constitution is judged by the extent to which it reflects the values,
shared norms, beliefs and ideals of the people which would require that the
constitution be authored by the people. This means the constitution-making
process has to be inclusive and fully participatory. In order to gain legitimacy
and be endurable, a constitution has to be made, approved and adopted with free
and full participation of the people through democratic procedures reflecting
popular will.11

In the process of making a constitution, there are flaws that would have grave
effects on the contents and sustainability of a constitution. Constitution-makers
need to know these flaws and take the necessary precaution to avoid these
defects which may otherwise result in fragility of a constitution and lack of
legitimacy. Without effective and extensive public participation during its

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8 Benomar, Supra note 3; See also Ghalli & Galli, Supra note 5.
9 Samuels, Supra note 7.
10 Saati, A., How Participatory Constitution-Building Affects the Quality of Democracy, (2011); Available at www.diva-portal.org/smash/get/diva2:759746/FULLTEXT01.pdf
   < Accessed on December 21, 2017>
11 Benomar, Supra note 3.
making, a constitution would lack the required public support and legitimacy.\textsuperscript{12}
If the making of a certain constitution is fully participatory and inclusive, the people will have feeling of ownership of the constitution and become loyal.\textsuperscript{13}

Full and effective public participation in constitution making process would result in “increased legitimacy, improved knowledge about the political system, avenue towards reconciliation, and a sense of ownership over the document”\textsuperscript{14}. Here it is good to note that the merits of participation depend on whether or not participants actually had real influence over the final decisions.\textsuperscript{15} There are cases where public participation is nominal with no actual influence on the final outcome.\textsuperscript{16}

Along with effective participation, another key issue is the extent to which constitution –making process includes or excludes the relevant social and political actors, before, during and after the making of the constitution. The outcome of constitution-making will have wider support and sustainability only where those who have experienced injustices in the past are included in all phases of constitutional deliberations.\textsuperscript{17} Inclusion of all segments of the population in the making of a new constitution will provide all groups equal opportunity to address past wrongs and determine future directions collectively.\textsuperscript{18}

In his study of some selected countries, Benomar has shown that inclusive constitution-making process and extensive deliberation among key groups contributed to the “longevity of the constitutions and the durability of the state institutions”\textsuperscript{19} Hence, when making a democratic constitution, the main concern of constitution- makers should always be how to make it command the loyalty,

\textsuperscript{13}Benomar, \textit{Supra} note 3.
\textsuperscript{14}Saati, \textit{Supra} note 10, P8.
\textsuperscript{15}Ibid.
\textsuperscript{17}Hart, V., Democratic Constitution-making (United States Institute of Peace, 2003); Available at http://www.usip.org/files/resources/sr107.pdf < Accessed on March13, 2015>
\textsuperscript{18}Saati, \textit{Supra} note 10.
\textsuperscript{19}Benomar, \textit{Supra} note 3, P.11.
obedience and confidence of the people. They have to make sure that the constitution is free from serious birth-defects. Exclusion of key players from constitution-making process is the most common and fatal defect leading to fragility of a constitution.\footnote{20} If those involved in constitution-making fail to take the necessary precaution, they will end up in producing a constitution with fatal birth-defects destined to have short duration.\footnote{21}

When a constitution is made, the entire constitution-making phases should be seen as an important forum for dialogue where the struggle between different political forces over issues of distribution, redistribution, and limitation of power are publicly and soberly discussed and determined.\footnote{22} In view of that, constitution-makers should avoid rushing the constitution through hastily without sufficient time for deliberation and negotiations. All those who take part in the making of the constitution need to have ample time and sobriety so that they may be able to make critical reflections on all issues, negotiate and arrive at genuine consensus. As it deals with fundamental issues of the given polity, constitution-making by its nature would require sober mind-set and well-considered approach to all the issues. A constitution not based on shared views, values and aspirations of all the people will be disowned by the people and be short-lived.\footnote{23}

A constitution and the institutions it establishes should not be imposed by a certain group or regime on the people from above. A constitution is not dictated, it is a negotiated and compromise document. As seen from constitutional experiences of many countries, there have been cases where constitutions have been made by the ruling regimes and imposed on the people. But the life-spans of these constitutions have not been longer than the regimes. If a constitution is a dictated one, neither can it get the required loyalty, obedience and confidence from the people nor can it have legitimacy.\footnote{24}

In a post-conflict society, in the entire process of making a new constitution, all those taking part in the constitution-making have to work towards harmonizing
their conflicting viewpoints through negotiations and dialogue in order to come up with a compromise document. Constitution-makers should identify and agree on the main constitutional concerns and problems of the society which the constitution should address. In the process, the fundamental differences which exist between the major national political forces have to be acknowledged and commonly addressed. Mutual-trust and compromise are the essence of a democratic and sustainable constitution. Especially when a new constitution is being made for a divided post-conflict society with diverse interest groups, there is a need to give concessions to potential spoilers who may possibly be able to exploit and mobilize the excluded interests and endanger the stability of the constitutional arrangement.25 For such a society, an inclusive and fully participatory constitution-making process will serve as an instrument that brings about peace and reconciliation between conflicting communities.26

4. CONSTITUTION-MAKING IN PRE-1991 ETHIOPIA AND THEIR OUTCOMES

Modern Ethiopian Empire State came into being through Menelik’s war of conquest at the end of the 19th Century. The different groups of people incorporated into the Empire have been brought together by force of arms and kept together by force. There has never been consensual-basis for Ethiopian State which gives it legitimacy. The past successive rulers of the Empire have uncompromisingly and persistently been engaged in their attempts to forge a nation-state out of the multi-ethnic Empire. As a result, the diverse ethnic groups have been forced to remain under the Empire thus making Ethiopia a prison-house of nationalities.27

The assimilationist nation-building project of Ethiopian rulers has been facing series of resistances all along from the various subjugated peoples that have been forcibly brought under the Empire-State. But the successive rulers of the Empire continued their forcible assimilationist strategy in total disregard of the resistances and revolts of the subjugated people. With the initial lack of consensual-basis at birth, the subsequent drive by the successive ruling regimes

26 Ginsburg et al., Supra note 12.
of the Empire to forcibly maintain the multi-ethnic Empire has served as a seedbed for perpetual constitutional crises in Ethiopia. The centralist nation-building project of the successive rulers has been facing fierce resistances and revolts from the diverse subjugated people of the Empire from the very outset and has drawn Ethiopia into endless upheavals for several decades.28

In Ethiopian constitutional history, the 1931 Constitution of Haile Sellassie was the first written constitution adopted and used by Ethiopian ruler as an instrument to create a modern nation-state out of multi-ethnic Empire. The Emperor made the Constitution on his own initiative with the sole objective of reducing the political power of the nobility and to consolidate his absolute power.29 The Constitution made Emperor Haile Sellasie’s hereditary rule that was alleged to have descended from King Solomon incontestable. According to Thomas Paine (1954), hereditary rule and government by their nature are tyrannical since inheriting a government simply amounts to inheriting the people “as if they were flocks or herds”30.

The 1955 Revised Constitution of Haile Sellassie has made considerable departure from the 1931 Constitution in terms of content and structure, but in their essence, both pursued the same assimilationist strategy of building a nation-state out of multi-ethnic Empire and consolidating Haile Sellasie’s absolutist rule. Since both constitutions were given /granted/ by the Emperor, they could not restrain the exercise of power of the Emperor in any way.31 The two Imperial constitutions have failed to build the desired nation-state but they have succeeded in creating a strong predatory state with exclusive and fragile state institutions. During his half a century imperial rule, there were more than enough signals and demands for change32. But rather than considering reconstituting the Empire-State on consensual-basis, Haile Sellassie’s regime continued its assimilationist

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32 The 1960 coup, the peasant revolts of Bale, Gojam, Sidama, the Eritrean Liberation struggle, Ethiopian students’ movement, (see Gebru Tareke, The Ethiopian Revolution: War in the Horn of Africa (Yale University, 2009)).
policy with hegemonic and authoritarian rule. Ultimately, the popular uprisings and revolts made by the diverse subjugated people of the Empire led to the 1974 removal of the Emperor from power with disgrace.33

After overthrowing Emperor Haile Sellassie and suspending the 1955 Revised Constitution, the Provisional Military Administrative Council (PMAC) known as the Derg, constituted itself as a provisional military government. In taking that move, Ethiopian military deprived Ethiopian people the opportunity history has offered them as a result of the demise of more than four decades of Haile Sellasie’s feudal and autocratic rule. The Derg ruled the country without a constitution for 13 years. The 1987 Peoples Democratic Republic (PDRE) Constitution was the third constitution for Ethiopia and it was the first to constitutionally declare the country a Republic. But the Constitution was made merely to serve as a camouflage for the Derg’s naked rule by force.

Except for the change in its name and form, in its essence, the 1987 PDRE Constitution endorsed the previous Imperial assimilationist approach and declared Ethiopia a centralized unitary State. Instead of being responsive to the continuous, deepening and legitimate demands of the diverse subjugated people of Ethiopia for equality, the Derg regime became more centralist, authoritarian and assimilationist than Emperor Haile Sellassie. The centralization efforts made by the architects of the Empire- state were taken to climax by the Derg’s over-centralization of the State and the economy.34 In terms of democratic constitutional development, the Derg regime abolished hereditary rule of Haile Sellassie and changed the name from Empire to a “republic”. Other than that, the Derg regime had perfected and used (rather in a more refined way) the hegemonic, predatory and repressive features of all state machineries that have been put in place and used under the Imperial regime.

Paul Brietzke has characterized the Derg’s style of governance as “unitarist in the extreme”35 In trying to make multiethnic Ethiopian polity centralist and unitarist in the extreme, the Derg regime worsened the fragility of the predatory and authoritarian state it took over from the Emperor. Ultimately, the Derg’s extreme assimilationist strategy and hegemonic rule generated ethnic backlash.

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33 Gebru Tareke, *Supra* note 32.
and led to the emergence of different armed insurgent groups which brought about the downfall of the regime in 1991. In terms of durability, from its adoption in 1987, the PDRE Constitution lived barely for four years. According to Widner, if a certain constitution is suspended within five years of its ratification, it is considered a “failed effort”\(^\text{36}\).

Overall, when one looks into the pre-1991 Ethiopian constitutions, they all have failed to build sustainable democratic constitutional state with inclusive state institutions. Rather, what they have established was an authoritarian culture of power that nurtured and promoted hegemonic mind-set among the power elites from the ruling regimes. This class of ruling elites always aimed at the control of central state power and accessing the country’s resources, most importantly land. The kind of Ethiopian State that was crafted was predatory in its nature and impervious to democratic values. Ultimately, since the constitutions, the state and the institutions the regimes created have all been elite-driven, exclusivist and not consensus-based, and owing to their inherent fragility, they all disappeared with the regimes.\(^\text{37}\)


5.1. CONTEXT AND BACKGROUND

The fall of the Derg regime in the year 1991, conclusively proved the total failure of attempts to build a nation-state out of multi-ethnic Empire –State and the fragility of Ethiopian polity as a state.\(^\text{38}\) It revealed more than ever before that the legitimacy of Ethiopian state and the authority of the rulers were under uninterrupted challenge. The pre-1991 constitutional experiences of Ethiopia have shown the need for a fresh start with a radical departure from the past.\(^\text{39}\)

In May 1991, the Derg regime was removed from power by force and the Ethiopian People’s Revolutionary Democratic Forces (EPRDF) assumed power

\(^\text{36}\) Widner, Supra note 4, P.1526.


\(^\text{38}\) Merera, Supra note 28.

\(^\text{39}\) Markakis, Supra note 27.
through force showing that power has once again assumed by force. With the downfall of the Derg regime, the diverse subjugated ethnic groups and people in Ethiopia have been provided with another opportunity to make a fresh start and re-constitute a consensus-based democratic state. The first opportunity was in 1974 which according to Eshetu Chole “turned out to be a bitter ‘harvest of sorrow’”. At the time, many thought the opportunity could be used by Ethiopian people to establish an endurable constitutional system with sustainable and inclusive State institutions. In view of the fact that Ethiopia was a post-conflict society struggling to come out from decades of authoritarian rule into democratic system, hoping for a new constitution that could rectify historical wrongs and addressed the perennial constitutional problems was justifiable optimism.

After the downfall of the Derg regime by joint forces of ethnic-based liberation movements in the year 1991, the dream of those who have strived much to build a nation- State out of the Empire -State was shattered. In 1991, after more than four decades futile attempt of trying to prevent Eritrean secession, Eritrea seceded from Ethiopia and declared its independence. The events which took place in 1991 were conclusive evidences as to the need to transform Ethiopia from prison-house of nations to a consent-based multilingual and multicultural federal state. No genuine Ethiopian constitution-maker could have missed the need for making a fresh start by reconstituting Ethiopia based on consent through fully-negotiated new constitutional arrangement.

With a brief transitional period from 1991 -1995, the FDRE Constitution was adopted in 1995 as a fourth constitution in Ethiopian constitutional history. Now, more than eighty-seven years after the 1931 Constitution and almost a quarter of a century after the 1995 FDRE Constitution, can one comfortably say Ethiopian people have used the opportunity offered to them in 1991 or was it a missed opportunity once again? To what extent had the efforts made during the making of the 1995 Constitution gone beyond mere constitution-writing and became constitution-building by producing a political community with sustainable democratic State and inclusive institutions? Have the diverse subjugated people of Ethiopia who were forcibly brought together through conquest and kept

together by force succeeded in building the quested for consensus-based political
community capable of nurturing democratic values and institutions?

The extent to which the 1995 FDRE Constitution was made in such a way as to
gain the loyalty, obedience and confidence of the people and thus gained
legitimacy will be looked at hereunder starting with the transitional Charter. The
article has attempted to pin-point some of the conspicuous birth-defects which
have affected the outcome and legitimacy of the 1995 FDRE Constitution.

5.2. THE TRANSITIONAL PERIOD CHARTER

Having controlled state power by force of arms, the EPRDF convened a National
Conference held in July 1991 which adopted the Transitional Charter on the basis
of which the governance for transitional period was established and the 1995
FDRE Constitution was prepared. The EPRDF invited different political
movements to take part in the July Conference most of which were small ethnic
parties created after 1991. At the end of the Conference, the participants have
agreed upon and came up with a Transitional Charter and the Transitional
Council of Representatives (COR) which had 87 members. The Charter stressed
and recognized the right to self determination of ethnic groups to independence.
The move to make ethnic self determination was dictated by the political setting
and the nature of the political force which came to power at the time. Since ethnic
problem was the cause that led to the emergence of the liberation movements and
the downfall of the Derg, the EPRDF-led Government could no more disregard
ethnic issue.

After the overthrow of the Derg regime, when the EPRDF formed coalition
government with a number of liberation movements, things appeared to be
moving towards reconstituting Ethiopian State on consensual basis. But, in the
course of time, events proved that the EPRDF had no intention of sharing
power.41 Ethiopian constitutional history so far shows that every successive
regime modified or changed the previous structure but “each time with a view to
raising its efficiency as an instrument of control and raising revenue”42

42 Markakis, Supra note 27, P12.
When one looks at the stage-setting period preceding the making of the new constitution, starting from the very determination of participants taking part on the July Conference and the allocation of seats for the 87 COR members; the EPRDF dominated the political landscape by virtue of the state power it already controlled and because of the partisan military supremacy it had. The EPRDF introduced a battle-field formula during the Transitional Charter to apportion the 87 COR seats. Based on the formula, the power positions of the liberation movements were determined by taking into account the role played by the liberation movements in the fight to defeat the Derg regime. This battle-field formula placed the EPRDF in an incontestably dominant position with effective control of the stage-setting and the making of the 1995 FDRE Constitution.43

As seen from the constitutional experiences of various countries, when governments preceded constitutions and took part in the making of the constitutions, the governments on power dominated the processes and influenced the outcomes in ways that favored them.44 In principle, since it is a constitution that is supposed to create the government and gives it legitimacy, a constitution should be antecedent to government.45 In the 1991 Ethiopian situation, the fact that the EPRDF already assumed power and was in total control of power all along enabled it to make use of its political and military leverage to dominate the Transitional process. The EPRDF’s exclusive control of state power has enabled it to dominate the entire constitution-making process and the outcome thus creating legitimacy deficit for the 1995 FDRE Constitution.46 Consequently, the whole transitional process and the subsequent constitution-making process became the exclusive affair of the EPRDF and those allied to it.47


EPRDF’s exclusivist approach and dominance of the whole process has been condemned by the different opposition groups excluded from the transitional

43 Vestal, Supra note 41.
44 Benomar, Supra note 3.
45 Thomas Paine, Supra note 30.
46 Vestal, Supra note 41.
Conference and the subsequent constitution-making process. All the same, the 1995 FDRE Constitution was drafted by a commission which was formed after several representatives of the opposition have boycotted.\textsuperscript{48} The few remaining opposition groups who were part of the EPRDF-led TGE were removed.\textsuperscript{49} The Commission consisted of 29 members designated as the General Assembly.\textsuperscript{50} Ethiopian oppositions have even gone to the extent of calling for the resignation of the Commission declaring their rejection of the Commission and the legitimacy of the constitution.\textsuperscript{51} Despite this, the draft Constitution prepared by the Commission was submitted for discussion to the Constituent Assembly elected on the basis of the draft constitution, ratified on Dec 8, 1994 and entered into force on 21\textsuperscript{st} August 1995.\textsuperscript{52}

A participatory constitution-building process is an all inclusive exercise where all stakeholders are required to make full and effective participation. According to Meaza Ashenafi (2003), one of the key participants in the making of the 1995 Constitution\textsuperscript{53}, although the “debates were lively nonetheless, the EPRDF- the ruling party, always dominated when an issue came to a vote as it had the largest delegation.”\textsuperscript{54} Evidently, in the absence of important political forces, there could be no serious debates and negotiations among different political forces on important and controversial issues. In effect, this would mean issues relating “ethnicity, self-determination and federalism were never adequately

\textsuperscript{48} The credible opposition parties left out or boycotted the process were; The Agew Peoples Democratic Union, the All Amhara People’s Organization (AAAPO), the Coalition of Ethiopian Democratic Forces (COEDF), the Council of Alternative Forces for Peace and Democracy(CAFPDE), the Ethiopian Democratic Action Group, the Ethiopian Democratic Union Party(EDUPO), the Ethiopian Medhin Democratic Party, The Ethiopian National Union Party (ENUP), the Ethiopian People’s Revolutionary Party(EPRP), the Gurage Peoples Liberation Front, the Islamic Front for the Liberation of Oromo, , the Oromo Liberation Front (OLF), the Somali Liberation Front, and the Southern Ethiopia Peoples Democratic Coalition (SEPDC). Names of those parties boycotted the 29 member Commission were EDU ENUP OLF Southern Coalition

\textsuperscript{49} The General Assembly of the Commission was composed of 7 members of the TCR, 7 representatives various political parties, 3 from trade unions, 2 from teachers association, 2 from lawyers association 2 from health professionals association, 3 from Chamber of commerce and 3 represented women.

\textsuperscript{50} For detail of the process of the making of the 1995 FDRE Constitution, see Vestal, 1996.

\textsuperscript{51} Benomar, \textit{Supra} note 3.

\textsuperscript{52} Vestal, \textit{Supra} note 41.

deliberated.”

This would in effect mean the outcome of the 1995 FDRE constitution-making process was dictated by the EPRDF, not negotiated among all political forces.

Although the exclusivist approach pursued by the EPRDF had created resentments and led to tensions and violent conflicts among political groups, with the help of its political and military power the EPRDF was able to dominate the political landscape making the constitution-making process unwelcoming to consensus and democratic dialogue. Eventually, “what had begun with a noisy diversity of views among a broad array of political organizations ended quietly with the clear hegemony of the EPRDF.”

John Abbink maintains that there is “historically engrained authoritarian/hierarchical tradition in Ethiopian politics.” Having studied Ethiopian nation-building project for many decades, John Markakis stated that “The analysis of succeeding crises along the route highlights the structural fault in its design, which is the centre’s monopoly of power.” This historically engrained authoritarian tradition which generates and nurtures hegemonic mind-set has been the main impediment to participatory and inclusive constitution-making in Ethiopia. Owing to this engrained hegemonic and authoritarian mind-set which always haunted them, the ruling power elites could not be accommodative by renouncing their longstanding hegemonic drive.

As revealed from the constitutional experiences of various countries, when making a new constitution, the role of a government in power during the constitution-making process need to be regulated and defined. In view of the fact incumbent governments have actual interests in the outcome of the process; such incumbent governments in many countries have negatively influenced the outcomes of the processes by using the state machinery and the military power they controlled. In the same vein, in Ethiopia, the EPRDF assumed control of state and military power before the making of the constitution which enabled it to dominate the whole constitution-making process and the outcome. This has

55 Benomar, Supra note 3, P.7.
56 Lyonns, Supra note 47, P121.
57 Abbink, Supra note 47, P173.
58 Markakis, Supra note 27,P355
happened because there was no mechanism to prevent any possible manipulation or influence coming from the powerful ruling party.\textsuperscript{59}

In South Africa the constitution-makers first laid down negotiated rules and principles in the interim constitution to equally govern all parties.\textsuperscript{60} But in Ethiopia, there was no such arrangement or mechanism in place to prevent the EPRDF from dominating the transitional process and from influencing the process and outcome of the 1995 FDRE constitution-making. The monopoly over the stage-setting enabled the EPRDF not only to determine who could take part in the constitution making processes but it enabled the ruling party to exclude the vanquished and all others opposed to the regime.\textsuperscript{61}

In terms of form and contents, the FDRE Constitution generally has resemblance with many modern federal democratic constitutions. Looking at the nicely-worded text, one may be misled and conclude that it is a democratic constitution. Regarding forms and contents of modern constitutions, almost all countries have constitutions which consist of set of rules structuring and defining powers of governments and almost all contain provisions that purport to recognize and protect most of the fundamental human rights. But of all these countries, a significant number of them have a well-written constitutional text but without constitutionalism or constitutional practice.\textsuperscript{62}

For modern dictators, a written constitution has nowadays come to serve as a camouflage for deception. The fact that there is a formal written constitution with provisions that purport to recognize and protect fundamental human rights cannot be taken as conclusive evidence that the governments are constitutional. In fact, any government with the intent to sidestep a constitution will have several extra-constitutional means to make the well-written constitution irrelevant as it has been the case in many developing countries. In view of that, in judging the merits of modern constitution one should not be deceived by the form and contents of the constitutions which also applies to the 1995 FDRE Constitution.\textsuperscript{63}

\textsuperscript{59} Vestal, \textit{Supra} note 41.  
\textsuperscript{60} Benomar, \textit{Supra} note 3.  
\textsuperscript{61} Vestal, \textit{Supra} note 41.  
\textsuperscript{62} Loewenstein, \textit{Supra} note 1.; See also Nwabueze, B. O. Constitutionalism in Emergent States (London: C. Hurst & Co., 1973).  
\textsuperscript{63} Vestal, \textit{Supra} note 41.
Overall, when looked at in terms of gaining the loyalty, obedience and confidence of the people and earning legitimacy, the 1995 FDRE Constitution making process had fatal defects. Effective participation and inclusiveness are essential requirements for making a democratic constitution. But these essential requirements were lacking in the making of the 1995 FDRE Constitution which has made the process seriously flawed. The ruling regime wielded control of the whole process of making the federal constitution by totally excluding all opposition political forces. The federal arrangement was not fully negotiated among the key political forces. This has made Ethiopian federal arrangement a dictated and imposed one. Ultimately, what prevailed was the traditional centralized command governance style under the guise of federalism.

Regarding legitimacy of the 1995 FDRE Constitution, one issue often raised is the possibility of gaining legitimacy later on which has been lacking in the beginning. According to Tsegaye Ararsa, the 1995 FDRE Constitution had a weak original legitimacy but could have earned derived legitimacy through consistent implementation.\(^{64}\) Surely, as rightly put by Tsegaye, where legitimacy may be weak originally, it can be gained through practice. This could have been done through opening the political space to those excluded when the Constitution was made. In fact, the EPRDF did not have the intent to be inclusive at the time of the making of the Constitution. In view of the fact that it lacked original intent, expecting that it will act towards gaining the intent to be inclusive will be remote. In due course, what we have come to observe during the last 25 years is the fact that the EPRDF has narrowed the political space more and more.

One may wonder whether the 1995 FDRE Constitution can still gain legitimacy under the ongoing reform measure of the EPRDF. On this issue, I generally agree with the following statement of Gedion. In his view, “instead of adopting a new constitution, the current constitution’s lack of legitimacy can be remedied by comprehensive constitutional reform that would still maintain the basic architecture and cornerstones of the current constitution.”\(^{65}\) But in my view, the problem would still be the EPRDF once again exclusively remaining in control

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of the ongoing reform. If the EPRDF is sincere about the current reform, if it abandons its exclusivist disposition and ready to share power, the possibility of the Constitution gaining legitimacy cannot be ruled out.

7. CONCLUSION

In close to a century Ethiopian peoples’ quest for constitutionalism, the single-most persistent problem remains to be lack of consensual-basis which is a prerequisite for building a political community with inclusive and sustainable state institutions. Whoever wants to genuinely address this perennial problem of the diverse Ethiopian people has to accept that Ethiopian people have not as yet built a consent-based political community. To the extent that it was not consent-based at the start and to the extent that the diverse Ethiopian people are still being kept together by force alone, the legitimacy of Ethiopian state and the authority of the rulers continue to be contested.

In the context of constitution-building, one bitter truth which should be acknowledged by any prudent Ethiopian constitution-maker is that the formation of Ethiopian polity was based on force and its survival was maintained simply by force. This is the main reason why legitimacy of Ethiopian polity and authority of its successive rulers have been contested all along. A multiethnic-Empire constituted by conquest and maintained by force cannot build a political community and establish sustainable constitutional system without renegotiating and reconstituting the state on the basis of consent.

All the past constitution-making processes in Ethiopia have failed to recognize the need for reconstituting Ethiopian polity with a view to make it consensus-based. Constitution-building in post-conflict society aims at re-building the society with a view to create a political community that can serve as foundation for sustainable democratic and constitutional order. This assumes that the existence of historical wrongs and injustices that have to be rectified. In the case of Ethiopian power elites who have taken the lead in making the constitutions, there has been reluctance to break with the past by way of recognizing historical wrongs and being ready to rectify them.

If one looks at Ethiopian constitutional history as a whole, under the Imperial rule of Haile Sellassie, the constitutions were meant to consolidate the absolutist rule of the Emperor which was feudal-based and inherently impervious to
democratic values. Besides, the Imperial constitutions were imposed on the people from above by the Emperor and opposed to democratic principles in their declared intent. But the Imperial constitutions have succeeded in building repressive, exclusive and predatory state institutions. The 1987 PDRE Constitution of the Derg regime was made with a view to give a legal cover to its overt rule by force. In so doing, the Derg changed the name of the State from unitary Empire to unitary “Democratic Republic” but with more repressive and authoritarian style of governance. Instead of democratizing the Empire, the Derg pursued Haile Sellasie’s assimilationist policy and centralist state structure in its most extreme form which back-fired and brought about the fall of the Derg in 1991.

The downfall of the Derg regime had opened a new opportunity for the diverse oppressed people of Ethiopia to reconstitute the polity and build a political community capable of sustaining a democratic state with inclusive institutions. The 1995 FDRE Constitution was greatly expected to bring about the consensus and the state legitimacy that has been lacking since the formation of the Empire-State and rebuild Ethiopia on new solid foundation. The expectation among many was that the constitution will not only be the means of legitimizing the government but it was also expected to recreate and legitimize Ethiopian State.

The main argument of this article was that there is direct correlation between constitution-making process and its outcome. If the process of making a constitution is not democratic, one can hardly have a genuine democratic constitution with legitimacy. It is only where the constitution-making processes are made fully participatory and inclusive that it be considered democratic, ensures the peoples’ ownership of the constitution and earns legitimacy. The process of making the 1995 FDRE Constitution was elite-driven and non-participatory which put in danger the survival of the Constitution. As it has been the case under the successive rulers of Ethiopia, the main problem was the traditional hegemonic mind-set of the ruling elite who always wanted to have exclusive control of state power and thus have free access to resources from the centre.

In turning the constitution-making into an affair of a few ruling elites and excluding the majority, the EPRDF restored the old hegemonic culture of power established by architects of the Empire and pursued by successive Ethiopian rulers. Lack of mechanism to prevent possible influence from the government on
power allowed the EPRDF to exclude key players without any restraint which resulted in frustrating the much expected democratic transformation. Ultimately, in the power relationship, the new constitution maintained the subordinate position of the people who have been brought under the Empire through conquest. Without changing the initial power relationship established by the architects of the Empire, the new constitution has camouflaged the old structure and gave it the name federal.

In a war-torn society like Ethiopia where the people have been kept for so long under successive repressive and predatory regimes and authoritarian culture of power, building mutual trust between the diverse people of Ethiopia should have been taken as a matter of utmost concern to the constitution-makers. At the time of making of the 1995 FDRE Constitution, instead of negotiation, what resurfaced was the old hegemonic and authoritarian culture of power. Instead of taking moves towards trust-building between different ethnic groups and oppositions, the EPRDF acted like a victor and excluded the vanquished and the oppositions.

Besides, to judge the merits of the 1995 FDRE Constitution, one can as well go beyond the text and look at the promises and performances of the Constitution twenty-two years after its adoption. Obviously, the Constitution has changed the name of the state from unitary democratic republic into Federal Democratic Republic. But still the Constitution-makers have ensured that command over the country’s vital resources including land remain under the control of the central government. With vital resources under effective control of the central government and the EPRDF controlling the Regions through its party structure, in practice, there is a centralized federal state which almost operates as a unitary state under the guise of a Federal Democratic Republic.66

In effect, despite the existence of such a well-written constitutional text with good contents, the past authoritarian culture of power and “the tendencies that uphold the politics of command are very much alive today, as they were during imperial and revolutionary times.”67

economic power by force. The Ethiopian state and its institutions have remained as extractive, exclusive and as unsustainable as they were during the past successive regimes.

Eighty-eight years after the first written constitution and twenty-four years after the fourth constitution, Ethiopia still has not succeeded in creating a consent-based democratic constitutional State with sustainable constitution and inclusive state institutions. What we can learn from the experience of the past eighty-eight years is that there is a need to renegotiate and reconstitute Ethiopian polity and make it consent-based. The mass protests of the years 2014 to 2018 have amply shown that legitimacy of Ethiopian state and the regime has gone beyond being contested and forcefully condemned. According to Markakis, the only way out of these perpetual crises is for Ethiopian power elites to “make a clean break with the past, renounce centre hegemony and accept equitable power-sharing with the periphery”.  

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68 Markakis, Supra note 27, P357.
THE FUNDING OF POLITICAL PARTIES IN ETHIOPIA: A REVIEW OF PROBLEMS*

Gebremeskel Hailu**

ABSTRACT

Political parties serve democracy through articulating and aggregating social interests. However, keeping other factors as they are, the success of political parties is dependent on having the necessary funds. Yet, there is extreme manipulation of political funding to create political advantages and disadvantages that affect election outcomes in a range of ways. Specifically, unequal access to funding, abuse of state resources and illegal funding are the challenges disrupting the competitiveness of election and democracy in Africa and Ethiopia alike. Thus, political finance is both a necessity and a problem. In response to such problems, the author tries to explore the way the Ethiopian political finance functions with due emphasis to the problems of political funding. For doing so, it uses primary and secondary sources of data. It reviews the existing laws governing the system of political funding. It also examines the reports of the 2010 and 2015 national elections of the ENEB, the EU and AU Election Missions to Ethiopia. It conducts interviews with key political actors and officials of the ENEB to appreciate the problems of the system of political funding. Accordingly, the research finding indicated that the incumbent party in Ethiopia has excessively used its incumbency to protect its position and further weaken the already weak opposition political parties. The amount of public funding granted to the political parties is so insignificant related to all African states. Of which the incumbent party takes the lion’s share because of the biased apportionment criteria. The public media allocation also significantly favors the incumbent party. Besides, the incumbent party massively abuses the state resources for its own partisan advantages. Now, therefore, there is a pressing need for leveling the political playing field by safeguarding equitable political resource distributions.

Key terms: Political Finance, Political Party, Public Funding, Ethiopia, EPRDF, Opposition Parties

*This piece of work was presented at a National Conference, Organized by Hawassa University on “Constitutionalism and Governance as Enablers of Sustainable Development in Ethiopia”, May 7-8, 2018.

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INTRODUCTION: WHY POLITICAL FUNDING MATTERS?

In modern democracy, regular elections among contending political parties have become the dominant method of selecting governments. In the process, political parties play two important roles: they form government or they serve as opposition.\(^1\) They promote vital competition on policies and offer the same alternatives to the electorate.\(^2\) They also give channels for citizens’ participation in government decision-making process. As agents of representative democracy, political parties are required to reach out to the electorate and explain their goals and policies, and receive inputs from the people.\(^3\) Thus, election campaigns need to engage citizens in the democratic dialogue.\(^4\) For accomplishing these democratic functions, political parties need financial resources, otherwise called ‘political finance’.\(^5\) Marcin Walecki in his work entitled ‘Challenging the Norms and Standards of Election Administration and Political Finance’ defined ‘political finance’ as “money for electioneering or campaign finance of political parties”. In connection to this, this introductory part intends to address the question: why is political finance so important?

Political funding is crucial for any political activity and indeed, sufficient access to funding is crucial to the overall vibrancy of an electoral and democratic system.\(^6\) It also determines fundamentally the quality of democracy.\(^7\) This is because the financial resources available to parties, the distribution of those resources, and the ways in which they are collected and spent can have a pivotal impact on the efficacy of political parties, the nature of electoral competition and ultimately the legitimacy of elections and

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2 Ibid.
4 Wondwosen, *Supra* note 1.
5 Marcin Walecki, Challenging the Norms and Standards of Election Administration: Political Finance, (Ed.), 2007, P.75. See also, Magnus Ohman, *supra* note 3.
6 Magnus Ohman, *Supra* note 3.

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democratic institutions. In this regard, various authors have highlighted the importance of political finance in various terminologies. For instance, Heidenheimer in his classical work published in 1970 coined political finance as the “oil that greases the engine” of party politics. Another author also called political finance as “mother’s milk of politics”. Gudeta Kebede quoting the work of Sachikonye underlined the importance of political finance stating, “the viability of political parties largely depends on whether they generate or receive satisfactory funding for their activities” and he further underscored the fact that “little funding cripples a party’s operations and reach”. Makara likewise accentuates the importance of finance to political parties and democracy asserting, “under-funded political parties are not likely to compete effectively in the political game and are unlikely to nurture the growth of democracy”.

Although political finance is very important to the viability of political parties, yet, the relation between money and politics has come to be one of the great problems of democratic governments. Political finance is susceptible to manipulation by “all political actors” though the degree of manipulation could differ from one to another. At any rate, it has never been neutral; rather it creates significant political advantages and disadvantages that affect election outcomes in a range of ways.

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8 Ibid.
11 Gudeta and Alemu, Supra note 7.
13 Marcin Walecki, Supra note 5.
14 Wondwosen, Supra note 1, p.4, see also, Gudeta Kebede, Supra note 7.
What is worst further is that election campaigns are getting expensive from time to time. Particularly, in Africa political campaigning is getting more costly due to the low income of the society, large rural population living in sporadic villages, high illiteracy rate, low technological development and infrastructure such as poor roads, poor telecommunications and transport. All these factors increase the burden of election campaigning for the political parties. According to Magnus Ohman, such situation more affects the opposition political parties than the incumbents. Wondwosen Teshome also concurs with the latter conclusion. Over all, the system of political financing in Africa inclines towards the advantage of the incumbent political parties and thereby creating uneven playing field between the incumbent and the opposition political parties. Moreover, there is serious abuse of state resources, whereby the incumbent political parties use resources belonging to the public to strengthen their political power and increase the chances of re-election.

In connection to this, one may assert that Ethiopia is not an exception as regards the problems of political financing in Africa. Nonetheless, in order to examine the magnitude and degree of the problems, there is pressing need to appreciate how the Ethiopian political finance functions on the ground. Because of its importance for one’s democracy and political system as a whole, political finance has attracted the attention of many researchers in different countries. However, except Wondwosen, who gave observations on African political finance with particular emphasis on the case of Ethiopia and Gudeta who brought a passing remark on the issue, to the best knowledge of the author, there is no other research on the Ethiopian political finance.

17 Ibid.
18 Ibid.
20 Wondwosen, *Supra* note 1.
21 Magnus Ohman, *Supra* note 19.
22 Ibid.
23 Exceptionally, Wondwosen Toshome has tried to explore the area while dealing with the topic entitled ‘Political Finance in Africa: Ethiopia as a Case Study.’ Yet, his discussion is wide enough covering the context in Africa and not entirely focused on Ethiopia. Another
In view to regulate the perceived or real problems, Ethiopia has introduced laws regulating political finance. Whether the laws are fair and whether they are efficiently enforced is yet a point of inquiry discussed in the upcoming topics. What is vivid from the laws is that most sources of funding are banned except those received from membership contributions, public funding and donations and grants from Ethiopian nationals, either individuals or businesses. Wondwosen Toshome quoting a research finding of Lovise Alen, which she incidentally tried to touch, said, “One of the major causes for the weakness of political parties in Ethiopia is the lack of strong resources or funds”. The opposition political parties also overlap with this finding that they are suffering from the scarcity of resources to undertake their political activities. Even the public fund allotted to political parties by the government has its own impediments. Furthermore, there are questions, among others, on the allocation of public media and on how the incumbent party uses its incumbency in administering the resources of the state.

In view of these problems and concerns, the author tries to address how the Ethiopian political finance is actually working on the ground. It specifically aims to examine the problems of the political funding system in Ethiopia. For doing so, it employs primary and secondary data sources. It reviews the existing laws governing the system of political funding and the reports of the 2010 and 2015 national elections of the Ethiopian National Electoral Board (hereafter ENEB), the reports of the European Union (EU) and African Union (AU) Election Missions to Ethiopia. It also conducts interviews with some key political actors and officials of the ENEB.

Author who can be mentioned here is Gudeta Kebede, which he incidentally touched the area while dealing with ‘Ethiopian Opposition Political Parties in the Post-1991 Political Structure’.

24 For example, the Revised Political Parties Registration Proclamation, No. 573/2008, the African Charter on Democracy, Election and Governance Ratification Proclamation No. 613/2008 and Regulation Concerning the Procedure for Determining the Apportionment of Government Financial Support to Political Parties Regulation No. 5/2009.


26 Wondwosen, Supra note 1.

27 An interview of ENN Television with Professor Beyene Petros, a key figure of Medrek, a coalition of four political parties, in the Voice of the Public Program, Feb 19, 2018 at 4:30 PM.

28 Wondwosen, Supra note 1, P858.
The structure of the article goes as follows; it starts outlining the introductory part stressing on how important is political funding to political parties. It goes on briefly addressing the need for regulating political funding. It then reviews the challenges of political funding in Ethiopia with particular focus associated to direct and indirect funds. This part explores how and who determines the amount of public funding, looks the eligibility and allocation criteria for apportioning public funding and the interval and timing for its distributions. It also investigates the problems of public media distribution among the political parties and its effect on opposition political parties. The last part scrutinizes the problems and effects of abuse of state resources in Ethiopia and winds up with conclusions.

With this introduction, the following sub-topic examines the need for regulating political funding before resorting to see how Ethiopia tries to regulate the system of its political finance.

1. WHY DO WE NEED TO REGULATE POLITICAL FUNDING?

As stated above the relationship between finance and politics has become among the thorny issues in democratic states. Kevin Casas-Zamora in his work, ‘Political finance and state funding systems,’ has summarized the possible negative consequences of political financing on democracy, unless properly managed, in the following three accounts.29

- The flow and distribution of funds can encroach upon electoral equality. A lopsided distribution of funds erodes genuine electoral results.
- Political donation can bestow asymmetric opportunity among political parties where political power simply reflects economic power and
- Fund raising process may result in a ‘quid pro quo’ deals between donors and policy makers where the latter serves the interests of donors at the expense of public interest.

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Unregulated political funding can shape public debates and can unduly influence the results of an election.\textsuperscript{30} In addition, the expense of running for office can prevent some parties from doing so and may cause them to spend too much time raising money or accepting money from unacceptable sources, and could contribute to public skepticism concerning the political process.\textsuperscript{31} Unregulated political finance can also feed the greediness of political parties, and their increasing financial need can affect the other arenas of democracy.\textsuperscript{32} For instance, political parties with authoritarian tendencies can sometimes put pressure on the state apparatus, civil society and economic society through the abuse of state resources.\textsuperscript{33}

Consequently, in order to prevent these dangers coming from the incumbent or opposition parties, democracy must regulate political funding,\textsuperscript{34} be it for campaign or party activities. In this regard, though there seems consensus on the need for regulating political funding, the practice reveals that there is extreme heterogeneity of political finance regulatory systems i.e. there is lack of single, magic, ‘one-size-fits-all’ solution to the problems of political financing.\textsuperscript{35} For the time being, the complex question of why different political systems travel along different regulatory paths will be sidelined. Yet, within the various regulatory systems, there are four categories subject to legal regulation; source of funding, political expenditure, financial transparency of political parties and sanctions and penalties.\textsuperscript{36}

The issue of regulating political funding has also attracted different international organizations, which tend to propose standards for political finance systems. Many of the proposals emerge from international and

\textsuperscript{30} Id., P.76.
\textsuperscript{31} Ibid.
\textsuperscript{32} Ibid.
\textsuperscript{33} Ibid.
\textsuperscript{34} Throughout this paper, the term “political funding or political finance” will encompass all aspects related to the funding and spending of resources by political parties and candidates in the context of election campaigns as well as in non-electoral times. As such, it is a broader term than “campaign finance”, often used in the literature to cover the whole subject, see, Kevin Casas-Zamora, \textit{ibid}.
\textsuperscript{35} Kevin Casas-Zamora, \textit{Supra} note 29.
\textsuperscript{36} \textit{Ibid}.
regional organizations including the African Union (AU). These proposals may differ in approach but all focus on the need for transparency of political finance. Because of such international, regional and domestic concerns, in recent decades, there has been much desire toward more political finance regulations and more public funding. Yet, scholars and practitioners agree that an effective political finance system should meet the following minimum requirements:

- Enabling equal opportunity to stand and compete in elections;
- Preventing political corruptions through the abuse of state resources;
- Avoiding biased enforcement mechanisms against political opponents and
- Ensuring transparency about how parties collect and spend their money.

Generally, by examining the system of political financing in the world, as the USAID and IDEA in their respective Handbooks on ‘Money in Politics,’ pointed out, one can understand that there exist too many laws but too little enforcements. Hence, among others, lack of enforcement is one scenario hindering healthy political financing.

This said about the importance of regulating political financing, the subsequent discussion tries to examine the regulatory system of political funding in Ethiopia.

38 Kevin Casas-Zamora, Supra note 29.
40 Kevin Casas-Zamora, supra note 29.
2. THE REGULATION AND CHALLENGES OF POLITICAL FUNDING IN ETHIOPIA

According to Transparency International, “political finance regulations have been introduced in a majority of democracies to promote fair political competition and to 'clean up' politics, or limit the influence of money over politics.” To address the problems of political finance, though they vary from country to country, more and more countries are introducing some form of regulation, which encompass public funding, disclosure regulations, bans and limits on donations, the setting of party spending ceilings etc.

In this view, Ethiopia has introduced its first political finance legislation in 1993. This law included various provisions intended to regulate political finance though it was not effectively enforced. For instance, articles 27 and 28 of this law deals with affairs related to source of income and properties of political parties. Accordingly, it stipulates that political parties are prohibited from engaging in commercial and industrial activities. However, they can raise funds from such events as bazaars on a non-permanent manner. Parties can also draw funds from membership dues, subsidies and grants from the government, and donations from supportive domestic sources. Prohibited donations according to this law were; grants from foreign nationals, foreign governments and political parties, external welfare and religious organizations, and convicted prisoners.

Later in 2008, the former legislation is amended by the revised parties’ registration proclamation, No.573/2008. As it is the case in the former, the latter proclamation tries to regulate political finance in many aspects, including ensuring transparency thought disclosure and reporting and the scheme of public funding. In this regard, article 51(1) of the proclamation describes the sources of income of political parties as income from membership dues, donations or grants by Ethiopian nationals and companies in accordance with the limit set by the Ethiopian National Electoral Board.

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43 Wondwosen, Supra note 1, P.855.
44 Political Parties Registration Proclamation No.46/1993.
45 So far, there is no any law made by the National Electoral Board of Ethiopia, which limit the amount of contribution to political parties.
and the grant and support given by the government (public fund). Besides, article 51(2) of the same proclamation states; “a political party may, upon the approval of the government or regional state administration, collect money from the proceeds of events organized on non-permanent basis to enhance its financial position.” However, as it was the case before, political parties are not allowed to directly or indirectly engagement in commercial activities. Moreover, the proclamation puts a bulky list of sources of funds that political parties could not resort. It strictly prohibits political parties from accepting any donation or grant from foreign nationals, foreign government or foreign political party. It also prohibits donation from welfare organization or non-governmental organization, religious organization, prisoners of law, an organized group or person assuming state power in a manner other than that provided under the Constitution and terrorist organization. Besides, it outlaws donation or grant having unknown source, from government organization and donation or grant from anybody or person intended for the execution of any inappropriate or unlawful future benefit. However, there is no ceiling limit on election expenditure by the political parties though there are disclosure requirements for any fund received from the lawful sources

46 The Revised Political Parties Registration Proclamation Proc. No.573/2008, 14th Year No. 62, 24th Sep, 2008, Addis Ababa, Art.52(3). On this respect, even though there are no businesses ventures registered by the name of political parties, in practice there are business activities administered by the EPRDF member parties. The TPLF, ANDM and OPDO administer huge companies over which they have full autonomy over them. The SEPDP has also a business activities led by the party called Wondo Trading.

47 Article 52(2) states; where any political party receives directly or indirectly the donation or grant prohibited in paragraph /a/ to /j/ of sub article (1) of this Article, the received money or property shall be confiscated. The political party may be responsible under the appropriate law and article 52(3) also states where a political party happened to get in any way the donation or grant prohibited under sub article (1) of this Article, the party shall return the donation or grant to the Board together with related documents within 21 days from the date it received the donation or grant.

48 The Revised Political Parties Registration Proclamation, supra note 25, Art. 52(1a).

49 The Revised Political Parties Registration Proclamation, Art.52(1b).

50 The Revised Political Parties Registration Proclamation, Art. 52(1c).

51 The Revised Political Parties Registration Proclamation, Art. 52(1d).

52 The Revised Political Parties Registration Proclamation, Art. 52(1e).

53 The Revised Political Parties Registration Proclamation, Art. 52(1f).

54 The Revised Political Parties Registration Proclamation, Art. 52(1g).

55 The Revised Political Parties Registration Proclamation, Art. 52(1h).

56 The Revised Political Parties Registration Proclamation, Art. 52(1i).

57 The Revised Political Parties Registration Proclamation, Art.52(1j).
from either a person or a business corporate. Yet, the law intends to put maximum limit on the amount of donations given to political parties as determined by the ENEB. Nevertheless, still now, such law is not issued.

As depicted in the aforementioned paragraph, the law treats most sources of funds except few as illegal. Arguably, membership due is preferred source of funding to political parties for it encourages democratic engagement and grass-roots ownership. Nonetheless, in the Ethiopian case, as it stands, membership contribution is very limited, specifically, for the opposition political parties, because of their narrow membership base and the obvious reason of poverty. Hence, membership contribution cannot become reliable source of funding for the opposition political parties, unlike the EPRDF that is substantially benefiting from the contributions of its large membership base as well as significant financial support from the business sector. As opposed to this, the opposition political parties are unlikely to receive donations and grants from Ethiopian individuals and businesses except the diaspora. This is mainly because of the fact that the disclosure of the identity of the donors may make them fear the possible revenge that comes from the incumbent party. The public has a right to know which individuals or businesses contribute funds to which parties because contributors donate to political parties not for merely altruistic reasons but for what they hope to get in return. Thus, it is logical to demand the disclosure of donations made to political parties as a way of enforcing the legal restrictions; otherwise, the banned

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58 See, the Revised Political Parties Registration Proclamation, No. 573/2008 articles 19 (1d) and 54(2(a, b and c)).
59 Ingrid van Biezen, Supra note 39, Pp.337–353.
60 An interview of ENN Television with Professor Beyene Petros, supra note 27.
61 As Wondwosen depicted, in Ethiopia, for instance, according to the official declaration of the EPRDF, the party collected 17.8 million (Ethiopian Birr) in 1999EC, and 11.4 million in 2000EC. In addition, it collected 75.6 million from the public and 70 million Birr from business owners as donation. The party’s expenses in 1999EC were 18.8 million and in 2000 E.C it was 18.7 million, see Wondwosen, supra note 1, P858.
62 Wondwosen, Supra note 1, P857, According to this author, the most common sources of income for opposition parties in Ethiopia is the diaspora, for instance, in the 2005 Ethiopian parliamentary election, the main source of income for opposition parties was the Diaspora Ethiopians. However, the Diaspora money has also brought many troubles to the opposition parties.
63 Abrha, Infra note 91, P18.
organizations will donate in anonymity and can spoil the political process, as it was the case in the 2005 Ethiopian National election.64

Therefore, if there is strict enforcement of political finance laws, the opposition political parties will lack viable alternative source of funding unless they resort to rely on public funding. Yet, the system of public funding merits investigation whether it is a reliable source of funding, if not, for reviewing the problems that it is facing.

2.1. PROBLEMS RELATED TO PUBLIC FUNDING

Although there are arguments forwarded for and against state funding of political parties, the spread of the latter has become a dominant trend over the last century following its early introduction in Uruguay in 1928.65 Though there are critics dispatched against state funding, among others, arguing it damages the public purse, the positive political significance of state funding has garnered immense support in the following three areas.66 These are,67

✓ Ensuring autonomy of political parties and prevention of corruption,
✓ Helping political equality and electoral competition and
✓ Safeguarding the institutionalization and organization of political parties

64“For instance, the collapse of the Coalition for Unity and Democracy (CUD) was mainly the result of the diaspora divergence and “one of the reasons that contributed for the collapse of the CUD was the party’s heavy dependence on the Diaspora donors and hence, the party was the victim of the infighting and rivalries of the Diaspora Ethiopians.” In that particular time, the Diaspora supporters of the CUD in the US and Europe split into two and two rival Diaspora groups emerged: one group (i.e. Kinijit International Leadership-KIL) allied itself with Birtukan Midekasa, the party’s first chairperson, and Berhanu Nega, the mayor-elect of Addis Ababa. The other group (i.e. Kinijit International Council-KIC) allied itself with Hailu Shawel, the chairperson of the CUD. They blackmail each other; while the supporters of Birtukan Midekssa and Berhanu Nega accused Hailu Shawel of dictatorship, and his close associates in the Diaspora for involving in corrupt practices, the supporters of Hailu Shawel accused Birhanu Nega, Birtukan and their Diaspora associates as infiltrators and agents of the incumbent party”, See, Wondwosen supra note 1, P.857.
65 Kevin Casas-Zamora, Supra note 29, P.10.
66 Ibid.
67 Ibid.
Because of its importance, state funding, now days, has become the most common form of state intervention in political finance and it comprises three basic categories:68

- **Direct state funding**, i.e. cash grants disbursed to parties according to a public procedure laid down in the law.
- **Indirect state funding**, i.e. any grant delivered in kind to political parties—such as access to State-owned broadcasts, public buildings and
- **Specific political subsidies**, for instance cash grants earmarked for party-related or party-controlled organizations, such as parliamentary caucuses, ancillary groups (women’s and youth, mainly), and newspapers.

The Ethiopian laws dealing with public funding comprises the first two types of funding, direct and indirect state funding and the third form of state funding is included neither in the laws nor in the practice. Nevertheless, as it is the case in many African countries, there are problems with the two types of state funding in Ethiopia.69 Among others, the weakness of opposition political parties emanates from the problems of public funding70 either because the amount reserved for public funding as a whole is insignificant or because the formula used to apportion the already insignificant fund is predisposed towards the incumbent party.

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68 The demarcation of different kinds of State funding is controversial, particularly concerning the status of specific subsidies. While, in principle, these specific grants may be considered as no more than particular examples of direct subvention, it seems advisable to group them in a separate category. Specific grants are frequently outside the control of the parties’ central or local organs and, in fact, are frequently disbursed to entities with a separate legal existence from the party (e.g. a newspaper or a research foundation). Moreover, in the case of parliamentary subsidies the extent to which public funds help to sustain the activities of parties rather than the workings of Parliament is unclear. See, Kevin Casas-Zamora, ibid.


70 Lovise Aalen, Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991-2000 (Bergen: Chr. Michelsen Institute, Development Studies and Human Rights, 2002), P.31. This is because, unlike for the incumbent party, membership dues made to the opposition is insignificant because of the presence of narrow membership. Again, contribution from the business sector is unlikely to be made to the opposition unless made without exposing the identity of contributors, which is illegal.
With the existing deficiency of financial resources, it seems so demanding that political parties must be partially, if not fully, funded through budgetary allocations of the government. However, the actual challenge with public funding remains in addressing the questions, ‘how much, when and how.’ Hence, the upcoming discussion will examine these points one by one. Particularly, the first three points, which concern with direct state funding will discuss how and with what procedure is the amount of state funding determined, the criteria used for determining the eligibility and apportionment of funds and the interval and timing of disbursements. The fourth part of the discussion that deals with indirect state funding tries to investigate the issue of public media allocation to see how fair it is.

2.1.1. Amount and Procedures of Determining Public Funding

In most countries the initial amount of Direct State Funding (DSF), rests in the hands of legislators. In other countries, non-political organ defined the amount of funding, so as to isolate the grant from political meddling. In the former case, the initial amount determination may follow one of several paths, including one that gives politicians a blank authorization to define the subsidy’s amount on an ad-hoc basis through the budget or a special law. This unconstrained system leaves the subsidy open to manipulation. Others follow constrained amount definition procedures, which lay down clear rules for the calculation of the amount of DSF and most countries have indeed preferred to formalize the rules for calculating subsidies to protect them from short-term political manipulation. In this regard, in some countries, the electoral law may define in detail the amount of subsidy payable for each seat or vote and alternatively, legislators may choose to fix the total sum of the donation.

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71 Kevin Casas-Zamora, Supra note, 29, P14.
73 Kevin Casas-Zamora, Supra note, 29, P15.
74 Ibid.
75 This is the case, for example, in Australia, Belgium, Colombia, Denmark, Italy, Japan, Paraguay, Portugal, South Korea, Sweden, Taiwan, Germany and, with slight variations, Canada and the U.S.
76 Hofnung Menachem, Supra note 72.
When it comes to Ethiopian situation, who determines the amount of grant extended to political parties and how is that determined is important issue in this regard. Article 42 of the Revised Political Parties Registration Proclamation No.573/2008 states the government may grant support for political parties for conducting their day-to-day activities or for election purposes that have representation at the Federal and at State houses. Yet, it says nothing as to the amount of finance allotted and how it is determined. Like all other budgets, it is left to the determination of the Federal House of Peoples Representatives done in consultation with the Ministry of Finance and Economic Cooperation. Hence, the influence of the incumbent party is so obvious that it might affect it in one or the other way.

To be specific, it would be better to examine further the practice and its consequence on the opposition political parties. As far as the amount of finance reserved for public funding is concerned, Ethiopia appears the last in the list of African countries. In this regard, Magnus Ohman recaps the situation of public funding in Africa as the lowest and the Ethiopian case as the worst of all.77 The following chart tries to summarize the amount of public funding in Africa.

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Figure 1-Per capita public funding in Africa

![Per capita Public Funding in Africa](chart.png)


From the chart, one can clearly see the level of public funding in African countries where Kenya stood the peak followed by Ghana, Tanzania and Uganda. Other like Seychelles, Ruanda, Morocco and Namibia have an African ‘average public funding per capita’ (over $1 per citizen), compared to around $0.7 in Tanzania, $0.35 in South Africa, $0.23 in Chad, $0.18 in Cameroon, $0.14 in Mozambique, $0.08 in Niger and a meager of all $0.03 in Ethiopia. Accordingly, Ethiopia is the least per capita public funder in Africa compared to all other states. This being as it is, who is going to suffer much from the small amount of public funds allotted to political parties is a question that will be considered in the subsequent discussion.

2.1.2. Eligibility and Allocation of Public Funding

As far as the formula employed for the distribution of public funding, there are generally two issues: first, which parties should have the right to receive funds (eligibility thresholds) and second, how the fund distributed among those who are eligible (allocation criteria).\(^{78}\) Magnus Ohman while writing

\(^{78}\)Magnus Ohman, Supra note 3, P.23.
about the African public funding stated that there is lack of a level playing field between the incumbent and the opposition parties.\footnote{Ibid.} This often gave rise to direct struggle between those who are in power and those who are not.\footnote{Ibid.} From this perspective, it would be better to scrutinize the situation of public funding in Ethiopia.

According to the revised political parties’ registration proclamation No.573/2008, direct subsidies can be \textit{permanent} and/or \textit{electoral}. Both categories differ in the frequency of the allocation, their recipients and the object of the funding. Thus, in contrast to electoral subsidies given during elections,\footnote{The Revised Political Parties Proclamation, \textit{supra} note 25, Art. 42 (2).} permanent subsidies are normally annual, payable to political parties and directed towards a wide array of activities primarily for building up and administering the day-to-day activities of the political parties.\footnote{The Revised Political Parties Proclamation, Art. 42 (1).} This type of public funding is granted to political parties for conducting their day-to-day activities but its allocation is made on the basis of the existing seats of the political parties’ in the federal and regional parliaments.\footnote{The Revised Political Parties Proclamation, Art. 45 (1).} By implication, it excludes opposition political parties from receiving funds of such sort for they lack parliamentary seats in the 2010 and 2015 national elections in the federal and regional parliaments. In effect, the EPRDF and its allies are the sole beneficiaries of this fund.\footnote{The Ethiopian National Electoral Board Regulation concerning the procedure for determining the apportionment of government financial support to political parties, regulation No.5/2009, Art. 20. This regulation confines the allotment of funding for day-to-day activities to political parties who have a seat in either the federal or regional parliaments and technically excluding all other opposition parties.} This type of public funding can be more beneficial than the election time fund, for two reasons. First, this type of fund is apportioned annually more frequently than its counterpart. For instance, the previous trend shows seven million birr allotted yearly to those who have parliamentary seats.\footnote{The ENEB Office, \textit{Election 2010}, A Special Bulletin, June 2010, P.22.} Second, the number of parties involved in the allocation of funds for the day-to-day activities is very small (EPRDF and five of its allies) compared to the election funding where numerous political parties take

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{chart.png}
\caption{Per capita public funding in Africa}
\end{figure}

\begin{adjustwidth}{-1in}{0in}
\begin{tabular}{|c|c|c|c|c|c|c|c|c|}
\hline
\textbf{Country} & \textbf{Per capita Public Funding} & \textbf{In $/citizen} \\
\hline
Kenya & Peak \\
Ghana & High \\
Tanzania & Medium \\
Uganda & Medium \\
Seychelles & Low \\
Ruanda & Low \\
Morocco & Low \\
Namibia & Low \\
Ethiopia & Lowest \\
\hline
\end{tabular}
\end{adjustwidth}
part (for instance, during 2010 and 2015 election periods 63 and 58 political parties involved respectively).\textsuperscript{86}

When it comes to the election campaign funding, it is allocated based on the number of elected representatives in the federal and regional houses, the number of candidates and the number of women candidates.\textsuperscript{87} This formula proportionately favored those parties already represented in the parliaments.\textsuperscript{88} According to ENEB sources, in the 2010 General election seven million birr allocated for election campaign.\textsuperscript{89} Yet, all opposition parties considered that the received amounts were insufficient to conduct an effective campaign.\textsuperscript{90} Even some opposition party members argued, not only the money is meager but also it was less than the money needed for preparing audit reports for itself.\textsuperscript{91} To support or otherwise disprove this allegation, it would be proper to examine the formula or criteria employed to distribute the public funding. In this regard, the ENEB has prepared a formula for allocating public funds to the political parties as depicted in the following table.\textsuperscript{92}

\begin{itemize}
\item \textsuperscript{86} ENEB Office, \textit{Post-Election Assessment of the 2015 General Election}, June 2016, P.3.
\item \textsuperscript{87} This fund is extended to political parties for election campaigning and it was established according to the Political Parties Registration Proclamation No.572/2008 and the NEBE Regulation Concerning the Procedure for Determining the Apportionment of Government Financial Support to Political Parties regulation No.5/2009.
\item \textsuperscript{88} The Revised Political Parties Registration Proclamation, \textit{supra} note 25, Art. 45 (2).
\item \textsuperscript{89} The ENEB Bulletin, \textit{supra} note 85.
\item \textsuperscript{91} Abrha Desta, chairman of Arena Tigray for Democracy and Justice, a regional party in Tigray which is a member of the national coalition, Medrek, in an international conference on the them; Political Parties, Multi-Party System and Democracy in Ethiopia, hosted by Mekelle University and Friedrich Evert Stiftung, Ethiopia, Feb. 14 and 15, 2018.
\item \textsuperscript{92} Data from ENEB, 27 October 2017.
\end{itemize}
Table 1-formula used for allocating public funding in the 2010 and 2015 general elections

<table>
<thead>
<tr>
<th>Criteria on the basis of</th>
<th>2010 election</th>
<th>2015 election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parliamentary Seat</td>
<td>55%</td>
<td>35%</td>
</tr>
<tr>
<td>Number of candidates</td>
<td>25%</td>
<td>40%</td>
</tr>
<tr>
<td>Women candidate</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>Equality</td>
<td>10%</td>
<td>10%</td>
</tr>
</tbody>
</table>

Source: Adapted from the data gathered from ENEB, Political Parties’ Directorate Office

As revealed from the table, in the 2010 general election public fund distribution, the highest weight given to the seat of the political parties. Thus, the EPRDF and its allies, which entirely controlled the federal and regional parliaments, had an exclusive claim on the 55% of the budget before resorting to the other criteria. Furthermore, EPRDF and its allies had the highest degree of advantage even on the other two criteria; number of candidates and women candidate presented for the election. The rest 10%, allotted on equality basis, among numerous political parties is insignificant.93 Hence, the opposition parties likely suffer from shortage of budget. In this regard, taking into consideration the financial limitations of most political parties, European Union Election Observation Mission to Ethiopia (EU EOM) concluded that most Ethiopian political parties, with the exception of the EPRDF, are under-funded.94 As depicted in the table, though the ENEB has introduced some modifications in the 2015 national election on the weight of the criteria allotted to parliamentary seats, yet it increased the weight given to the number of candidates presented to which the EPRDF would possibly have greater advantage.

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93 Data from NEBE, 27 October 2017.
94 EU EOM Report, supra note 90.
Given the plurality electoral system and the huge wastage of votes when converted in to seats, using parliamentary seat as criteria for apportioning public funding would not be fair in the Ethiopian context. It would not also show the popular support of political parties. Rather it would have been fairer than it is, had the criteria been based on votes earned in the previous elections. Besides, as it is done in Israel and Mexico, substantial amount of subsidy could have disbursed in equal terms for all recipients. However, while leveling the playing field for allowing the state funding to all political parties fairly is important, there is a challenge that some parties may use it as a tool, only for getting the funds without having serious courage to compete in the election. To regulate such problems, it can be necessary to devise a system of threshold limits for becoming eligible to get state funding. Yet, the threshold limit should not be so high, that only one or two already well-established parties will benefit.

Against all odds, as it stands, the incumbent party in Ethiopia, with substantial alternative sources of funds, is the recipient of the largest portion of the meager budget allotted to public funding of political parties and the opposition political parties with minor alternative sources of funding get the smallest portion of the disbursement.

2.1.3. Interval and Timing of Distributions of Public Funds

The moment of the disbursement of public funding is consequential having its own negative and positive impacts on parties and enforcement of reporting requirements. In some countries, the State subsidy operates as a post-electoral reimbursement of expenditures, while in other systems there are rules that entitle parties full access to the subsidy before the election. In a few countries both options are mixed, combining in different measures a post-election

95 Most countries allocate the bulk of DSF proportionally, according to the share of vote or representation obtained by each eligible recipient in the previous election (e.g. Belgium, Greece [per share of votes]; Finland, Sweden [per share of parliamentary seats]). The use of vote or seat-based allocation rules is not, however, universal or unqualified. Out of normative choice or political expediency, reformers frequently enact rules that qualify proportional election-based distributions and make the subsidy system move towards absolute equality for all recipients. See, Kevin Casas-Zamora, supra note, 29, p.14.

96 Kevin Casas-Zamora, Supra note 29.
reimbursement with a pre-electoral advance. The availability of subsidies before the election or, alternatively, their arrangement as a post electoral reimbursement can greatly influence the financial barriers experienced by newcomers since advances tend to be distributed according to the parties’ or candidates’ previous electoral results. Despite such an effect on emerging parties, it might still provide them with vital resources during the decisive months of the campaign and thus reducing to some extent their dependency on private financial operators.

When it comes to the Ethiopian case, the Ethiopian National Electoral Board Regulation concerning the procedure for determining the apportionment of government financial support to political parties, regulation No.5/2009, under its article 17, underscores the fact that political parties shall receive public funding before the Election Day. Through this, it enables political parties to receive important resource for making campaigns though the amount is insignificant as discussed above. Yet, such an arrangement hinders newly emerging potential competitors from having fair share from the electoral funds, for instance, in the 2010 national election out of the seven million allotted to political parties more than half (55%) of the fund was allotted on the basis of seats that actually demand previous performance. Hence, to try to compromise these two interests it may be good to introduce a mixed system of fund allocation without compromising the other concerns stated herein above.

2.1.4. Problems Related to Public Media Allocation

As an indirect support of the government to political parties, the Ethiopian Broadcast Authority (EBA) have allocated free airtime and space to all political parties contesting the election. For instance, in 2010 general

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97 Ibid.
98 Ibid.
99 Ibid.
100 ENEB regulation, supra note 84, Art. 17.
101 The Revised Political Parties Registration Proclamation, supra note 25, Art. 42(3) states the support to be granted by the government may be in the form of money, in kind and in service.
102 The Ethiopian Broadcast Authority Directive on Media usage of political partied for the fifth general election (May 2015 general election), January 2015, Art.5.
election such an allocation extended to all 63 political parties attending the general election. The formula for its allotment is depicted as follows: Table 2—Public Media allocation criteria for the 2010 and 2015

<table>
<thead>
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<tr>
<td>Candidates presented</td>
<td>20%</td>
<td>40%</td>
</tr>
<tr>
<td>Equality</td>
<td>25%</td>
<td>10%</td>
</tr>
<tr>
<td>Women candidate</td>
<td>-</td>
<td>10%</td>
</tr>
</tbody>
</table>

Source: Adapted from the data gathered from ENEB, Political Parties’ Directorate Office

When we look at the distribution of the state-owned media, it does not seem to provide a balanced coverage in its news and bulletins. This is mainly because parliamentary seat has taken the highest weight where the EPRDF would be the sole beneficiary. On this regard, the EU EOM Report on the 2010 Ethiopian general election has visibly shown the actual benefit that the EPRDF received compared to the other opposition political parties. The following chart summarizes the practical distribution of public media airtime and bulletin by the EPRDF and the combined opposition in the 2010 general election.

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103 An interview with Ato Tesfalem Abay, Public Relations Directorate Director of the ENEB, October 27, 2017.
104 The Ethiopian Broadcast Authority Directive on Media usage of political partied for the fourth general election (May 2010 general election), January 2010, Art. 5.
105 The Ethiopian Broadcast Authority Directive, supra note 102.
106 EU EOM Report, supra note 90, P.21.
107 Ibid.
Figure 2—the distribution of public media both airtime and bulletin by the EPRDF and the combined opposition in 2010 general election

![Distribution of Public Media](image)

Source: Adapted from the EU EOM Report on the 2010 Ethiopian election

As can be depicted from the chart, on ETV1, the EPRDF obtained 58% of total airtime for election-related news. Likewise, Ethiopian National Radio devoted 60% of airtime to the ruling party. The EPRDF’s coverage on FM Addis 97.1 and FM 96.3 amounted to 68% and 72% of total airtime, respectively. The imbalance was even more marked in state-owned written media, where the EPRDF obtained 70%, 77% and 72% of all electoral coverage space in Addis Zemen, The Ethiopian Herald and Addis Lessan, respectively.

Consistent with the above finding, Kassahun Berhanu in his article entitled ‘Ethiopia: Beleaguered Opposition under a Dominant Party System’ argued opposition parties in Ethiopia got limited access to state-owned media during the previous elections to publicize their election platforms. He emphasized that no equal coverage given to the opposition in a manner that is on a par with the access enjoyed by the ruling party.  

Hence, there is genuine concern on the distribution of Public Medias, as a public resource, where the EPRDF surpasses the combined opposition parties when it comes to the actual exercise and this would have negative

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ramifications on the electoral results by creating information asymmetry among the competitors.

### 2.2. PROBLEMS ASSOCIATED WITH ABUSE OF STATE RESOURCES

One of the problems of opposition parties in emerging democracies is the situation where the ruling party makes use of governmental resources for party purposes, while opposition parties are cutoff from access to public funds.\(^{109}\) This situation makes the opposition parties disadvantaged in the electoral process. As such, the abuse of state resources is a key problem in the field of political finance in Africa.\(^{110}\) Most incumbent political parties in Africa use their position to increase their chance of re-election to a certain extent by directly misusing public resources and this contributes to the uneven playing field between political parties.\(^{111}\) Abuse of state resources carries the risk of undermining the *democratic process* by giving the incumbent an undue advantage.\(^{112}\) This has been mainly because of the blurred distinction between the state and the ruling party.\(^{113}\) In effect, as one analyst underlines, “it causes damage to democracy by creating an unleveled playing field which expands the re-election chances of incumbents.”\(^{114}\)

In the Ethiopian context, the use of public resources, including federal, regional and municipal, for a particular party's campaign is strictly forbidden in article 14 of the Electoral Code of Conduct for Political Parties and it is regarded as ‘abuse of power’.\(^{115}\) Nonetheless, against this provision, there is widespread abuse of state resources to the extent of failing to distinguish the government and the incumbent party. In this regard, the European Union

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110 Magnus Ohman, *Supra* note 3, P.40.


113 Wondwosen Toshome, *Supra* note 1, P855.

114 Magnus Ohman, *Supra* note 3.

Election Observation Mission (EU EOM) to Ethiopia witnessed the exploitation of public resources by the ruling party's campaign throughout the country, mainly in Oromia, the Somali Region and Tigray. It also observed a blurred distinction between the ruling party and local administration, which were, according to the latter, “often perceived and referred by citizens as being one single entity”. It particularly expressed as having directly comprehended:

*The ruling party consuming propaganda on public administration buildings, civil servants wearing ruling party propaganda while on duty, the loading of EPRDF campaign posters in local administration vehicles, the use of local administration offices to coordinate campaign activities, housing of ruling party offices in local administration compounds and the storing of EPRDF posters within local administration installations.*

These practices would have the possibility of providing an unfair advantage to the incumbent party in the process of campaigning. It has also an effect of further blurring the already blurred distinction between the state and the ruling party. When considering the fusion between the incumbent party and the state in Ethiopia, Merera Gudina in his article ‘Elections and democratization in Ethiopia, 1991–2010’, also coincides with the above stated idea. He observed that there is fusion between the ruling party and the state, which in turn allows the former to have unrestricted resources under the command of the state with little or no accountability. He further argued that the hegemonic power of the EPRDF has effectively excluded the opposition political parties from taking fair access to mass media and campaign finances.

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116 EU EOM report, supra note 90, P.17.
117 Ibid.
118 Ibid.
119 Ibid.
121 Ibid.
122 Ibid.
Because of the unmatched resource disparity between the ruling and the opposition political parties and because of the limited resources available to the latter, the opposition political parties tried to depend on foreign funds, mainly in the diaspora. For instance, in the 2005 Ethiopian parliamentary election, the main source of income for opposition parties was the Diaspora community. Yet, the Diaspora money has brought several troubles to the opposition parties. Particularly, the collapse of the Coalition for Unity and Democracy (CUD) was chiefly the result of the diaspora divergence. In this regard, Wondwosen firmly argues, “one of the reasons that contributed for the collapse of the CUD was the party’s heavy dependence on the Diaspora patrons and hence, it was the victim of the infighting and rivalries of the Diaspora donors.” In this regard, one can safely conclude that the opposition parties’ political allegiance to the diaspora is the consequence of the latters’ financial support. Therefore, controlling or at least reducing the heavy financial dose of the diaspora community on the opposition political parties in Ethiopia is necessary. This is possible, first by leveling the resource platform among all political competitors, specifically, by ensuring sufficient and equitable public resources to the parties. Second, together with the first, it is necessary to strictly enforce the financial regulatory laws with due consideration to take corrective measures on issues affecting reasonable resource distribution.

3. CONCLUSION

Political parties are agents of representative democracy. They have incomparable contribution in a democratic process. For accomplishing their democratic functions, they need resource or political funding. Political funding greatly determines their strength. Yet, political funding is highly manipulated for creating unequal laying field and thereby extending ones

123 Wondwosen, supra note 1, P857.
124 The CUD was the biggest and the formidable opposition party coalition in the 2005 parliamentary election. In the said election, the CUD controlled almost 100% of the seats in Addis Ababa legislature. It also won many seats in the Federal parliament. In the post-election period, in fighting and rivalry among the party leaders fuelled by the Diaspora led the party into disintegration see Wondwosen, Id, P.855.
125 Ibid.
electoral success. The incumbent parties are the beneficiaries in most of these manipulations through either law or practice.

In view to this, this research intends to address the system of political funding in Ethiopia. It particularly examines the regulation of sources of funds, the allocation of public funds and the abuse of state resources in Ethiopia to demonstrate their influence on the opposition and the incumbent parties.

Accordingly, it concludes that political funding in Ethiopia is unevenly dispersed. While the EPRDF garners huge resource, the opposition suffers from lack of the same. The regulation and distribution of political funding favors the incumbent party. In this regard, the incumbent party earns large amount of funds from its big membership base and from the private business contributions. It takes the lion’s share of the public funds allotted by the government. It also substantially benefits from the public media distribution. Moreover, the incumbent party uses its incumbency for abusing the state resources, at its disposal, for its own partisan advantages thereby getting the upper hand in the electoral competition. In sharp contrast, the opposition political parties suffer from lack of adequate resources. It is because their membership base is narrow and private donations are rare for the latter fears retributions coming from the incumbent party. As far as public funding is concerned, on the one hand, the funding allotted for day-to-day activities is apportioned based on parliamentary seats where the opposition parties are effectively excluded. On the other hand, regarding the election funding, from the beginning the whole amount is so small but in addition to this, the substantial amount of money is distributed based on parliamentary seats where the incumbent party overall have substantial claim. The same problem also exists in the allocation of public media allocation.

Generally, the Ethiopian political competition functions in a vicious circle; the opposition parties are financially weak, as a result, they are unable to win parliamentary seats and still the direct and indirect resource allocations base on parliamentary seats and yet the same problem continues reproducing itself.
To deal with such problems in the political funding system of our country, though there is no-one-size-fits-all solution to the said problems, the author suggests the following measures might help:

1. The laws regulating political funding, from the very start, should be drafted through the concerted and genuine engagement of all stakeholders. Specifically, the voices and concerns of political parties, civic societies and the citizenry must be dully considered.

2. Both the sum of the total budget granted to political parties and the specific criteria employed for its apportionment, to each of the political parties, should not be left as a ‘blank check’ only to the determination of the legislative organ dominated by the incumbent party. To be more explicit, either objective standards must be set in advance as part of the laws regulating public funding or the same should be determined in an open and transparent discussion of all stakeholders.

3. Further, to avoid biased enforcement of the political financing laws by the National Electoral Board, usually against the opposition political parties, the former’s independence and impartiality should be ensured first. Besides, the board’s institutional capacity should be strengthened to make sure it has the capability to properly enforce the laws regulating financial fair plays.

4. Last but not least, to minimize or control the abuse of state resources by incumbent parties, the best way is ensuring that the government institutions including the civil servants and the bureaucracy of the civil service and public media are liberated from partisan dispositions. And again, as part of the enforcement of the funding laws among political parties, the National Electoral Board should be given the mandate to investigate abuse of state resources and expose the same to the public and other relevant bodies.
MAKING INVESTMENT WORK FOR SUSTAINABLE DEVELOPMENT: A PRESSING NEED TO INTEGRATE SUSTAINABLE DEVELOPMENT INTO ETHIOPIAN INVESTMENT LAW

Abiyot Mogos

ABSTRACT

Sustainable development is aspiration of all nation, nationality and people of Ethiopia. It embraces three mutually reinforcing pillars; economic growth, social development and environmental protection as integral part of development process. The FDRE Constitution recognizes right to sustainable development and dictates integration of economic, social and environmental concern into investment process. However, the close inspection of how investment operates in the country reveals that essence of sustainable development is missing from Ethiopian investment governance. Against this backdrop, this study examines the nexus of investment and sustainable development in Ethiopia, and appraises the adequacy of Ethiopian investment laws in mobilizing investment for sustainable development. To this end, it employed a combination of doctrinal and socio legal research method utilizing both primary and secondary sources. This study established a quest for inclusive economic growth, respect for human right, and need to curb social and environmental impacts in the course of investment as pressing issues that necessitate the integration of the pillars of sustainable development into the Ethiopia’s investment laws. It argues that the economic, social and environmental pillars of sustainable development are not appropriately integrated under the Ethiopian investment laws to insure investment works for sustainable development. Thus, legal reform is suggested to integrate sustainable development in Ethiopia’s investment laws so as to realize the motto of investment for sustainable development.

Key words: Ethiopia, Investment, Investment law, Sustainable development

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I. INTRODUCTION

With the advent of globalization, the importance of investment as the primary engines of growth in all economies has been strongly affirmed especially for developing countries. Investment is generally understood to mean the expenditure of capital for the production of goods and services with the purpose of making a profit.¹ From the legal point of view, different legal instruments attempted to define investment using different criteria on the basis of the purpose to be achieved by the instrument in question. For instance, in an attempt to establish its jurisdiction under Art.25 of the International Centre for settlement of Investment Dispute (ICSID) convention² in *salini* case, the ICSID arbitration panel adopted a *Salini* test, which defines investment as having four elements: (1) a contribution of money or assets (2) a certain duration (3) an element of risk and (4) a contribution to economic development.³

Investment is a potential weapon of development; especially for developing countries like Ethiopia. However, it has also tremendous negative impacts unless there is effective law that will be used to avoid or minimize such side effects of investment and mobilize it for sustainable development. However, a close look at how investment operates in the country reveals the missing of sustainable development from Ethiopian investment governance.

Against this background, this study aims to examine the nexus of investment and sustainable development in Ethiopia, by shading light on the pressing need of integrating sustainable development into Ethiopian investment laws. This article will first expose the pressing concerns that have been proliferated under guise of investment in Ethiopia so as to lay down rational for the need to integrate sustainable development into Ethiopian investment law. Next, it makes critical analysis whether the three pillars of sustainable development are adequately integrated in Ethiopian investment laws. To this end, the study employed a combination doctrinal and socio legal research methods utilizing both primary and secondary sources. Accordingly, relevant International

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Instruments, Ethiopian laws, books, articles, relating to the matter were reviewed along with key informants interview \(^4\) selected purposively from Ethiopian Investment Commission (EIC), Oromia Investment Commission (OIC) and Oromo Federalist Congress (OFC).

The paper is organized in five sections. The first section is introduction; while the second section provides general concepts of sustainable development and its accommodation under the FDRE Constitution. The third section exposes prevailing economic, social, environmental and human right impacts of investment in the country as pressing issues that compel for legal intervention. The fourth section evaluates the status of Ethiopian investment laws on the issues. As usual, the paper ends up with conclusion and recommendation on ways forward.

**II. THE CONCEPT OF SUSTAINABLE DEVELOPMENT AND ITS ACCOMMODATION UNDER THE FDRE CONSTITUTION**

**A. The concept of sustainable Development and its principles**

Sustainable development is an elastic and evolving concept that it’s meaning, content and legal status evolved over times in a series of international conferences.\(^5\) United Nations (UN) Declaration on right to development defined development as a comprehensive process which facilitates for entire population and all individuals the enjoyment of economic, social, cultural, and

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\(^4\) These key personnel are contacted to solicit supplementary information that may enrich or update the existing secondary data. EIC is selected because of its responsibility in respect of investment in the country. OIC is added because it is believed that majority of investments that are devoid of sustainability are operating in Oromiya, especially in Oromiya special zone Finfinne round. Of oppositions, OFC is selected because this party was highly criticizing Ethiopian investment approach by raising issues like land grabbing, eviction and violation of human right.

\(^5\) Key among the conferences include: the United Nations Conference on Human Environment held at Stockholm held in 1972 reading the Stockholm declaration; ii) the United Nation Conference on Environment and Development held at Rio de Janeiro in 1992 that led to the Rio declaration; the Johannesburg World Summit on Sustainable Development of 2002 that resulted in the adoption of Johannesburg Declaration and; the 70th Conference of the International Law Association(ILA) held in New Delhi in 2002 which led to the codification of the new Delhi declaration on principles of international law relating to sustainable development.
political improvements. However, the need to insure other competing principles like environmental objective was resulted in the inception of new approach to development also called sustainable development. Sustainable development is thus, a process that improves living standard of people inclusively while respecting environment, based on bottom-up agendas and priorities.

According to the definition provided in 1987 report of Brandtland commission, sustainable development implies the development that meets needs of the present without compromising the ability of future generations to meet their own needs. In the wording of the 1992 Rio declaration, sustainable development embraces, inter alia, inclusive economic deal and equity, and addressing social, environmental and human right concern as its substantive elements; and making people at the center of development, and social and environmental impact assessment as its procedural elements. Similarly, Johannesburg Declaration on sustainable development considers sustainable development as embracing the three interdependent and mutually reinforcing pillars; economic growth, social development and environmental protection. The New Delhi declaration eventually consolidates the international law principles on sustainable development in seven international Law principles. These includes principle of integration; the principle of common but differentiated responsibilities; principle of precaution, principle of good governance; the principle of public participation; the principle of equity and poverty eradication; and the principle duty of states to ensure sustainable use of natural resources. These principles are widely accepted as benchmark and guiding principles that should form the starting point in a principled

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8 Brundtland et al, Our Common Future; Report of the UN World Commission on Environment and Development (UN: New York, NY, USA, 4 August 1987; UN Doc A/42/ 427).
10 Johannes Barge Declaration on Sustainable development (Johannesburg, South Africa, 2 -4 September 2002).
assessment of any national law and/or policy regarding any activity related to sustainable development. Future Sustainable development is the intersection of the three pillars of development as could be observed figuratively in the diagram below.

![Diagram of the intersection of social, economic, and environmental aspects]

Source: Free encyclopedia

The idea embodied in the diagram is that, when environment is linked with social interest, it will be bearable; when environment is linked with economic interest, it will be viable; and when social interest is linked to economic interest, it will be equitable. Hence, environmental concern linked with the socio-economic development amounts to sustainable development and vice-versa. To achieve this desired goal of integration, there shall be better and realistic Economic (Investment) law, a better and achievable social law, and better and inclusive environmental law that collectively lead to sustainable development.

B. Precursor to Sustainable Development under the FDRE Constitution

Sustainable development is the aspiration of all nations, nationalities, and peoples of Ethiopia. And this is reflected in the preamble of the FDRE Constitution which reads;

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We, Nations, Nationalities and Peoples of Ethiopia: Strongly committed, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing democratic order, and advancing our economic and social development; Firmly convinced that the fulfillment of this objective requires full respect of individual and people’s fundamental freedoms and rights to live together on the basis of equality and without any sexual, religious or cultural discrimination…emphasis added.\(^\text{13}\)

From this preamble, one can infer advancing economic and social development with due respect to fundamental right and freedom of all individual and people. This stipulation triggers the inclusion of social and economic pillar of sustainable development expressly and environmental pillars by implication in context of right to environment. In effect, the preamble introduced human right based approach to development by recognizing fulfillment of human right as a precondition for realization of economic and social development.

A key provision that boldly recognizes sustainable development under FDRE Constitution is Art. 43 (1). The provision reads as follows. “The People of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development.”\(^\text{14}\) This provision does not merely envisage economic growth, but targets ‘sustainable development’ that embraces economic growth, social development, and environmental protection. The inclusion of the three pillars of sustainable development in this provision can be buttressed by making cross reference to Art. 44 of the constitution and stipulations enshrined in the preamble, national policy objectives and principles, and other provisions that made reference to economic and social development.\(^\text{15}\) Arts. 43 and 44 of the constitution expressly provide for right to development and right to clean and healthy environment, respectively. Right to development under the constitution includes right to improved standard of living, right to sustainable...

\(^{13}\) FDRE Constitution, Preamble.

\(^{14}\) The FDRE Constitution, Art. 43 (1).

\(^{15}\) The FDRE Constitution, Preamble, Art 43-44 & Art 89-92.
development and right to participate in development process. Arts.89-92 of the constitution provide for economic, social, cultural and environmental objective of the country.

Inclusion of economic pillars of sustainable development in the constitution is evident if we read Art. 43 of the Constitution. The Article is dealing with right to sustainable development in conjunction with economic policy objective of the country and other provisions of the constitution that expressly used term ‘economic development’. Art. 89 titled ‘Economic Objectives’ lists down the duty of the Government to formulate and implement economic policy that ensure economic development pillars of sustainable development. In particular, Art. 89(2) require the government to formulate policies that create equal opportunities and conditions conducive to development and equitable distribution of wealth for Ethiopian people. In this regard, the economic development pillar of sustainable development under the Constitution entails realization of economic right enshrined under Art. 41 of the constitution which envisages among other things creation of job opportunities, the right of citizens to be engaged in an economic activity, and the duty of the State to increase opportunities for citizens to find gainful employment.

Similarly, the inclusion of social development pillars of sustainable development in the constitution can be elucidated from the overall reading of Art.43 of the constitution dealing with right to sustainable development in conjunction with social development policy of the country and other provisions that expressly used term ‘social development’. Art. 43(2) of the constitution duly recognizes right to public participation and to be consulted in development process as social pillar of sustainable development. Human right as integral part of social development pillar is evident from chapter three of the constitution which provides a list of inalienable and inviolable human right, and the preambular assertion which recognizes the protection of the human rights as a precondition to realization of social and economic

16 The FDRE Constitution, Preamble, Art 18(4) (d), 41(8),51(2), 89(4 &7).
17 The FDRE Constitution, Art. 41.
development.\textsuperscript{19} Arts.90 and 91 of the constitution embodied social and cultural objectives of the country imposing duty to promote social and cultural development on government.

The incorporation of environmental pillar of sustainable development can be construed from Arts.44 and 92 of Constitution that relates to environmental rights and environmental policy objective of the country, respectively. Art.44 of the Constitution provides for the right to a clean and healthy environment. Moreover, Art.92 of the constitution states that the design and implementation of the development project shall not damage the environment. It adds that People have the right to full consultation and to the expression of views in the planning and implementations of environmental policies and projects that affect them directly, and urges the government to ensure that all Ethiopians live in a clean and healthy environment. What is more, the provision imposed environmental protection as a duty of Government and individual citizens. These constitutional provisions call for a balance which addresses the dual constitutional objectives of development without damaging the environment. In general, as can be deduced from the above discussion, the three pillars of sustainable development have been recognized under the FDRE constitution. Keeping in mind that the constitution is the supreme law of the land, the recognition of sustainable development under the constitution has a paramount implication for nature of the country’s investment legislation. The economic, social, cultural and environmental policies and principles enshrined under Arts.85 to 92 of the Constitution are also important as any organ of government are dictated to be guided by these principles in implementation of the Constitution and other laws or public policies.\textsuperscript{20} Hence, it can be submitted that the Constitution has subscribed to sustainable development and it requires integration of its three pillars into the Ethiopian investment laws.

Even though the ideology of developmental state is claimed to be pursued by the country, principles enshrined in the constitution, the principles of rule of law dictates ruling party to give up the ideology and uphold sustainable development agenda advocated by the constitution in its investment laws and policy. This is because the ideology lacks constitutional legitimacy as the

\textsuperscript{19} See The FDRE Constitution, the preamble, Art 41 and chapter three.

\textsuperscript{20} The FDRE Constitution, Art.85 (1).
constitution guaranteed all three generation rights without prioritizing one right over the other but the ideology prioritize economic growth over civil and political freedom. That way, the ideology may potentially shape the investment laws of the country to prioritize economic growth over other pillars of sustainable development. Hence, it can be submitted that lawmakers should not be influenced by the claimed ideology of developmental state while enacting or amending the investment laws.

III. EXPOSING THE NEED TO INTEGRATE SUSTAINABLE DEVELOPMENT INTO ETHIOPIA’S INVESTMENT LAW: AN ELEPHANT IN THE ROOM

This section exposes the existing tragedy and burning issues under the guise of investment in Ethiopia as a serious problem that requires integration of the principles of sustainable development into Ethiopia’s investment laws. Accordingly, it establishes the quest for inclusive economic growth, respect for human right and need to curb social and environmental impacts the in the course of investment as pressing issues that necessitate harnessing Ethiopian investment laws for sustainable development. The discussion is primarily based on inference made on basis of the existing literature; but some key informant interview has also been used to update and buttress the inference made on the basis of the existing literature.

A. The Need to Mobilize Investment for Inclusive and Equitable Economic Growth

The underlining assumption behind attraction, protection, and promotion of investment in a given country is that such investment specially FDI will boost economic growth through job creation, technology transfer, transfer of managerial skill and the same justification has been pleaded by Ethiopian government in its policy toward investment. However, the close inspection

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22 Interview with Mr. Mesay W/Semayat, Team Leader of Investment Treaties and Legal Affairs, Ethiopian Investment Commission, on 26th of March 2018. See also The Investment Proclamation, Preamble and Art. 5.
of how investment operates in the country suggests expected economic benefit of investment remained elusive and unfulfilled promises; especially for the concerned local communities. In this regard, different study and report of the alerting institution and data obtained from the key informants covered under the study revealed that investment in Ethiopia, especially large scale land investment, have little or no economic significance to the local community. For instance, the Oakland Institute argues that the large-scale land transfer in Ethiopia to manufactures resulted in hungers and poverty; as the government takes away key coping strategies from its people and impacts the livelihoods of millions.23 Das and Grant also found that the large-scale land transfer in Ethiopia displaces poor and vulnerable populations which in turn exacerbate poverty and food insecurity.24 Moreover, opposition party leader professor Merera Gudina has been quoted to complain that the stated promises of large scale land deal like employment creation, technology transfer and boosting export earnings are empty or utterly inadequate, and are not up to the standard of the propagated promises.25

Different studies found that, most of lease contracts signed with large scale land investor in the country were not negotiated with job creation in mind, that they do not contain local content provisions requiring the lessee to prioritize local workforce in recruitment.26 It is also revealed that majority of the jobs are labourer positions, are often seasonal and short term in nature, workers will not be fully paid, or the rate of wages is very low that is not commensurate with the service rendered by the workers, even the costs of living cannot be guaranteed. In addition, there is also a concern that most of the employees,

23 Oakland Institute, Miracle or Mirage? Manufacturing Hunger and Poverty in Ethiopia (2016); Available at https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/ethiopia-miracle-mirage.pdf <Accessed on 25th of January, 2018>
specially the managerial employee and skill operator, came from other parts of Ethiopia rather than the local or indigenous people.\textsuperscript{27}

Transfer of managerial skills to local personnel claimed by the government is also illusory because the foreign investor does not allow higher managerial positions for local professionals and that personnel employed cannot acquire new skills.\textsuperscript{28} Moreover, the interview with the key informants covered by the study confirms that expected economic benefit of investment remained elusive for local community. In this regard, key informant from the EIC claimed that the foreign investment has contributed a lot to the economic development of the country through foreign currency earnings and revenue generation but he confirms that poor labour standard and very low level of wages had made it insignificant in improving the livelihood of the local people.\textsuperscript{29} According to Mesay, wages rate in Ethiopia is seven times lower than the payment in Asian countries and he asserted that we consider this cheap labour wages as opportunity for investment.\textsuperscript{30} The informant from OFC stated that both FDI and domestic investment in Oromia produce no significant economic contribution to the local community due to its cheap wages standards, and even more, the prevailing wages rate is not enough to cover rent price of the residential house.\textsuperscript{31} Besides, the informants from OIC and OFC confirmed that the employees are recruited from the other parts of the country and that in some situation the managerial employee does not understand the local language of the place of investment and this in turn incapacitated the employments of local people.\textsuperscript{32} The informants also exposed different economic problem of investment such as eviction from the land without adequate compensation, lack of transparency and corruption in compensation and valuation, cheap land lease price to investor, and absence of effective rehabilitation mechanism. As a result, the operation of investment in the country undermined economic development of local community;

\textsuperscript{27} Dessalegn Rahmato, Land to Investors: Large-Scale Land Transfers in Ethiopia, Forum for Social Studies, Addis Ababa, 2011, P 22
\textsuperscript{28}Tesfaye Abate, Investment Law Teaching Material, Prepared under the Sponsorship of the Justice and Legal System Research Institute (2009), P 59
\textsuperscript{29} Mesay, supra note 22
\textsuperscript{30} Ibid.
\textsuperscript{31} Interview with Mr. Birmadumma Namo, Public Relation and Youth League Vice President, Oromo Federalist Congress <on 29th of March 2018>.
\textsuperscript{32} Ibid.
progressively marginalize smallholders, and eventually turning local farmers into guards or beggars.\(^3\) In this regard, Kuma stated that even after getting compensation, the farmer use up the proceeds of compensation within short period of time due to absence of effective rehabilitation mechanism.\(^4\) As a solution, Birmadumma mentioned that his party proposed a policy that local residents displaced as a result of investment project be a shareholder to the investment in question in return for their land.\(^5\)

It shall be noted that practice and policy of any investment should primarily target economic empowerment of local and indigenous peoples\(^6\) but such quality is missing from most of investment in Ethiopia. In this regard, Kuma stated that to ensure economic benefit of investment for local community, a number of investments that failed to accord any benefit to the community in accordance with the terms of the contract, and those investment that are licenced in favour of individuals through a corrupt practice are being closed as part of the reform agenda in the region.\(^7\) Hence, the author believes that the aforementioned discussion that cast doubt in economic sustainability of investment practice in Ethiopia calls for the need to integrate sustainable development into Ethiopian investment laws.

**B. The Need to Foil Human Right Violation under the Guise of Investment**

Different international human right instrument to which Ethiopia is a party recognize the inalienable and inviolable human rights and impose a duty to respect, protect and promote these rights on states. In line with these requirements, the FDRE constitution provides for a list of human rights provisions under chapter three and adopted the human right based approach to development. The constitution dictates that no development program and investment project shall be implemented at the expense of fundamental right and freedom. However, different study and report of alerting institution

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34 Interview with Kuma Daba, Investment Potential Study and Project Appraisal Directorate, Oromia Investment Commission, on 25\(^{th}\) of March 2018.
37 Kuma, *supra* note 34
discloses mass violation of human rights such as land right, labor right, right to food, cultural right, right of indigenous people, and forced villagization and resettlement in the name of investment in Ethiopia and to some extent, such violation are also confirmed by the data obtained from the informants covered by the study. The perpetrators are both government and individual investor. The investors engage themselves directly or indirectly in suppression of human rights to ensure the continued maintenance of regimes favourable to investors. The government commits violation of human right in course of facilitating and protecting investment.

The prevalence of human right violation in the name of investment in Ethiopia is particularly evident if one examines the practice of aggressive large scale land investment running in Oromia and Gambella regions, and the villigization program implemented by the government to facilitate such investments. According to Human Rights Watch, the government of Ethiopia has relocated tens of thousands of indigenous people and leased out an estimated millions of hectares of land to investors and these lease arrangement are negotiated between investors and the federal or regional governments. The study conducted by the Oakland institute also noted that in its aggressive pursuit of agricultural investment, the Ethiopian government has forcibly displaced hundreds of thousands of indigenous people from their lands, and has arbitrarily arrested and beaten individuals who have refused to comply with its policies. Refuting all evidence, the Ethiopian government insists that consultations are being held with host communities in all instances where land deals are occurring, no farmers are being displaced, and the land being granted is unused. However, Oakland Institute found that consultations with local

39 Tesfaye, Supra note 28, P.60.
40 Human Rights Watch, Supra note 38, P 3.
41 Ibid.
43 Ibid.
communities did not occur, in violation of their right to Free and Prior Informed Consent, the claimed land is used for grazing and never unused as claimed by the government.44 The data obtained from key informants covered under study confirmed the prevalence of human right violation under the guise of investment in Ethiopia. In this regard, informant from the Ethiopian investment commission claimed that though there might be human right violation in the course of investment in the country, such violation is natural for developing countries like Ethiopia and hence it’s not peculiar to Ethiopia.45 Accordingly, he hesitates to unequivocally deny or confirm the prevalence of violation of human rights under the guise of investment in the country. The informant from Oromia investment commission on his part unequivocally confirmed that operation of investment in the region is full of human rights violations and stated that the government is striving to improve human rights condition in general including investment related human right issues.46 The informant from OFC, Birmaduma, disclosed the gross violation of human rights by the investor and the government organ which includes forced eviction from the land, violation of right to food, clothing, and right to life, labour right, sexual harassment, and rape at work place.47 All of the informants confirmed that there is no practice of conducting human right impact assessment before the implementation of any project even if it is likely to produce adverse human right impacts to the local community.

Unfortunately, the Ethiopian government has thoroughly repressed any form of open political debate and public participation in its development policies. This resulted in inability of people affected by development project have no way to speak out without punishment even through their elected regional representatives, and hence the decision and implementation of development project remained top down imposition from the federal authority.48 In this regard, the informants of the three institutions also confirmed that the notion of public participation is almost missing from Ethiopian investment process.

44 Ibid.
45 Mesay, Supra note 22.
46 Kuma, supra note 34.
47 Birmadumma, supra note 31.
Kuma states that the notion of public consultation is at its infant stage but he claimed that the government of Oromia regional state recognized importance of public consultation and started to make public consultation as part of the reformation agenda triggered by government. Even worse, according to the Oakland institute, let alone the concerned local communities, the local officials were not consulted in most of the decision to transfer the land to investors, and as a result, the regions are not be able to protect the right of indigenous peoples not to be removed from their lands without their free, prior and informed consent by the decision of Federal authorities usurping the jurisdiction of the regions. Acknowledging this problem to some extent, Kuma stated that the government is working to come up with the policy that the federal authority should not licence investment in the region unless the investor obtained the investment land from the concerned regional authority and this will in turn give an opportunity for the regional authority to indirectly participate in the decision on investment permit to be issued by federal authority.

In general, as can be understood from the above discussion about the incidence of human right violation in the name of investment in Ethiopia, the investment practice in the country reverses human right based approach to development and rushes for economic growth at the expense of human right and freedom of the local communities. Hence, to curb such human right violation in the name of investment, Ethiopia need to have an effective investment law that adequately integrate the human right protection into investment process and decision. And thus in the author’s view, integrating sustainable development in Ethiopian investment law aids a lot in ensuring protection of human right in the course of investment.

49 Kuma, supra note 34.
51 Kuma, supra note 34.
C. Need to Curb Social and Environmental Harm under the Guise of Investment

Addressing social and environmental concerns in any investment process is among key elements of sustainable development, and this assertion has been reflected under FDRE constitution. However, different researches and reports of relevant institutions disclose tragic social and environmental impacts of investment in Ethiopia; especially in large scale commercial agricultural investment and floriculture investment. The most recent phenomenon in this regard is the case of donkey slaughter investment at Bishoftu. Accordingly, the environmental impacts like water pollution, soil pollution and degradation, air pollution, human and cattle health hazards, defective pregnancy, risk on aquatic life, as well as water logging and salinization has been identified in different floriculture industries. Moreover, the waste and the gasses emitted from a certain factory had polluted the air in the surrounding area causing respiratory problems to nearby societies. All of the informants covered under the study confirmed the prevalence of aforementioned impacts of investment on the environment. In fact, the informants from both governmental authorities claimed that government is trying its best to minimize these environmental impacts of investment within the existing capacity.

Social impacts identified in floriculture industry include poor labour standards, absence of worker’s health and occupational safety, sexual harassment, health problems and improper compensation for previous land holders. Adverse socio-cultural impacts on local community are prevalent in large scale land investment as well. All informants confirmed that there exist enormous social and cultural impacts of investment in the country. Socio-cultural impacts of investment is exposed by informants from OIC and OFC include deterioration of infrastructural facility, food insecurity and famine, cultural disappearance, social marginalization and identity crisis, and excessive labour exploitation that is approximate to slavery and feudal

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54 Mesay, *Supra* note 22; Birmadumma, *Supra* note 31; and Kuma, *Supra* note 34.
system.\textsuperscript{56} To curb these socio-cultural impacts that arise due to eviction from the land for investment, Birmadumma stated his party proposed a requirement that investment should not displace indigenous and local people for more than ten kilo meters.\textsuperscript{57} This is because, in Ethiopia, the issue of land is very sensitive, and to many Ethiopians, land is not merely a commodity but is a critical component of their social identity and that the loss of land, whether farmland, grazing areas, or areas of religious or cultural value, has serious impacts on people, their identity and socioeconomic conditions.\textsuperscript{58}

The other unusual investment that resulted in dramatic socio-cultural impacts on the local community is the opening of donkey slaughter houses by Chinese company in Bishoftu town, which is absolutely insult to the culture of local people.\textsuperscript{59} In this regard, the informant from the EIC insisted that our primary goal is to attract investment for economic growth and that so long as it benefits the economy of the country in the form of foreign currency earnings or revenue generation, and so long as it is not used for domestic consumption, there is no wrong in licensing donkey slaughter investment.\textsuperscript{60} He added that such objection emanates from misconception about investment and attitudinal problem, and hence we should work on awareness creation rather than rejecting investment for the sake of culture and morality.\textsuperscript{61} The informant from OIC on other hand bitterly opposed any act of licensing investment that has adverse impacts on culture and moral values, and asserted that this kind of investment will neither permitted nor given investment land for operation in Oromia in future.\textsuperscript{62} He added, they are on the way to include socio-cultural impacts assessment as part of project appraisal due to protest from community.

In general, it can be submitted that there are tremendous social and environmental impacts in the course of investment in Ethiopia, and it seems

\begin{thebibliography}{99}
\bibitem{56} Kuma, \textit{supra} note 34, and Bimadumma, \textit{supra} note 31.
\bibitem{57} Birmadumma, \textit{supra} note 31.
\bibitem{58} Gudeta Degytu, \textit{Supra} note 55, P16.
\bibitem{59} The information accessed from Addis fortune website at \url{https://addisfortune.net/articles/donkey-meat-up-for-export-slaughterhouse-opens/} uncovered that the donkey slaughter house in Bishoftu started its operation regardless of the protest by the local community though later forced to closure
\bibitem{60} Mesay, \textit{supra} note 22.
\bibitem{61} \textit{Ibid}.
\bibitem{62} Kuma, \textit{supra} note 34.
\end{thebibliography}
both investor and government turned blind eye to such negative impacts of investment. In this regard, all informants confirmed that there is no practice of requiring social and cultural impacts assessment for the implementation of the investment project, and even the existing environmental impact assessment is too weak in implementation and supervision.\textsuperscript{63} The author believes that legal tool is an important strategy to prevent and remedy social and environmental impacts of investment. Hence, these and other social and environmental impact under the guise of investment demand integration of social and environmental pillars of sustainable development into Ethiopia’s investment laws.

IV. **STOCKTAKING SUSTAINABILITY OF ETHIOPIAN INVESTMENT LAWS: A FOCUS ON INVESTMENT PROCLAMATION AND REGULATION**

In Ethiopia, Civil Code and Commercial Code serve as general frameworks for business activities but within these broad frameworks, there are specific investment laws regulating investment. Accordingly, Investment Proclamation No.769/2012\textsuperscript{64} and Investment Incentive and Investment Areas Reserved for Domestic Investors Council of Ministers Regulations No.270/2012\textsuperscript{65} along with their respective amendments in 2014 represents the main legal documents governing investment in Ethiopia. Besides, there are also other special investments laws that are designed to regulate specific form of investment activities such as Mining Operation proclamation No.678/2010, Energy proclamation No.810/2003, Petroleum operation Proclamation No. 838/2014, and transaction of precious mineral proclamation No.651/2009.

The Investment Proclamation has nine parts which starts with preamble and provides for a detail rules on different points such as definition of relevant terms, jurisdiction and scope the proclamation, investment objectives and areas of investment, forms of investment and capital requirement, investment permit, technology transfer, investment incentive, guarantees

\textsuperscript{63} Ibid; Mesay, *supra* note 22, and Birmadumma, *supra* note 31.

\textsuperscript{64} Investment Proclamation, Proclamation No.769/2012, *Federal Negarit Gazeta*, 18th year no.63, Addis Ababa, 17\textsuperscript{th} September, 2012 (Hereinafter the Investment proclamation)

\textsuperscript{65} Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulations, Regulation No.270/2012, *Federal Negarit Gazeta*, 9th Year No. 34, Addis Ababa, November 2012 (hereinafter Investment Regulation).
and protection, investment administration, industrial development zone and some other miscellaneous provisions.\textsuperscript{66} The investment regulation provides for lists of areas reserved for domestic investor, areas open for foreign investor, and some fiscal and non-fiscal incentives to both foreign and domestic investor so as to encourage investment in the country. These investment proclamation and regulation generally apply to both foreign and domestic investment and all investment in all sectors except the investments in prospecting, exploration, and development of minerals and petroleum resources\textsuperscript{67} and that is why they are picked for this study. Moreover, it is believed that the investment proclamation and regulation are more subject to scrutiny for their inadequacy to accommodate sustainable development as compared to the aforementioned specific investment laws. Below, the author appraises the extent to which the three pillars of sustainable development have been integrated under these investment proclamation and regulation.

**A. Ethiopia’s Investment Law and Economic Development Pillar**

Under the New Delhi Declaration, the economic pillar has been reaffirmed by the principles of integration, and reflected in principle of equity and eradication of poverty and principle of common but differentiated responsibilities.\textsuperscript{68} Collectively, it has been echoed through these principles that economic pillar of sustainable development requires any development process (including investment) to improve economic condition of people inclusively and equitably. Toward these overarching goal, the economic pillar requires the investment project to equitably and inclusively economic growth in host country through job creation, revenue generation, transfer of technology and managerial skill, research and development, export promotion etc.\textsuperscript{69} However, much of this economic ambition depends on the way investment is regulated. And hence, to reap the economic benefit of investment, sustainable development calls for legal arrangement to maximize

\textsuperscript{66} See generally the Investment Proclamation.

\textsuperscript{67} The Investment Proclamation, Art.3.

\textsuperscript{68} The New Delhi Declaration, Principles 2, 3 & 7.

\textsuperscript{69} AD.Basiago,  \textit{Economic, Social, and Environmental Sustainability in Development Theory and Urban Planning Practice}, 19 \textit{THE ENVIRONMENTALIST}, 145-161(1999), at 149; see also the new Delhi declaration, principles 1-7
positive linkages with the local economy through different means like introduction of performance requirements

In line with this, the FDRE constitution recognized economic pillar of sustainable development within the constituent elements of right to sustainable development incorporated under Art.43 and as further reinforced under provision dealing with socio-economic right of peoples and economic policy objectives of the country. To ensure the realization of the objective of inclusive economic development enshrined in the constitution, the detailed investment legislation was enacted to pursue this constitutionally founded objective of economic development.

Accordingly, the preamble of the investment proclamation highlights the need to encourage investment to accelerate economic development of the country and improve living standards of its peoples; increasing inflow of capital; accelerating transfer of technology into the country; and enhancing and promoting equitable distribution of investment among the region and benefit the society as key economic objective that necessitates its enactments.

Similarly, Art.5 of the proclamation provides for the general and specific objective of investment that capitalizes on economic development. The general objective of investment as articulated under this article is improving the living standard of people through realization of sustainable economic and social development. Sub article 1 to 8 of the provision listed eight specific objectives, seven of which relate to economic development. The seven specific objective that relates to economic development under Art.5 includes accelerating economic development; developing the domestic market through the growth of production, productivity and services; increasing foreign exchange earnings by encouraging expansion in volume and variety of the country’s export products and services and the improvement of their quality as well as to save foreign exchange through production of import substituting products; encouraging balanced development and integrated economic activity among the regions and to strengthen the inter-sectoral linkages of the economy; enhancing role of private sector in accelerated economic development; render foreign investment play its proper role in the country’s economic development; and create employment opportunities for Ethiopians
and fostering the transfer of technical know-how, of managerial skills, and technology required for progress of the country.\textsuperscript{70}

As can be understood from the above discussion, both the preambular and declared objective of the investment proclamation adequately incorporated the economic pillar of sustainable development but this overambitious preambular and declared objective of economic development is not translated into other operative provisions. It should be noted that the expected economic benefit of investment may not be achieved through mere aspiration as an objective of investment. Under the investment proclamation, fostering economic growth is declared as an objective of investment but investment may fail to create enough positive linkages with the local economy unless there is a law that obliges the investor to do so. For instance, investment may fail to create expected job or even if it creates, wages may be too low to support employee’s livelihood, or it may fail to insure equity by targeting local community. One of the best practices to ensure investment for equitable and inclusive economic growth is the use of performance requirement which may be imposed as a condition for admission and operation or linked to incentive.\textsuperscript{71} They could be used to achieve the twin purpose of economic development pillar, enhancing economic growth and ensuring that the resulted economic growth is inclusive and equitable to the local community.

To examine the extent to which performance requirement is used to mobilize investment for sustained economic growth under the Ethiopia’s investment law is vital to analyze provisions dealing with investment permit and incentive. Arts.12 to 19 of the investment proclamation deal with investment permit, however, economic performance requirement, such as local content requirement including hiring local personnel, requirement to achieve specific level of jobs and level of wage are not explicitly provided as a requirement for application, issuance, renewal and expansion or promotion or revocation. Furthermore, incentives provided under the investment regulation are linked to few forms of performance requirement like investments in certain sector,

\textsuperscript{70} The Investment Proclamation, Art.5.

certain areas/regions, and export requirement that other forms of economic performance are not rewarded by incentive.

However, though not well organized, there are some provision that may relate to some aspects of performance requirement under both investment proclamation and regulation. For instance, part 6 of the investment proclamation has provided certain provisions relating to registration for technology transfer and collaboration with local investor, nonetheless the provision is merely procedural and it is not clear whether technology transfer or collaboration with local investor is a requirement for investment permit or operation. Art 37 of the proclamation dealing with employment of expatriates is short of providing local employment requirement. Even more, it solidifies the investor’s right to hire expatriate employees. The only limitation to employment of expatriate under the proclamation is that an investor who employed expatriate for the operation of business is required to replace, within a limited period, such expatriate by Ethiopian employee, by arranging a necessary training.72 The list of performance requirement including the local content disclosure is not provided even in business license application form, and the form merely requires the investor to fill a number and nature of employment opportunities to be created including Ethiopian and expatriate. Thus, no more information is needed as to whether Ethiopian employee is from the local employee or from other parts of the country.73 Accordingly, the Ethiopian investment law fails to oblige investor to employ local worker when the Ethiopian workers are qualified to the position, and even if it may do so, it fails to target local people of the specific place where investment is operating.

Moreover, the provisions dealing with level of liberalization, registration and capital requirement, standard of treatment, and nature of incentive under Ethiopian investment law are also subject to scrutiny as regard their implication for the achievement of economic development objective aspired by the investment specially from FDI perspective. To start with level of liberalization, almost majority of lucrative investment areas in the country remained closed for foreign investment there by blocking potential FDI that

72 The Investment Proclamation, Art 37(2).
could contribute to the economic development of the country.\textsuperscript{74} The requirements regarding minimum capital requirement has also more of hindrance than contribution.\textsuperscript{75} As regard standard of treatment, only two standards dealing with guarantee against expropriation and transfer of fund is available but it could have been better to add other standards of protection like national treatment and physical protection and security with some necessary exception just to signal that protection of FDI in the country.

Besides, overly promised packages of incentive with no effective link to economic performance have made the expected benefit of revenue generation a mere illusive. Moreover, a provision dealing with investment form and registration has negative implication to the objective of insuring equity and making investment beneficial for local people.\textsuperscript{76} Without giving proper guidance on the would-be corporate structure, the proclamation allow the four form of investment formed and registered in accordance with commercial code and the federal authority is given jurisdiction to register these business regardless of the regions in which they operate. As the business is required to pay tax at their place of registration, they pay tax to the federal authority rather than to the concerned regional authority making the local community affected by the investment distant from benefit of the revenue generated. The proclamation could have given direction as regards corporate structure of would-be investment by requiring them to be registered at concerned regions so that tax benefit will equitably go to local community.

In short, as far as economic development pillar of sustainable development is concerned, it has been sufficiently incorporated as an objective in the preamble and under Art. 5 but these preambular and declared objectives are not translated into other substantive provisions.

**B. Ethiopia’s Investment Law and Social Development Pillar**

Social development pillar requires, \textit{inter alia}, making people at the center of investment, social inclusion of the poor and historically marginalized people,

\textsuperscript{74} See The Investment Proclamation, Arts. 6 &7; \textit{The Investment Regulation}, Art 3.

\textsuperscript{75} The Investment Proclamation, Art .11.

\textsuperscript{76} The Investment Proclamation, Art 10.
improving the welfare of all through poverty eradication, improved labor standards, secured land tenure, transparency and anti-corruption, insuring interest of indigenous and local communities, respect for culture and human right in general.\textsuperscript{77} Under the New Delhi declaration, social development (including human right) has been recognized as pillar of sustainable development through the principles of integration and further reflected under principles of equity and eradication of poverty, principle of public participation and access to injustice and information; and principle of observance of human right envisaged under the umbrella of good governance.\textsuperscript{78} The principle of integration recognizes social (including human right) issues as equally important principles of sustainable development and requires the integration of this concern in investment rule making.

The FDRE Constitution explicitly recognizes social development as a pillar of sustainable development and it dictates the investment law and policy of the country to integrate and uphold the social development of the Ethiopian people. Against this constitutional guidance, the Ethiopian investment laws (both the investment proclamation and regulation) failed to adequately integrate social development pillar including human right issues, labor standards, public participation, and anti-corruption measures. Both the preambular and declared objective of the proclamation capitalize on economic pillar and the reference made to social development pillar is loosely crafted, merely indirect and remained fairly inadequate. Attempt has been made to make reference to social development pillar in the preamble and objective of investment under Art.5 of the proclamation indirectly in furtherance of and as an ultimate goal of economic development. For instance, some of the preambluar language that recognizes the importance of investment for economic development and improving living standard of people as highlighted in paragraph 1 that recognized the need to equitable distribute investment among the regions to equitably benefit of society as in paragraph 2, and the language that recognized the need for transparent and efficient administration of investment as in Para 5 of the preamble of the investment proclamation could indirectly relate some components of social development objective. The preamble neither uses the term sustainable development that is capable of

\textsuperscript{77} AD. Basiago, \textit{Supra} note 69; see generally the New Delhi Declaration, Principles 1-7.

\textsuperscript{78} The New Delhi Declaration, Principles 2,5,6 & 7.
including social development nor it makes express reference to important components of social development like human right, labor standards and, thus, it failed to integrate the social development pillar.

Art. 5 of the proclamation dealing with the objective of investment is probably the only provision that attempted to incorporate social development pillar by recognizing the realization of social and economic development to improve living standard of Ethiopian people as objective of investment. However, without undermining importance of this provision in making express reference to social development as a general objective, it is nonetheless doubtful as to whether it is incidental or the clear objective of investment since it is not translated into subsequently listed specific objectives. Sub-Articles 1 to 8 of Art. 5 lists about eight specific objective that emphasize on economic development pillar but with no direct reference to the social dimension other than issues of balanced and integrated development among the regions mentioned in Art. 5 (5) and the employment opportunities mentioned in Art. 5 (8) both of which have economic and social dimensions. Possibly, legislature could have at least mentioned illustrative list of social development pillar including the human right so as to translate the general objective relating to social development into the specific objective just as in the case of economic development pillar.

Taking the spirit of the preamble and the objective, other substantives provisions of the proclamation also failed to integrate social development. Firstly, social development has not been integrated in provision dealing with investment permit and incentive. None of sustainability impact assessment components including social, cultural and human right impact assessment is provided as a condition for investment permit under Arts.12 to 18 of the proclamation. Furthermore social, cultural and human right performance of the investment is neither sanctioned by suspension /revocation of investment permit under Art.19 of the proclamation nor rewarded by the incentive provided under the investment regulation. Moreover, the provision dealing with standard of protection and guarantee failed to assist social sustainability. Hence, government regulatory measures taken to achieve legitimate social policy, insure human right, and achieve other public welfare objective may not be excused as an exception to the guarantee against expropriation provided under Art.25 of the proclamation. Similarly, provision dealing with transfer of
funds lacks public welfare policy safeguards that excuse restriction on transfer of funds to insure different social development concerns.

Besides, there is no substantive provision that deals with social standards like human right standards, labor standards and no reference to the internationally recognized standards or best practice is made in the proclamation and the regulation. Moreover, the investment proclamation failed to integrate social development pillar (including human right) either as obligation of investor or as state’s right to regulate. Ended, Art.37 of the proclamation dealing with employment of expatriate has no more stipulation about labor standards.

The only provision that deals with non-investment obligation of investor is Art.38 of the proclamation which states that investor shall have a duty to observe the law of the country, and in particular, shall give due regard to the environmental protection. Though in weak language, the second sentence of Art. 38 picked out and emphasized investor’s obligation as regard environmental laws, but no similar reference is made to the relevant social and human right laws including the constitution, the labor law, land laws, or international human right instruments. From this, one can understand that reference to the environmental law under second sentence acknowledges the weakness of the first sentences in imposing non-investment obligation in other laws, and the omission of other relevant human right and social laws from second sentence reaffirms the legislature’s intention to deemphasize investor’s obligation to respect laws other than environmental laws. Accordingly, the proclamation failed to make sufficient reference to the relevant human right law and social law as in the case of environmental laws.

Furthermore, social development pillar is not reflected under the provisions dealing with jurisdiction and investment administration and industrial development zone. In fact, had it been carefully crafted, these provision could have integrated or at least reflected components of social development pillar like public participation and access to justice and information, democratic governance based on rule of law, respect for human right- and self-determination, transparency, and anti-corruption measures; respect for tenure

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79 Investment Proclamation, Arts.27-32.
80 The Investment Proclamation, Arts. 33-35.
security, culture, and the legitimate social interest of indigenous and local communities. It should be noted the preamble has also no spirit of encouraging bottom up approach to investment.

Art.4 of the proclamation reserves administration of core investment matters to the jurisdiction of the federal investment organ regardless of the region in which they operate and the regional and local authorities that are presumed to have proximity with concerned local community have no power to decide on or administer the investment in line with the interest of local communities. Similar feature of centralism has been reflected under parts dealing with investment administration organ. Even though Art. 27 of the proclamation hang the possibility of having federal and regional investment organ to administer investment by law, the subsequent provisions, Arts. 28 and 29 of the proclamation which lists the power and duties of federal investment organ exhausted the core investment matters, and left no important place for regional organs to decide on investment operating in their regions specially the FDI. As a result, the regional investment organ remained the mere facilitator, information provider and executor of the decision of federal investment organ.

Moreover, the provision of one stop shop service provided under Art. 30 coupled with the absence a provision that establish a firm cooperation among the federal and regional investment authority and other cross sectorial authority has worsened the problem making the investment administration and decision a top down imposition in the country. The only provision that talks language of cooperation between federal and regional organ in the proclamation is Art. 31 of the proclamation dealing with the cooperation as regard investment related information, but this does not cover issues of cooperation to give joint decision. In addition, there is no provision that ensures grassroots public participation in investment administration and decision making nor is the room for individual to submit grievance on the investment decision either to the authority or the regular court as access justice scheme since this right are available only for investor as per Art.32 of the proclamation. And, hence, both direct and indirect participation through the close local representative are missing from Ethiopian investment administration system.
Even more, provision of the proclamation dealing with industrial zone has exacerbated the concern about social sustainability like ensuring public participation and bottom up approach to investment administration that respect right to self-determination, respecting local land right, respecting and preserving cultural identity, ensuring the interest of local and indigenous community. The provision gives an exclusive and unchallengeable power for the federal government to establish industrial zone in regions and hung up every issues to be determined by the regulation to be issued by council of minister.81 The proclamation is silent about the role if any of the regional authorities, the role and interest of local community and the aforementioned issues of social sustainability that could be raised in respect of industrial development zone nor it provide framework that guides the would be laws in addressing these issues. Within the umbrella of the aforementioned deficiency, Industrial park proclamation has been enacted in 2015, but the author prefers not to examine its sustainability for scope and time limitation.

In general, both the investment proclamation and regulation have no sufficient space for social development. Even if the general objective stipulated in the proclamation made references to social development, this is not translated in to specific objectives and other substantive provisions. Thus, the proclamation failed to address components of social sustainability like human right, public participation, ensuring equity, and the interest of local community, access to justice and information, labor standards, and good governance.

C. Ethiopia’s Investment Law and Environmental Protection Pillar

The environmental protection as pillar of sustainable development requires integration of the environmental concern in any development process. This has been reflected under the New Delhi declaration through the principles of integration, the principles of duty to sustainable utilization of natural resources and the principles of precautionary approach to human health, natural resources and ecosystems.82 Addressing environmental concern in any investment process has been firmly recognized as pillar of sustainable development under FDRE constitution. However, there is neither express

81 See Investment Proclamation, Arts. 33-34
82 The New Delhi Declaration, Principles 1, 4, & 7.
reference to the constitution nor detailed provision that fully integrates this constitutional requirement under the subsequently enacted investment legislations. The stipulation integrating environmental protection is missing from both preamble and declared objective of Ethiopian investment proclamation and regulation.

The preamble is totally mute about the environmental protection pillar. Art.5 of the proclamation dealing with the objective of the investment tries to make a loose reference to environmental pillar. It states general objective of the investment as realization of sustainable economic and social development. Even if the term ‘sustainable’ is embodied in this general objective, express reference made to social and economic development and omission of environmental sustainability seems that environmental pillar is not contemplated under the general objective of investment. By the same token, the specific objective listed under Art. 5 of the proclamation seem to capitalize on economic development pillar saving the insignificant reference made to exploitation and development of the immense natural resource of the country under Art.5 (2).

This incidental reference made to the environment is indeed inadequate even if it envisages not only the exploitation of natural resources, but also their simultaneous development. Hence, the environmental sustainability does not feature prominently in both the general and specific objectives outlined under Art. 5.

Part four of the proclamation titled investment permit is among a potential place under which environmental issues could have been integrated. However, Arts.12 to 19 of the proclamation failed to explicitly provide environmental conditions, such as compliance with environmental standards and the making of environmental impact assessment as a requirement for application, issuance, renewal and expansion or promotion or revocation of permits. In particular, Art.19 (2) of the proclamation specifically put exhaustive list of grounds for revocation of investment permit but the law maker skipped to integrate environmental issues in a clear language.

84 Ibid.
85 Id. P. 169.
Part 5 which deals with the registration of technology transfer could have provided requirements for investors to use clean technology so as to enhance environmental protection but no such requirement is contemplated. Part 6 of the proclamation which deals with investment incentive, guarantees and protection also remained silent on the issues of environmental sustainability. Environmental sustainability does not appear to be a justification for an incentive packages provided under the investment regulation as contemplated by Art.23 of the proclamation. Furthermore, Art. 25 of the proclamation dealing with investment protection and expropriation lacks environmental safeguards and could prohibit legitimate regulatory measures aimed at insuring environmental protection as indirect expropriation.

Part 7 of the proclamation which deals with investment administration including issues of institutional cooperation, one shop service and grievance mechanism also fails to assist in environmental sustainability. In this regard, the investment proclamation fails to incorporate the requirement of institutional cooperation among the relevant organ like investment commission and environmental protection authority. The only provision in the investment proclamation that relates to cooperation is Art.20 which deals with the cooperation of investor and investment organ. Even worse, without creating such institutional cooperation, the proclamation aspires to give one-stop shop service as highlighted under Art.30 (4) (d). This provision imposes an obligation on investment commission to facilitate execution of investor’s requests for approval of environmental impact assessment but does not compel investors to do environmental impact assessment. At this juncture, since there is no provision establishing firm coordination with environmental authority, the investment commission may issues license without making impact assessment to comply with the expected one-stop shop service.

Under miscellaneous part, the relatively important provision that attempted to integrate environmental issues is Art.38 of the proclamation .The provision states that any investor shall have the obligation to observe the laws of the country in carrying out his investment activities, and in particular, he shall give due regard to environmental protection. According to Fikermarkos, the first sentence of this article does not add anything since it is the obligation of

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86 Ibid.
an investor to respect the laws regardless.\textsuperscript{87} The second sentence is important developments given its direct reference to the environment, is nonetheless formulated in a weak language, stating ‘…give due regard to environmental protection’ and may not add meaningful obligation related to the environment in the context of investment.\textsuperscript{88} The sentence does not specify the legal consequences of a failure to give due regard to environment.\textsuperscript{89} There is no explicit penalty provided for by the Proclamation be it is criminal or administrative sanction saving an implicit measures of suspension of permit that could be arguably anticipated by interpreting Art 38 in conjunction with Art 19(1) of the proclamation which entitled the authority to revoke license if investor violated the provision of the proclamation.

Lastly, part 8 of the proclamation dealing with industrial development zone could have play some role in incorporation environmental concern in investment law, nonetheless remained with no meaningful contribution to this direction. Under definition part, industrial development zone has been defined to have the objective of mitigating the impact of environmental pollution but there is no hard and fast rule as to how this objective could be achieved. The only guiding provision that relates to the environment in this regard is Art. 34 (3) (c) of the proclamation which reserves the possibility of possessing a leasehold land within or adjacent to industrial zone for the purpose of maintaining natural resources, cultural heritage, or place required to be preserved by law in decision regarding reduction or expansion of industrial development zone. It should be noted that industrial development zone being the investment place that could cause worst environmental issues; this part could have addressed at least key environmental issues.

Overall, it can be submitted that the Ethiopian investment laws has failed to fully mainstream environmental protection pillar into investment governance. The only direct references made to environmental issues are found under Art.38 but this is in itself in adequate to insure environmental protection mainly for its weak terminology and absence of bold sanction. It seems that environmental issues are left for the environmental laws,however these issues

\textsuperscript{87} Ibid.
\textsuperscript{88} Ibid.
\textsuperscript{89} Ibid.
could and should have been at least briefly stated as a preambular and declared objective objectives under article 5, and in other provisions dealing with guarantee against expropriation, investment permit and incentives as appropriate.

V. CONCLUSION AND RECOMMENDATION

Sustainable development is aspiration of all nation, nationality and people of Ethiopia at all times. It embraces three mutually reinforcing pillars; economic growth, social development and environmental protection as integral part of development. It is uncontested that investment is a weapon of development, but it has also tremendous economic, social and environmental impacts on local community unless it is effectively regulated. In furtherance of this, FDRE Constitution recognized right to sustainable development and dictates integration of economic, social, and environmental concern in investment process. However, the fact on the ground evidences that sustainable development objective is almost missing from Ethiopian investment governance.

Through a combination of doctrinal and socio legal investigation, this study established a quest for inclusive economic growth, respect for human right, and need to curb social and environmental impacts in course of investment as pressing issues that necessitate integrating of the three pillars of sustainable development into the Ethiopia’s investment laws. It is also found that the Ethiopia’s investment laws (both Investment proclamation and investment regulation) failed to adequately integrate economic, social and environmental pillars of sustainable development as envisaged by the constitution and the requirements of sustainable development.

To be specific, it has been found that economic pillar of sustainable development has been overly asserted under preamble and declared objective of investment stipulated under Art.5 of the proclamation but are not fully translated in to other substantive provisions of the investment proclamation and regulation. In particular, the proclamation failed to explicitly employ important components of performance requirement such as local content requirement including hiring local personnel, requirement to achieve specific
level of jobs and level of wage as the requirement for application, issuance, renewal and expansion or promotion or revocation investment permit or incentive to maximize positive linkages of investment with the local economy. Moreover, there is no provision that ensure equity and inclusiveness dimension of investment to target the economic empowerment of the local people.

Besides, the Ethiopia’s investment law also failed to adequately integrate social development pillar of sustainable development including human right issues, ensuring public participation and the interest of local community, ensuring social equity, labor standards, and good governance. Attempt has been made to make reference to social development pillar under the preamble and objective of investment, but these loose references are either merely indirect or fairly inadequate. The proclamation also failed to provide sustainability impact assessment components including social, cultural and human right impact assessment as a requirement for application, issuance, renewal and expansion or promotion of investment permit. Moreover, the proclamation also failed to integrate social development pillar as obligation of investor nor it align investor’s right with social development in any other substantive provisions.

With regard to environmental protection pillar, the study confirmed that the preamble of the investment proclamation and the general objective of investment provided under Art.5 are totally mute saving the incidental and tiny reference made to the exploitation and development of natural resources under Art.5(2). Moreover, environmental conditions, such as compliance with environmental standards, use of clean technology and the making of environmental impact assessment are not explicitly provided as a requirement for investment permits nor they are linked with incentive packages provided under the investment regulation. The only direct reference to environment is found under Art.38 of the proclamation but this is in itself in adequate to ensure environmental protection for its weak terminology and absence of bold sanction. Even though it can be argued that investment related environmental issues can be addressed by making reference to existing environmental laws, these issues could and should have been at least briefly stated as a
preambular and declared objective of investment, and explicitly linked with investment permit and incentive as appropriate to achieve a better result.

Therefore, it shall be a call of time for the Ethiopian legislature to revolutionize Ethiopia’s investment law in manner that adequately integrate economic, social and environmental pillars of sustainable development, and rectify all legal deficiency and gaps identified in this paper. This could be achieved *inter alia* through reforming the preamble, reforming objective of investment, standardizing investor’s right with sustainable development, inserting investor’s obligation that assists sustainability, and democratising provisions dealing with investment administration to ensure bottom approach to investment. Besides, the Ethiopian judges shall exercise their inherent power of judicial activism and interpret the investment laws in manner that ensure right to sustainable development and human right based approach to development enshrined in the constitution. In that method, we use our investment laws as tool to mobilize investment for sustainable development and ensure that an elusive economic benefit of investment does not cause irreversible environmental, social and human right impact to our people.
ABSTRACT

The core idea of principle of separation of power was coined by John Lock and latter refined by Montesque in the 18th century. It advocates for separation of government power among three branches: legislative, executive and judiciary. Each branch has its own primary function and intervention in the primary function of the other branch is not allowed. However, the principle is not absolute for different reasons. One area of deviation is delegated legislation whereby executive branch makes laws; although the function belongs to legislature. However, the compatibility of delegated legislations with enabling legislation should be controlled so that the principle of separation of power is not totally eroded. The objective of this article is to investigate how delegated legislations (regulations and directives) are controlled by the three branches of government. In doing that, qualitative research method that includes review of literature, in-depth interview, case analysis and scrutinizing legal provisions was employed. Accordingly, 38 in-depth interviews with officials from different executive sectors at bureau level; 16 cases decided by quasi-judicial organs; 10 cases decided by regular courts; most importantly 20 proclamations, 20 regulations and 20 directives were read and examined critically. Finding of the research claims ineffective control on delegated legislations in Oromia mainly due to lack of institutionalized controlling mechanisms supported by laws; and leniency and sometimes the inability of the judiciary to exercise its judicial review power. Due to this, there are cases whereby delegated legislations become ultra virus to the primary laws thereby unduly restricting constitutionally guaranteed rights such as the right to procedural justice. Hence, the article suggests institutionalizing controlling mechanisms which are suppor ted by laws, and enabling the judicial organ to effectively exercise its inherent power of judicial review as ways forward.

Key words: Controlling Delegated Legislations, Delegated Legislations, Directives, Oromia, Regulations
1. **SEENSA**


Haa ta’u malee, haala addaatiin, qajeeltoo kana irraa akka maqamuuf sababootni dirqisisiisan (fakkeenyaaf, baay’achuu hojji) kan jiran yoo ta’u, bakkeewwan kun itti mul’atu keessaa tokko ammoo hojiirra seera baasuun kan walqabatu dha. Hoojii kana hojjechuuf qaamni aangoo uumamaa (inherent power) qabu qaama seera baastuu ta’us, qaamolee moomtummaa biroofis aangoon kun bakka bu’insaan kennamuun ni danda’aa; yoo kennamu garuu, daangaa aangoo bakka bu’insaa keessatti ba’uun hojiirra oooluun isaa to’atamuun qaba. To’annoon kunis akkuma haala isaatti sadarkaa wixineetti ykn ragga’uun hojiirra erga oolanii bodoa, qajeeltoowwan hordofamuun qaban tarressuuu sana keessa darbuu isaa hordofuu (to’annoo waliigala) fi qaamolee moomtummaa adda addaan, keessattuu qaamolee moomtummaa sadaniin akka ta’u hobotuuwan toora kanatti barreeffaman ni agartiisuu.\footnote{ Fakkeenyaaf, Oyelami, T.O., \textit{The Challenges of Controlling Administrative Legislation in Nigeria}, NIALS Law and Development Journal (2010); Delegating Law-making Powers to the Executive, \url{http://ldac.org.nz/assets/documents/13.-Delegating-law-making-powers-to-the-executive.pdf} \(<\text{F8 ilaaluun ni danda’ama}>\).}

Gara Itoophiyaafi Naannoo Oromiyaatti yoo dhufnu, Heerota lachu ilaaluun barbaachisaa ta’a. Heerri Mootummaa Rippaabilika Dimokiraatawaa Federaalawaa Itoophiyaar caaseffama moomtummaa federaalaawaa akka hordofuu fi aangoonis qaamolee moomtummaa sadan (seera baastuu, seera raawwachiistuu, fi seera hiikttuu) jidduutti kan qqqoodame ta’uu ni ibsu.\footnote{ Heera Mootummaa RDFI, kwt. 50 (2) fi kwt.1} Heerri kun Manni Marii Bakka Bu’oota Uummataa qaama aangoo ol’aanaa moomtummaa federaalaak akka ta’e ibsuun, hojiir seeraa baasuus qaama kanaaafi
kenneera.⁴ Gama biraatiin, aangoo Manni Marii Bakka Bu’ootni Uummataa kennuuf irratti hundaa’uun qaamni raawwachii stutteru (Manni Maree Ministeerotaata) dambiiwan baasuu akka danda’u, Heerumti kun ifatti tumeera.⁵ Heerri Mootummaa Naannoo Oromiyaas aangoon qaamolee mootummaa sadeen gidduutti kan qoodamu ta’uu ni tuma.⁶ Bu’uura Heerichaatiin Caffeen Oromiyaas qaama moomtaa aangoo ol’aanaa moomtaa naannichaa yoo ta’u, aangoo seera baasuu, dambiilee dabalatee kan qabos qaamuma kana dha.⁷ Haa ta’u malee, haala addaatiin, aangoo bakka bu’insaa Caffeen kennuuf irratti hundaa’uun qaamni raawwachii stutteru dambiiwan baasuu akka danda’u, Heerumti kun tumeera.⁸

Qabatamaanis labsiiwan Caffeen irra dhaabbachuu dambiilee fi qajeelfamoonni adda addaa ba’aa jiru. Hanga yeroo daataan qorannoo kanaa walitti qabametti, labsiiwan Caffeen Oromiyaan labsaman lakkoofsaan 208 yommuu ta’an, dambiiwan aangoo bakka bu’insaa ba’an ammoo 195 irra gahaniiru. Qajeelfamoonni seekteroota moomtaa ba’anii hojiirra jiranis lakkoofsi isaanii hanga kana jedhamee beekamu bu’atuu hadduu dha. Haa ta’u malee, dambiilee fi qajeelfamoonni Oromiyaas keessatti ba’aa jiran kunniin daangaa aangoo bakka bu’insaa seera Caffeen kennaan ba’uun isaanii bifa kamiin to’atamaa akka jiran qorannoon agarsiisu hin jiru. Kaayyoon qorannoo kanaa Oromiyaas keessatti akkaataa dambiilee fi qajeelfamootni bakka bu’insaa itti bahanii fi qaamolee moomtaa sadaniin (qaama seera baastuu, qaama seera raawwachii stutteru fi qaama seera hiiktuu) to’ataman maal akka fakkaatu sakatta’uun qaaawwa seeraa fi hojimaataa jiru agarsiisuun yaada furmaataa akeekuu dha.

Kana gochuuf malli qorannoo hordoofame: dursa, seerotni aangoo bakka bu’insaa ba’an seerota Caffe Oromiyaan ba’an wajjiin walsimuu fi dhiisuuu isaanii bifa kamiin to’atamuu danda’u? kan jedhu qajeltoowwan bu’uuraa seera bulchiinsaa keessa jiran maalfaa akka ta’an beekuuf; akkasumas, sirni to’annoo qaamolee moomtaa sadaniin taasifamu (qaama seera baastuu, seera raawwachii stutteru fi seera hiiktuu) maal akka fakkaatuu fi

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⁴ Heera Mootummaa RDFI, Kwt.55.  
⁵ Heera Mootummaa RDFI, Kwt.77 (13).  
⁶ Heera Mootummaa Naannoo Oromiyaas, Kwt.46.  
⁷ Heera Mootummaa Naannoo Oromiyaas, Kwt.46 (1), 49 (1) fi 49 (3p).  
⁸ Heera Mootummaa Naannoo Oromiyaas, Kwt. 55(6).
muuxannoowwan akka addunyaatti gama kanaan jiranis maal akka ta’e bifa agarsiisuu danda’uun hogbarruuwwan sakatta’amaniiiru. Muuxannoon biyyoota sakatta’amaniiis Hindii, Ingilizii, Ameerikaa, fi Naayijeeriyaa yommuu ta’an, kan filatamanis sirna bulchiinsaa hordofan (sirna mootummaa federaalawaa fi waaltawaa; fi sirna mootummaa parlamaa fi pirezidaantummaa) jiddu-galeessa godhachuudhaani.

Itti aansuun, dambiilee fi qajeelfamoorni aangoo bakka bu’insaan tumaman kunni Oromiyaa keessatti bifa kamiin ba’anii to’atamaa jiru kan jedhu qajeeltoowwan seera bulchiinsaa fi muuxannoowwan jiran irratti hundaa’uun hammatni heeraa, seerra fi/ykn hojimaataa gahaa ta’e jirachuuf dhiisuu isaa xiyyeffannoon madaaluun qaawwa jiru adda baasuuf hooggantootaa fi ogeessota Waajjira Caffee Oromiyaa, Waajjira Bulchiinsa Mootummaa Naannoo Oromiyaa, Biiroo Haqaa Oromiyaa, qaamolee raawwachiiftuu mootummaa naannoo Oromiyaa biiro amala hojjii isaanii irraan kan ka’e dambiilee fi qajeelfamoota hedduu baafachuun itti hojjetu jedhamanii tilmaamaman jahaa fi abbootii seerra fi pirezidaantota manneen murtii naannichaa sadarkaa hundarra jiran wajjiin afgaaffiin gadi fageenya qabu (in-depth interview) soddomii-saddeet (38) gaggeeffameera; dhimmoonni qaamolee bulchiinsaa aangoo abbaa seerummaa qabaniin (quasi-judicial bodies) murtaa’an 16 fi dhimmoonni manneen murtii idileen murtaa’an 10; walumatti, dhimmoonni 26 sakatta’amuuun warreen gaaffii qoranno wajjiin hidhata qaban filatamuun xiinxalamaniiiru. Akkasumas, labsiwwan 20, dambiwwan 20 fi qajeelfamoota 20; walumatti, seerotni 60 walbira qabamuun dubbifamaniiru.

Gaaffii qabatee ka’e deebisuuf akka tolu qorannichi kutaalee afuritti qindaa’uun dhiyaateera. Seensa kanatti aane, kutaan lammaffaa, sirna to’annoo dambiilee fi qajeelfamooota aangoo bakka bu’insaan ba’anii ilaalchisee dhimmoota waliigalaa jiran irratti hogbarruuwwan sakatta’a. Haaluma kanaan, maalummaa seerota aangoo bakka bu’insaan ba’anii, dambiilee fi qajeelfamootni aangoo bakka bu’insaan ba’an qajeeltoowwan bu’uuraa hordofuu qabanii fi qaamoleen seerota kanneen to’achuuf aangeffaman eenyufaa akka ta’an kutaan kun hammateera. Kutaan sadaffaa, seerota aangoo bakka bu’insaan ba’an to’achuun Oromiyaa keessatti maal akka fakkaatuufi rakkoowwan qabatamaan mul’atanis maalfaa akka ta’an
adda baasuun agarsiisa. Dhuma irratti, kutaan afraffaa, yaadota gudunfaa fi furmaataan kan dhiyeessu ta’a.

2. SIRNA TO’ANNOO SEEROTA AANGOO BAKKA BU’INSAAN BA’ANII: SAKATTA’A HOGBARRUUFI SEEROTAA

2.1. MAALUMMAA SEEROTA AANGOO BAKKA BU’INSAAN BA’ANII

‘Seera aangoo bakka bu’insaan ba’u’ 9 kan jedhu seerota biyyoota adda addaa keessatti hiikkaan adda addaa yoo kennamuuf ni hubatama. Fakkeenyaaaf, Seerri Adeems Faalufi Bulchiinsaa Amerikaa baru 1946 ba’e kaayyoo seerri aangoo bakka bu’insaan ba’u jiddu galuessa godhaachuuun, seera qaama raawwachiiftuun dhimma addaa ykn waliigalaal irratti baasu ta’ee seera ykn imaammeta hoojiirra oolchuuf, ykn hiikuuf; ykn hojimaataa, fi adeemsaa dhaabbata tokko ibsuuf jedhee tumu jechuu akka ta’etti hiike. 10

Hogbarruuuuwan hedduu keessattis ‘seera aangoo bakka bu’insaan ba’uu’ jechuu maal jechuu akka ta’e yoo hiikamu: seera qaama raawwachiiftuun seera qaama seera baasuuf aangoo uumamaa qabuun aangeffamee seera boodaa kana (seera qaama seera baastuuun ba’e) hoojiirra oolchuuf ykn bulchuuf baasu jechuu 11 akka ta’etti dha.

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9 ‘Aangoo bakka bu’insaan seera baasu’ kan jedhu afaan Ingiliziin, delegated legislation, secondary legislation, subsidiary legislation, statutory instrument, administrative rule, subordinate legislation, administrative legislation or quasi-legislation’ gaaleewaan jedhan kan bakka bu’u dha.

10 The American Administrative Procedure Act (APA) of 1946: ‘Rule means the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency …’

Gara Itoophiyaatti yommuu dhufnu, Wixineen Adeemsa Seera Bulchiinsa Federaalaa bara 1996 ALItti wixineeffame kwt.2 (4) (10) jalatti, hiikkaa seerri Adeemsa Bulchiinsa Amerikaa olitti kenne wajjiiin haala baay’ee walfakkaatuun hiikee argina. Haaluma kanaan, qaamni seerota aangoo bakka bu’insaan baasu Ejensii dha. ‘Ejensii’ jechuu ammoo Ejensii bulchiinsaa qaama raawwachiiftuu federaalaa ta’ee hojii to’annoo hojjetuuf fi biiroo tajaajila ummataaaf kennu jechuu akka ta’e wixinichumti kwt. 2 (2) (2)\(^{12}\) jalatti hiikee jira.

Ibsa olii kana irraa waanti hubannu, dambiilee fi qajeelfamootnii fi hogbarruuwwwan karaa adda addaa hiikkoo kan kennan ta’uu dha. Biyyoota adda addaa keessattis maqaa adda addaatiin waamamu.\(^{13}\) Akka naannoo Oromiyaatti garuu, dambiilee fi qajeelfamoota maqaa jedhuun beekamu. Gabaabumatti, ‘seerri aangoo bakka bu’insaan ba’u’ seera qaamni seera baasuuf aangoo uumamaa hin qabne seera qaamni seera baasuuf aangoo uumamaa qabu baasu kenneef irratti hunda’a’uun baasu akka ta’e hubachuu ni danda’ama. Qorannoo kana keessattis seerotni aangoo bakka bu’insaan ba’an dambiilee fi qajeelfamoota adda addaa aangoo bakka bu’insaan Caffeen kennu irratti hunda’a’uun bahan akka ta’etti kan hubatame dha.

2.2. DHIMMOOTA AANGOO BAKKA BU’INSAAN SEEROTNI IRRATTI BA’ANII FI HIN BAANE (DELEGABLE & NON-DELEGABLE LEGISLATIVE POWER)

Seerotni aangoo bakka bu’insaan ba’an sababa itti ba’annii fi faayidaa mataa isaanii kan qaban yoo ta’ellee, dhimmoota hunda irratti ba’uu danda’u jechuu miti. Akka waliigalaatti, dhimmoonni imaammataa fi qajeeltoon walqabatan qaama aangoo uumamaan seera baasuuf aangoon kenneefiin ba’u.\(^{14}\) Seerotni aangoo bakka bu’insaan ba’an bu’uurarraan seerota aangoo

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\(^{12}\)Agency means an administrative agency with regulatory/supervisory power/function of the federal executive and a service rendering public office (The Draft Federal Administrative Proclamation, Art.2(2) (2)).

\(^{13}\)Fakkeenyaaf, Orders in Council, Regulations, Statutory Instrument, Rules, Orders schemes, Warrants fi Directions maqawwan isaan ittiin waamamani dha (Miers DR and Page AC, Legislation, London Sweet and Maxwell (1982), P140).

uumamaan qaama seera baastuun ba’an hojiirra oolchuuf jecha kan ba’ani dha.\textsuperscript{15} Dhimmoota aangoo bakka bu’insaan seerri irratti ba’uu danda’uu fi hin dandeenye tokko tokkoon tarreessanii kaauun salphaa ta’uu baatus, agarsiiftonni akka waliigalaatti fudhatama argatan kan jiran akka ta’e hogbarruwwwan ni ibsu. Kana akka itti aanutti gabateedhaan agarsiisuun ni danda’ama.

\begin{tabular}{|c|l|l|}
\hline
\textbf{Lak} & \textbf{Dhimmoota aangoo bakka \textit{bu’insaan seerri irratti hin baane} \textit{(Non-delegable Legislative power)}} & \textbf{Dhimmoota aangoo bakka \textit{bu’insaan seerri irratti ba’uu danda’u} \textit{(Delegable Legislative power)}} \\
\hline
1 & Dhimmoota bu’uuraa imaammataan walqabatan & Dhimmoota adeemsa sasalphia akkaataa kaffaltiin itti raawwatu agarsiisu;qophii unka sanadoota adda addaa \\
\hline
2 & Dhimmoota mirga namoomaa miidhuu danda’an & Tarreeffama bal’ina qabu(large lists), dhimmoota sasalphoo gabateedhaan (schedules) ibsaman \\
\hline
3 & Dhimmoota sakatta’insaa fi qabiinsaa ykn dhaala qabeenyaa & Dhimmoota walxaxoo teekinikaawaa ta’an (technically complex matters) \\
\hline
4 & Dhimmoota mirga ol’iyyanno kennuu ykn jijjiiruu ilaallatan & Dhimmoota ariifachiisoo (emergencies) dafanii furmaata seeraa argachuu qaban \\
\hline
5 & Dhimmoota yakka cimaa hundeessanii fi adabbii isaanii murteessan & Dhimmoota yeroo yeroon haaromsuu barbaadan \\
\hline
6 & Dhimmoota taaksii kaffalchiisuu,qarshii liqeeffachuu fi qarshii uummataa baasii gochuu ilaallatan & \\
\hline
\end{tabular}

\textsuperscript{15} Akkuma lak.14\textsuperscript{tha}
Dhimmoota seera duraan qaamni seera baasaa baasee ture akka fooyyaa’u godhu

Dhimmoota seerri duubatti deebi’ee bu’aa akka qabaatu taasisu tumuu

Madda: Delegating Law-making Powers to the Executive, FF50-51

Gabatee olii kanarraa wanti hubatamu, seerri aangoo bakka bu’insaan ba’u bu’uurraan seera qaamni seera baasuuf aangoo uumamaa qabu haala bu’a qabeessa ta’een hojiirra oolchuuf yaadamee kan ba’u ta’uu dha.Fakkeenyaaf, seerri aangoo bakka bu’insaan ba’u qaawwa seerri qaama seera baastuun ba’e qabu duuchuuf jecha, adeemsu dheeraa parlaamaan hordofu gabaabsuuf jecha, falmii siyaasaa ka’uu malu dhabamsisuf jecha akka ba’u taasisuun sirrii miti.16

2.3. SIRNA TO’ANNOO WALIIGALAA (GENERAL CONTROLLING MECHANISMS)

Dambiileefi qajeelfamootni aangoo bakka bu’insaan ba’an akka seerota qaama seera baasuuf aangoon uumamaa kennenkeefi adeemsu cimaa keessa darbuu qabu jedhamee hin eegamu. Kun ammoo mirgoootni namoomaa waliigalteewwan idila addunyaafi heeraan beekamti argatanii jiran akka sarbamaniiif daandii saaquu danda’a. Akkas akka hin taaneef dambiilee fi qajeelfamootni aangoo bakka bu’insaan tumaman kunniin qajeeltoowwan hordofuu irra jiraatu ni qabu. Qajeeltoowwan kunniin qajeeltoo beeksisaa (principle of notice), qajeeltoo uummata hirmaachisuu, fi qajeeltoo maxxansaa kan jedhaman yommuu ta’u, iddoo tokkotti sirna to’annoo waliigalaa (general controlling mechanisms) jedhamuun waamamuu danda’a.17 Itti aansuun, qajeeltoowwan kannii gabaabinaan ibsina.

2.3.1. Qajeeltoo Beeksisaa (Principle of Notice)

Qajeeltoon beeksisaa qajeeltoo hirmaachisummaa ittiin dhugoomsuuf gargaaramnu keessaas isa tokko yommuu ta’u, kunis malawwan lamaan

16 Akkuma 15ffaa, F51.
17 Akkuma 16ffaa, F8.
raawwatamu danda’a: 1) wixineee seerichaa gaazzexaa irratti maxxansuun uummanni beekee yaada isaa akka ibsatuu gochuu fi 2) qaamni wixinee seerichaa qopheesse uummanni yaadaa fi qeeqa isaa akka kennuuf guyyaa murteessuun affeeruu dha.¹⁸ Malawwan kana irratti hundaa’uun yaadotaa fi qeeqota seericha irratti ka’an wixinee keessatti hammachiisuun seerichi akka ba’u taasisuu dha. Seerota qajeelticha hojjirra oolchuuf gargaaran ilaalchisee biyyaa biyyatti adda addummaan ni jira. Fakkeenyaaf, biyya Hindiitti, tokkoo tokkoo seera aangoo uumamaan seera baastuun baasu (primary act) keessatti hammatamee yoo argamu, biyya Amerikaa fi Ingilizitti ammoo seera addatti of danda’een hoogganamu.¹⁹ Itoophiyaa keessattis, Wixineen Seera Adeemsa Falmii Bulchiinsaa Federaalaa qajeeltoo kanaaf boqonnaa lama, kwt. 7 jalatti beekamtii kenneera.

### 2.3.2. Qajeeltoo Uummata Hirmaachisu (Public Participation)

Qajeeltoon kun qaamoleen seera aangoo bakka bu’insaan ba’u ilaallatu hunduu adeemsa seericha wixinessuus keessatti hirmaachuu kan dandeessisu dha.²⁰ Hirmaananaa kanaanis yaadotnii fi gorsi walitti qabamuun seera ba’uuf akka galteetti kan gargaaru ta’a.²¹ Kanaaf faayidaa isaa faayidaa qajeeltoo beeksisu wajjiin hidhata gudda qaba. Yaadni qajeeltoo kanaa, jalqabumayyyuu, aangoon seera baasuukan qaama seera baastuu dha kan jedhu dha. Qaama kana keessa ammoo qaamoleen uummatu uummatu bakka bu’uu danda’an hedduun waan jiruuf fedhii hin hammatamiin hafu hin jiraa tuu jedhamee tilmaamama.²² Seerota aangoo bakka bu’insaan ba’an irratti garuu, haalli fedhiin kun hundi itti hammatamu jiraachuu dhiisuun mala. Qajeeltoon

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²⁰ Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak. 18, F11.


²² Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak. 18ffaa.
uummata hirmaachisuun kun qaawwa akkasii duuchuuf ni gargaara jedhamee yaadama. Akkuma qajeeltoo beeksisuu, hojiirra oolmaan qajeeltoo kanaas adda addummaa qaba.

Fakkeenyaaf, biyya Amerikaatti, Seerri Adeemsaa Falmii Bulchiinsaa bara 1946 bahe hojiirra oolmaa qajeeltoo kanaa gadi fageenyaan tumee jira. Biyya Ingiliziitti, qabatamatti, uummata hirmaachisuun kan baratame ta’us, seerri akka dirqamaatti tumeen jiru. Biyya Hindiittis, qabatamaan bal’inaan itti hojjetama; dambiilee fi qajeelfamootni akka dirqamaatti tuman garuu hunda osoo hin taane tokko tokko qofa.

2.3.3. Qajeeltoo Maxxansaa (Principle of Publication)


Akka Itoophiyaatti, Labsiin Negaarit Gaazzexaa Federaalaa Hundeessuuf Bahe Lak.3/1995, kwt. 2(2) seerotni hundi gaazzexaa kana irratti maxxanfamuu akka qaban ni tuma. Hiikkoon jecha ‘seera’ jedhuuf kennamu labsiiwwan mootummaa federaalaan ba’anis ta’e muuxannooowan akka addunyaatti jiran irraa ka’uuddhaan yoo ilaalamu qajeelfamootas ni dabalata. Fakkeenyaaf, Labsiin Mana Maree Federeeshinii Hundeessuuf fi Gahee fi Aangoo isaanii tarreessuuf bahe seerri labsiiwwan, dambiwwanii, fi qajeelfamoota mootummaa federaalaal naannoleen bahan; akkasumas,

23 Delegating Law-making Powers to the Executive, Olitti yaadannoo lak. 14ffaa, F12.
24 Dr Sunita Zalpuri, Olitti yaadannoo lak. 21, F37; Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak.18, F12.
25 Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak. 18ffaa, F12.
26 Dr Sunita Zalpuri, Olitti yaadannoo lak. 21ffaa, F13
27 Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak.18ffaa, F13.
waliigalteewwan idila addunyaa biyyi keenya kan raggaasifte kan dabalatu akka ta’etti hiikee jira. Kanaaf, dambiilee fi qajeelfamootni aangoo bakka bu’insaan ba’an qajeeltoo maxxansaaf beekamtii kan kennan akka ta’e ni hubatama.

2.4. TO’ANNOO QAAMOOLEE MOOTUMMAA SADANIIN TA’U

2.4.1. To’annoo Qaama Seera Baastuu (Parliamentary Control)

Akka seenaatti yoo ilaalamu, to’annoon seera baastuun seerota qaama raawwachistiituun bahan irratti taasifamu kan qaama seera hiikuuun yoo wal bira qabame taatee yeroo dhiyooti. Ta’us, gama bu’a qabeessummaa isaatiin yoo madaalamu to’annoo qaama seera hiikuuun taasifamu irra fooyyee akka qabu hogbarruuwwan ni agarsisu. Sababiin isaa, to’annoon seera hiiktuun raawwatamu erga miidhaan gahee fi qaamni miidhame gara mana murtiitti dhimmicha yoo dhiyeessu qofa yoo ta’u; kan seera baastuun gaggeeffamu garuu osoo miidhaan hin gahiinis raawwatamuun kan danda’uu fi mirga hawaaasa waliigalaa kan eegsisu waan ta’eefi dha. Qaamni seera baasu haala lamaan seerota bakka bu’insaan bahan to’ata. Inni duraa fi bu’a qabeessi, daangaa aangoo qaamni raawwachistiituu keessatti seera baasu danda’u tumaa seeraa daangessuun yommuu ta’u, inni biraan ammoo koreetti fayyadamuu dha. Tokko tokkoon haa ilaallu.

A) Ifa Taasisuun Kennuu

Barreessaan tokko barbaachisummaa seeraan ifatti daangessanii aangoo bakka bu’insaa kennuu haala armaan gadiin ibseera:

28 Fakkeenyaaf, Labsii Mana Maree Federeeshinii Hundeessuu fi Aangoo fi Hojii Isaa Tarreessuuf Bahe, Labsii Lak.251/2001, Kwt.2 (2).
31 Oyelami, T.O., Olitti yaadannoo lak. 1flaa, F202
“One of the most effective controls is for Parliament in the first place to carefully spell out the limits of the delegate’s law making powers so that there can be no doubt when the delegate is exceeding his powers. If the provisions in the enabling legislations that set out the powers of the delegates are vague or ambiguous, then the limits of the powers of the delegate will be unclear and control over the exercise of these powers will be made more difficult.”

Kana irraa kan hubatamu, tooftaan gaarii seera baastuu seerota aangoo bakka bu’insaan bahan haala bu’a qabeessa ta’een to’atu yeroo aangessu wanta raawwatamuu qabu ifa taasisuun akka ta’e dha. Dhimmoota qaamni raawwachiistuu irratti seera baasu danda’u ifatti teechisuun bu’uura sanaan bahuu fi bahuu dhabuu seerota bakka bu’insaan bahanii qaamni aangoo isaa kenne haala salphaan to’achu dandeessisa. Gama kanaan biyyi Hindi muuxannoo gaarii qabdi. Achitti, keewwata aangoo bakka bu’insaa kennu (delegative clause) irratti Paarlaamaan yeroo gaaffii (question hour) addaa kennuun ifa ta’uu fi dhiisuu keewwatin aqal qabdi. Tooftaan kun biyya Jarmanittis sirriitti beekamaa dha. Seerri Bu’uuraa (Heerri Mootummaa) Biyya Jarman kwt. 80 (1) jalatti qabiyyeen (content), kaayyoo (purpose) fi daangaan (scope) aangoo bakka bu’insaa kennamu seerumaan ifatti adda ba’ee beekamuu akka qabu tumeera. Biyya Ingiliz keessatti paarlaamaan seera qaamni raawwachiistuu baasu san to’achu akka danda’u achi seeruma aangoo bakka bu’insaa kennu keessatti ni tumu.

33 Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak.18ffaa, F14.
B) Koree Hundeessuun Itti Fayyadamuu

Karaan lammaffaa seera baastuun seerota bakka bu’insaan bahan itti to’atu koree (committee) hundeessuuni dha.36 Bu’uura kanaan, koreen qaama seera baasuun hundaa’e seerotni aangoo bakka bu’insaan bahan aangoo kenneameef keessatti bahuu fi bahuu dhabuu isaanii sakatta’uun dhimmicha qaama seera baasuuf dhiyeessa. Seera baastuunis yaada koree dhiyeesseef irraa ka’uun seerrri bahe ango kenneameeffi ol (ultra vires) kan bahe yoo ta’e seericha haquu ni danda’a. Koreen paarlaamaan hundaa’u kun seerotni aangoo bakka bu’insaan bahan (sadarkaa wixineetti fi/ykn erga bahanii hojiirra oolani booda) seera paarlaamaana baase waliin walsimuu fi simuu dhabuu ni sakatta’u. Sirni koreetii fayyadamuu kun biyyoota Ingiliz fi Hindii keessatti baay’ee beekamaa fi bal’inaan dhimma kan itti bahamu dha.37

Akkuma biyyoota sirna bulchiinsa paarlaamaa hordofanii biyyoota sirna pirezidaantummaa hordofan keessattis to’annono qaama seera baasuun seerota bakka bu’insaan bahan irratti taasifamu raawwatamummaa ni qaba.38 Fakkeenyaaaf, biyya Amerikaatti, dambiileefi qajeelfamootni qaama raawwachiistuun bahan daangaa aangoo kenneameeffi keessatti ta’uu isaa bal’inaan kan to’atu seera hiiktuu ta’us, seera baastuun biyyichaa akka hojii to’annoo qaama seera raawwachiisuu irratti gaggeeffamuutti kallattiin abbaa aangoo, ministeerota adda addaa seerota qaama seera baasuun bahan raawwachiisan qorachuuf aangeeffameera.39 Waan ta’eefuu, qaamni seera baasu seerota qaama raawwachiistuu bahan irratti to’annoo taasisuuf aangoo kan qabu ta’uu isaatii. Naayijeeryaa keessattis qaamni seera baasu dhimmootta qaamni raawwachiistuu seerota irratti baasuu danda’u haala ifa ta’een gad-fageenyaan tarreeessa.40 Fakkeenyaaaf, labsiwwwan ‘Emergency Power Act 1964 fi Fire Arm Act 1958’ keessatti dhimmootta qaama raawwachiistuu irratti

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36 Marume, S. B. M. etal, Olitti yaadannoo lak.32ffaa.
38 Oyelami, T.O., Olitti yaadannoo lak. 1ffaa
39 Akkuma lak. 38ffaa
dambii baasu danda’an tarreeffameera. Kana jechuun, qaamni dambii akka baasuuf aangeffame sun dhimmoota labsichaan tarreeffaman qofa irratti kan daanga’u ta’a jechuu dha. Akkasumas, dambiilee fi qajeelfamootni aangoo bakka bu’insaan bahan hunda ta’uu baatanis hedduun isaanii qaama seera baasu duratti ni dhiyaatu.41

2.4.2. To’annoo Qaama Seer Hiiktuu (Judicial Control)

Seera hiiktuun miidhawwan aangoo humnaa ol fayyadamuu qaama raawwachiistuu42 lammiilee irra gahu hambisuuf; akkasumas, aangoo seera baasu qama raawwachiistuu to’achuu irratti gahee olaanaa qaba.43 Manni murtii eegduu mirgaa fi bilisummaa lammiilee waan ta’eef, dambiilee fi qajeelfamootni bakka bu’insaan bahan mirga lammiilee kan midhan yoo ta’e heeraa fi seerota seerichi akka bahuuf aangessan waliin wal bira qabuun raawwatummmmaa akka hin qabaanne murteessuu ni danda’a. To’anna manni murtii haala kanaan seerota qaamni raawwachiistuu baasu irratti taasisu ‘judicial review’ jedhama.44 Dambiilee fi qajeelfamootni aangoo bakka bu’insaan bahan sirrii ta’uu ulaagaawwan hedduu guutuu qaba.45 Fakeenyaaf, adeemsa dambiilee fi qajeelfamootni aangoo bakka bu’insaan bahan keessa darban keessa darbuu; seerota waliigalaan wal simuu; daangaa aangoo seeraan kennaan keessatti kan bahe ta’uu barbaachisa. Kana yoo hin taane, namni kamiiyyuu seericha irratti mormii kaasu danda’a.46 Manni murtiiis seerichi aangoo kennamee olitti bahe (ultra vires) jechuun fudhatama dhabsiisuu ni danda’a.

Tooftaan to’annoo isaanii biyyaa gara biyyaatti garaagarummaa haa qabaatu malee, biyyoota adda adaa keessatti seera hiiktuun seerota aangoo bakka bu’insaan bahan irratti to’annoo ni taasisa. Amerikaa keessatti yaadama manni murtii murtiiwwan qaama raawwachiistuu raawwataman irra deebiin ilaaluuratti daangaan hin jiru jedhutu jira.47 Manni Murtii Waliigalaa

41 Factsheet L7 Legislative Series Revised, Olitti yaadannoo lak. 37 ffná.
43 Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak.. 18ffaa.
44 Vivian C. Madu, Judicial Review of Legislation, F1.
45 Marume, S. etal, Olitti yaadannoo lak.. 32ffaa.
47 Poverty, F. etal, Olitti yaadannoo lak.. 42ffaa.
Amerikaas kanuma bifa mirkaneessuun manneen murtii ol’aanoo federaalaa biyyichaa seerota koongiresiin bahanillee heerawummaa isaanii mirkaneessuuf dirqama akka qaban ibseera.48 Biyyicha keessatti manneen murtii seerota qaama raawwachiistuun bahan irratti to’annoo taasisuunis ni beekamu. Haaluma kanaan, Manni Murtii Waliigalaa Amerikaa bara 2010 keessa seerota Kongiresiin biyyattii baase 163 heerawaa miti jechuun murteesseera.49

Naayijeeriyaa keessattis seerota qaama raawwachiistuun bahan to’achuu keessatti manni murtii gahee guddaa qaba.50 Aangoon to’annoo gama mana murtiiin taasifamu kunis bara 1962 yeroo labsiin ‘Emergency Power Act’ pirezidaantii biyyattii seerota qaama seeraa baasuun bahan fooyyessuu, akka hojiirra hin oolle tursuu fi haquuf aangessu baaseen qoramee ilaalam. Manni murtiiis seerri akkasiis kun bu’uura seeraa akka hin qabne murteessuun seerota qaama raawwachiistuun bahan to’achuu akka danda’u mirkanesesse.51

Biyya Hindii keessattis, manni murtii seerota qaama raawwachiistuun bahan irratti to’annoo ni taasisa. Fakkeenyaaf, dhimma ‘Municipal Corporation of Delhi v. Birla Cotton Mills’ irratti manni murtii qaamni seera baasu bakka bu’insa yeroo kennu qajeeltoo qaamni sun baasu ibsuun ta’uu akka qabu ibseera.52 Kana irraa manni murtii dambiilee fi qajeeltoo qaama raawwachiistuun bahan akka feettee akka hin taaneef daangaa aangoo isaan keessatti baasan ibsamuu akka qabuu fi yoo daangaa aangoo kenneefi keessatti hin baane ta’e ammoo manni murtii seera san fudhatama dhabsisuu kan danda’u ta’uu hubachuu ni danda’ama.

Gara biyya Ingilizittis yoo dhufnu, manneen murtii seerota aangoo bakka bu’insaan bahan irratti to’annoo ni taasisa.53 Manni murtii Ingiliiz sirrummaa

48 Marume, S. etal, Olitti yaadannoo lak. 32ffaa.
49 Poverty, F. etal, Olitti yaadannoo lak. 42ffaa.
50 Jemina Fabiawari Benson, Olitti yaadannoo lak.. 40ffaa. It is said in Nigeria, as the country does not really have in place an adequate system of legislative scrutiny of delegated legislation. What seems to be relied on here is judicial control which is not enough because, decisions that are made under judicial review seem to affect only parties to it as against Parliamentary scrutiny that cuts across the whole society.
51 Jemina Fabiawari Benson, Olitti yaadannoo lak. 40ffaa.
52 Akkuma 51ffaa.
53 Beatson, Jack, Olitti yaadannoo lak. 35ffaa.
2.4.3. To’annoo Qaama Raawwachiistuu (Executive Control)

Qaamni seera raawwachiisuuus aangoo bakka bu’insaan seeraa baasuq qaama seeraa baasuq kenneefeef bu’uura aangoo kenneefeifiin raawwatamuu isaa mirkaneeffachuuf ni hojjeta.55 Sababiin isaa, daangaa aangoo kenneefeifiin keessatti kan hin raawwamne yoo ta’e, inni aangoo kenne seera bakka bu’insaan bahe san raawwatamummaa akka hin qabaanne taasisuu waan danda’uufi dha. Biyya Ingiliiz keessatti, qaamni raawwachiistuu aangoo isaatiin ala bahee akka hin raawwanne koree kaabinee hundeeessuu to’annoo taasisa. Hojjii kanaaafis koreen dhimma seeraa (legislative committee) jedhamu kan hundaa’e yoo ta’u, koreen kunis dambiilee fi qajeelfamootni aangoo bakka bu’insaan bahan bu’uura seera aangesseen kan bahe ta’uu isaa mirkaneessuuf itti gaafatamummaa qaba.56 Naayijeeriyaa keessattiis sirnoota to’annoo jiran keessaa kan qaama raawwachiistuun raawwatamu isa tokko.57

3. SIRNA TO’ANNOO SEEROTA AANGOO BAKKA BU’UMMAAN BA’ANII: AKKA NAANNOO OROMIYAATTI

Hog-barruuwwan kutaa lammaaffaa jalatti ilaalaman, seerota jiranii fi daataawwan bifa adda addaan walitti qabaman ka’umsa godhachuun, sirni to’annoo dambiilee fi qajeelfamoota Oromiyaa keessaaatti bahanii maal akka fakkataatu fi rakoowwan kanaan walqabatanii jiran kutaa kana jalatti xiinxalameera. Kutaan kun xiinxalaaf akka tolutti kutaaleet xiiqqaa sadiitti qoodamuu dhiyaateera. Kutaan xiiqqaa duraa, gama to’annoo waliigalaan, yoo ilaalamu maal akka fakkata uu xiixale. Kutaan xiiqqaa lammataa, gama qaamolee mootummaa sadaniitiin to’annees dambiilee fi qajeelfamoota irratti

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54 Sabti, S. et al., Olitti yaadannelo lak.. 46flaa.
55 Oyelami, T.O., Olitti yaadannelo lak..1flaa.
56 Akkuma 55flaa.
57“Executive Control is another form of control that exists in Nigeria. The executives are always conscious of the fact that the law makers can always withdraw the delegated powers that they have conferred as such there are some level of control that it imposes on itself in the exercise of these powers in order not to be embarrassed by the exercise of parliamentary powers over its regulations.” (Jemina Fabiawari Benson, Olitti yaadannelo lak. 40flaa.)
taasifamu qabatamatti maal akka fakkaatu xiinxale. Kutaan xiqqaa sadaaffaa, hanqina to’annoo dambiilee fi qajeelfamootaa irraa ka’uun rakkoowwan qabatamatti mul’ataa jiran maal fa’a akka ta’an sakatta’eera.

3.1. To’annoo Waliigalaa

Kutaa kana jalatti, Oromiyaa keessatti, dambiilee fi qajeelfamoonni aangoo bakka bu’insaan ba’an ija to’annoo waliigalaatiin yoo madaalaman maal akka fakkaatantuu xiinxalame. Xiinxalicha qixa sirriin gaggeessuuf akka tolu ammoo adeemsaa qophii isaanii beekuun barbaachisaa dha. Waan ta’eefuu, adeemsaa qophii dambiilee fi qajeelfamootaa adda adda baasuun akka armaan gadiitti haa ilaallu.

3.1.1. Adeemsa Qophii Dambiilee

Dambiin Hojimaata Mana Marii Bulchiinsa Mootummaa Naannoo Oromiyaa Lak.131/2003, kwt.15 irratti adeemsa dambiileen naannicha keessatti bahan keessa darban tarreesseera. Haaluma kanaan,
1) Qaamni wixineen seeraa akka qophaatu yaada burqisiise,duraan dursee,barbaachisummaa fi kallatti isaa irratti Pirezidaantii wajjiin mariyachuu qaba.

2) Qophii wixine wixaa seeraa qorannoo barbaachisu gaggeessuu.

3) Qorannoo irratti hundaa’tuun seera wixineessuu.

4) Qaamni wixinicha qopheesse qorannoo wixinicha qopheessuuuf gaggeeffame wajjiin Biiroo Haqaaf dhiyyessuun ogummaa seeraatii ilaalamee irratti marf’atamuuun sirreeffamni barbaachisaa ta’e ni taasifama.

5) Wixineen akkaataa olitti sirreeffamne qo’annoo gaggeeffamee fi yaadota falmisiisaa fi murtii barbaadan haala agarsiisuu danda’tuun qophaa’ee xalayaadhaan waajjira Pirezidaantii fi dhiyyaata.

6) Dameen seeraa waajjira Pirezidaantii qaama wixineen qopheesssee fi Biiroo Haqaa Oromiyaa wallin ta’tuun ni ilaala.

7) Ilaalee barbaachisaa ta’ee yoo argarne qaamota biiroo dhimmii ilaalu wajjiin marii gaggeessuun wixineen akka gabbatu ni taasifama.

8) Wixineen haala kanaan damee seeraatiin erga illaalamee booda,Mana Mariif ni dhiyyaata.
Kunis adeemsa dambiileen keessa darbuun ba’an ilaalchisee uwwisi seerra kan jiru ta’uu agarsiisa. Seerri kun qajeeltoowwan jiran keessaa hirmaachisummaaf uwwisa kenneera. Sababni isaa, fakkeenyaaf, kwt.15 (2) (b) jalatti, qaamni wixinee seerra qopheesse qo’annoo wixinicha qopheessuuf gaggeeffame wajji irratti mari’atamuun sirreefamni barbaachisaa ta’e erga taasifameen boda ta’uu akka qabu tumameera. Wixineen qorannoo jira taanaan ammoo qaamotni dhimmii ilaallatu irratti waan mari’atuuf hirmaachisummaan ni jira jedhamee tilmaamama. Dabalataan, dambuma kana kwt.17 (a) jalatti, dhimmi murtee barbaachisu kamiyyuu osoo mana mariif hin dhiyaaatiin dura, manneen hojjii dhimmi ilaalu, federaala, naannolee biraa dabalatee yoo barbaachisaa ta’ee argames yaada hawaasichaa argachuudhaan yaada kanniin jiddi galeessa kan godhate dhiyeessuun dirqama mana hojjii mootummaa dhiimnicha dhiyeessuu akka ta’u tumameera. Dhimmoota murtee barbaadan keessa tokko ammoo dhimma aangoo bakku bu’insaan seera baasuu akka ta’e beekamaa dha. Kanaaf, dambichi qajeeltoo hirmaachisummaa uummataa kan hammate akka ta’e hubachuun ni danda’ama.


58 Labsii Magalata Oromiyaaa Irra Deebiidhaan Hundeessuuf Bahe, Lak 186/2006, Kwt.3 (1).
Dambichi qajeeltoo beeksisuuf (principle of notice) garuu uuwwisa hin kennine. Waan ta’eefuu, adeemsa qophii dambiilee Oromiyaa ilaalthisee uuwwisni seeraa kan jiru ta’us, ija to’annoo waliigalaatiin yoo madaalamu garuu gahaa dha jechuun hin danda’amu.

Qajeeltoo hirmacchisummaa dambichi beekamtii kenne hojiirra oolchuun walqabatee qatabamaan hanqinatu jira. Kun, fakkeenyaaf, qorannoon dambiilee baasuuf gaggeeffamu bilchinaan gaggeeffamuu dhabuu, qaamolee dhimmi ilaallatu waliin marii bilchina qabu taasisu dhabuu, yaadota marii irratti dihiyaaten fudhachuun hammachiisuu dhubuu, fi kkf fa’i.

Ija qajeeltoo maxxansaatiin (principle of publication) yoo ilaallu, gama hammata seeraatiin qawwi jirachu baatus, maxxansa dabiileen walqabatee qatabamaan hanqinni ni jira. Hundaa ol, qaamni abbummaan dambiilee maxxansuuuf seeraan angeffame eenyu akka ta’ee hanga bara 2009 ALItti hin beekamu ture.61 Biiroon Haqaa Oromiyaas (amma mana hojii Abbaa Alanagaa Waliigalaa) maxxansaa fi jiildessaa kan ture seeraan angeffamee osoo hin taane, itti siqeenyuma seerotaaf qabu irraa ka’ee akka ta’ee afgaaffii gaggeeffame irraa ni hubatama.62 Waan ta’eefuu, baajata hojii kanaaf barbaachisu ramaduu xiyyeeffanno hojjechuu irratti hanqinni jiru bal’aa dha.63 Kun ammoo dambiilee ba’an maxxansuun dhaqqabamaa taasisuu irratti rakkoo fideera. Rawwiin gama maxxansa dambiileen jirus hanga qorannoon kun gaggeeffametti meeqa akka ta’ee adda bahees sirriitti hin beekamu.64 Haa ta’u malee, dambiilee 195 hanga yoonaatti ba’an keessaa kan maxxanfaman 72 kan hin caalle ta’uuti tilmaama.65 Kun dhibbeentaan yoo shallagamu % 36.73 qofa waan ta’uuf, raawwiin jiru gadi bu’aa ta’uu namatti agarsiisa.
3.1.2. Adeemsa Qophii Qajeelfamootaa


Qaphxiiin xinxala barbaaduu, adeemsi qophii baratamaan jiru kun ija qajeeltoowwan seerotni aangoo bakka bu’insaan ba’aniin yoo madaalamu, attamitti ilaalamuu danda’a? kan jedhu dha. Qajeeltoon beeksisuuf seeraan


67 Fakkenyaaf, Caffee qajeelfamoota digdama(20), Biiroon Haqaa Oromiyaa qajeelfamoota kudhan (10), Biiroon Misooma Magaalaa fi Manneen Oromiyaa qajeelfamoota kudhasagal (19), Biiroon Bulchinsaa fi Itti Fayyadama Lafa Baadiyaa qajeelfamoota saddeet (8) baafatanii itti hojjechaa akka jiran afgaaffii gaggheeefame irraa hubachuun danda’ameera. Fakkenyaaf, Caffee qajeelfamoota digdama(20), Biiroon Haqaa Oromiyaa qajeelfamoota kudhan (10), Biiroon Misooma Magaalaa fi Manneen Oromiyaa qajeelfamoota kudhasagal (19), Biiroon Bulchinsaa fi Itti Fayyadama Lafa Baadiyaa qajeelfamoota saddeet (8) baafatanii itti hojjechaa akka jiran afgaaffii gaggheeefame irraa hubachuun danda’ameera.

68 Fakkenyaaf, Caffee qajeelfamoota digdama(20), Biiroon Haqaa Oromiyaa qajeelfamoota kudhan (10), Biiroon Misooma Magaalaa fi Manneen Oromiyaa qajeelfamoota kudhasagal (19), Biiroon Bulchinsaa fi Itti Fayyadama Lafa Baadiyaa qajeelfamoota saddeet (8) baafatanii itti hojjechaa akka jiran afgaaffii gaggheeefame irraa hubachuun danda’ameera.

uwwisa hin arganne. Baratamni isaas hin jiru waan ta’eef xiinxala addaa osoo hin barbaachisiin gabaabumatti bira darbuu dandeeyaa.


71 Ob. Addisuu Laggaas, Olitti yaadannoo lak. 60ffaa.
72 Ob. Addisuu Laggaas, Akkuma 71ffaa.
3.2. TO’ANNOO QAAMOLEE MOOTUMMAAN GODHAMU

3.2.1. To’annoo Qaama Seera Baasaan (Caffee) Ta’u

Muuxannoowwan kan agarsiisan seera baastuun tooftawwan lamatti fayyadamuun dambiilee fi qajeelfamoota bakka bu’insaan bahan akka to’atu dha. Inni duraa, durumaan aangoo bakka bu’insaa ifa taasisee kennuu; fi inni lammataa, sirna koree hundeessuun to’annoo gaggeessuu dha. Kutaa kana jalatti, to’annoon Caffee Oromiyaan taasifamaa jiru ija kanaan yoo ilaalamu maal akka fakkaatu tokko tokkoon xiinxalameera.

A) Tooftaa Aangoo Bakka Bu’insaa Ifa Taasisuun Kennuu

Aangoon bakka bu’insaa ifa ta’ee kennamuu qaba yommuu jedhamu, qaamni seera akka tumuuf aangoo bakka bu’insaa argate maal irratti seera tumuuf akka aangeffame sirriitti beekuun daangaa aangoo kennameef keessatti seera baasu danda’uu qaba yaada jedhu agarsiisa.74 Caffeen Oromiyaan haala sadiin aangoo bakka bu’insaa kenna. Tokkoffaa, bifuma waliigala ta’een keewwata tokkoon labsicha raawwachiisuuuf Manni Marii Bulchiinsa Mootummaa Naannoo Oromiyaak dambii baasu akka danda’u tumuu dha.75 Lammaffaa, dhimmoota labsichaan uwwifaman keessaa dambin dhimmoota adda ba’an qofa irratti kan tumamuu akka ta’e keewwata-keewwataan adda baasee

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74 Delegated Legislation Text Book Notes, F29
agarsiisuudhani. Sedaffaa, mala tokkoffaa fi lammaffaa kanniin iddoo tokkotti waluma faana fayyadamuudhani.

Qaphxiin xiinxala barbaadu, tooftaawwan kenninsa aangoo bakka bu’insaa sadan olitti ibsaman keessaa isa kamti filatamaa dha? kan jedhu dha. Kun ammoo debi’ee filanoowwwan jiran keessaa isa kamti aangoo bakka bu’insaan dambii ykn qajeeffama baasu ifa taasisuu danda’a? gaaffii jedhu kaasa. Sababni isaa, muuxannoo biyyootaa sakattaane irraa waanti hubanne qabiyyee, kaayyoo, fi daangaan aangoo bakka bu’insaan kennaamu ifa ta’uu qaba kan jedhu malee bifa kanaan yoo kennaame sirrii ta’a, ykn sirrii hin ta’u kan jedhu miti waan ta’eefi dha. Dhimma kana ilaalchisuun yaadni afgaaffiin walitti qabames adda addummaa qaba. Yaadni tokko, waliigala taasisuun iddoo tokkotti keewwata tootoo kennuun dhamma kam irratti aangoon bakka bu’insaa akka kennaame adda baasanii beekuuf nama hin dandeessisu; hojii to’annoo Caffeen gaggeessus ulaaftaa taasissa waan ta’ee, labsicha keessaa dhimmoota dambii fi/ynk qajeeffamni irratti ba’uu qabu adda baasuu bakka bu’insa kennuu wayya jechuun tooftaa lammaffaa irratti ibsabe filatamaa taasisu. Yaadni biraa ammoo, sirni wixineessa seeraa akkuma biyyattiittuu baay’ee laafaa waan ta’ee, dhimmoota dambii fi/ynk qajeeffamni irratti ba’uun barbaachisu jalqabuma irratti adda baafachuun labsii keessatti


77Fakkeenyaaaf, Labsii Kenninsa Hayyamaa fi Bulchiinsa Abukaattotaa fi Barreessitoota Dhimma Seeraa Mootummaa Naannoo Oromiyaa Lak.182/2005 kwt. 10 (3) (b) jalatti Dhaabbbata barnooatta seeraa beekamtiir argate irraa barumsa seeraatiin dippiloomaan eebbijamee tajaajila ogummaa seeraatiin waggaa saddeetiifi isaa ol kan tajaajile yoo ta’e. Raawwiin Keewwata kanaa Dambii bahuun kan mutaa’u ta’a jechuun tooflaa lammeffaa hordofee. Labsichumti kun kwt. kwt.78 (1) jalatti ammoo ‘Manni Maree Bulchiinsa Mootummaa Naannoo Oromiyaa Labsii kana raawwachiitsuf kan gargaaru Dambii baasu ni danda’ a jechuun tooflaa tokkooffaatti fayyadamuun aangoo bakka bu’insaa keennerra.

keewwata-keewwataan tumuun akka ulfaatu ibsuun sirnuma kenninsaa amma itti hojjetamaa jiru hordofuun gaarii akka ta’e ibsu.79

Yaadonni lamaanuu dhugummaa of keessaa qabu. Haata’u maleee dhimmoota lama jiddu galeessa godhachuun xiiinhaluun gaarii (ta’a tokkoffaa, haalli aangichi itti kennamuu iftoomina qabaachu yoo ta’u; lammaffaan, labsiissaan keenya qorannoo gad-fageenyaa qabu irratti hunda’anii bahuu dhabuu isaaniti. Kana bu’uureffannnee yoo ilaallu, muuxannoo amma itti hojjetamaa jiru keessaan filannoon sadafaa (bifa waligalaatiin aangoo bakka bu’insaa kennuu fi tokko tokkoon keewwata- keewwataan walfaana yeroon tokkotti fayyadamuu) irrada deddeebii hin barbaachifnine ta’uu bira darbee qaamni aangoo bakka bu’insaan dambii ykn qajeelfama aka baasu anfeffamme aangegoo kennameefiin ala (ultra vires) akka ba’uuf haala mijataa uummn ala faayidaan argamsiisu hin jiru jechuun ni danda’a. Sababni isaa, seerri ba’u durumaan qorannoo irratti kan hundaa’e yoo ta’e, seera baafduun dhimmoota kam faa irratti ofif seera akka baasu fi dhimmoota kam faa irratti aangoo bakka bu’insaa akka kennuu asumaa achi dursee beekuu ni danda’a. Kana ammoo tooftaan wan sadan amma itti hojjetamaa jiran keessaa isa 1fiiay kn isaa 2fiiay qofa hordofuun aangoo bakka bu’insaa kennuu ni danda’a. Haataa ta’u maleee, tooftaan 1fiiay irra tooftaan 2fiiay caalaatti filatamaa ta’uu akka danda’u waanti namatti agarsiisu ni jira. Sababni isaa, seerri aangoo bakka bu’insaan seera baasu aangessu qabiyyee, kaayyoo, fi daangaan ifa ta’uuti irraa eegama. Qabatamatti garuu, hojiirra oolmaa labsii tokkoof dhimmoonni dambiin ykn qajeelfamni akka irratti ba’u barbaadamu hedduu ta’uu danda’u; hedduudhas. Dhimmoota hedduu kannenen keewwata seeraa tokkoon akkaataa barbaadamuun ifa godhanii aangoo bakka bu’insaa kennuu rakku ta’uun isaa hin oolu. Kun kan agarsiisu, tooftaan 1fiiay fayyadamuun aangoo bakka bu’insaan dambiilee ykn qajeelfamota baasuuf ifa godhanii kennuu kan rakkuu ta’uudha.

Tooftaan 2fiiay amma itti hojjetamaa jiru (aangoo bakka bu’insaan dambii fi/ykn qajeelfama keewwatawan dhimmichi ilaalu jalatti ibsuu) kanneen biroon walbira qabamee yoo ilaalamu uumamuma isaatiinuuf ifa dha jedhamee

yaadama. Dhimmooni dambii fi/ykn qajeelfamni irratti ba’an hedduu yoo ta’anis tokko tokkoon ifa godhanii kaa’uuf tooftaa mijataa dha. Dabalataan, tooftichi aangicha daangessuu dhimma dambii fi/ykn qajeelfamnni akka irratti ba’u barbaadame akkaataa barbaadamuuun ifa godhanii kaa’uuf ni dandeessisa. Sababni isaa, seerri aangoo bakka bu’insaan ba’u dhimmuma keewwata sana jalatti tumaamee jiru irratti kan daanga’e akka ta’e ni beekama waan ta’eefi.80 Waan ta’eefuu, jalqabumaan, labsiin tumamu qorannoo gahaa irratti kan hundaa’e taanaan, tooftaa lammaffaa amma itti hojetamaa jiru kana (keewwata labsii dambii fi/ykn qajeelfamni akka irratti ba’u barbaadamu jalatti ibsaa adeemu) qofatti fayyadamuuun aangoo bakka bu’insaan dambii fi/ykn qajeelfama baasu kennuu ni danda’ama. Kana gochuun kaayyoo barbaadame milkeessuu bira darbee Caffeen hojimaata walfakkaataa ta’e akka hordofu ni dandeessisa amantaa jedhu qabna.

Kanaan walqabatee hanqinni Caffee birratti mul’atu keewwata aangoo bakka bu’insaan seera baasu aangessu (enacting clause) kanaaf xiyyeeffannoog gahaa ta’e kennuu xiixaaluu dhabuu dha.81 Caffeen Oromiyaa tumaa seeraa bakka bu’insaan seera baasu aangessu keewwatoota biroo labsicha keessatti ibsaman irrara adda godhee hin ilaalu.82 Kun ammoo muuxannoo biyyootaa kan akka Hindii fi Ingiliiz fa’a83 irraas kan maqe dha. Kun kan agarsiisu, tumaa seeraa aangoo bakka bu’insaan seera baasu aangessu ilaalchisee Caffeen Oromiyaa xiyyeeffannoog guddaa akka hin kennine dha.

80 Haa ta’u malee, akkuma Seerri Bu’uuraa biyya Jarman jedhu sanatti qabiyeen, kaayyoo, fi daangaan aangoo bakka bu’insaa ifatti beekamuu yoo baate tooftaa kana hordofuu qoftii to’anno Caffeen taasisuuuf wabii ta’uun hin danda’u.
82 Afgaaffiwwan ob. Addisuu Fallaqaa, ob. Abdi Kadiir fi Ob. Isaa Boruu, waliin gaggeeffame (Akkuma lak.81fi)
83 Fakkeenyaaaf, paarlaamaan biyya Hindii tumaa seeraa aangoo bakka bu’insaan seera baasu kennu irratti addatti falmii cimaa gaggeessa; waan ifa hin taane irratti yeroo gaaffii (question hour) ni qabaata. Ingilizittis dhimmoota muraasa irratti seerota aangoo bakka bu’insaan kennaman kana paarlaamaan kana hordofuu fi to’atu ta’uul jalqabuma seera bakka bu’insaan seerri akka ba’u aangessu keessatti ibsama.
B) Sirna Koreetti Fayyadamuu (The Committee System)

Caffeen Mootummaa Naannoo Oromiyaa koreewwan dhaabbbii saddetteetti gurmee jira. 84 Dambii ykn qajeelfamni aangoo bakka bu’insaan ba’u kamiyyuu daangaa seerri Caffeen ba’e aangesssee fi seera Caffeen baaseen akkaataa walsimutti ba’uu qaba. 85 Daangaa jedhame keessatti yoo hin baane Caffeen sirna ittiin to’atu tolfatee to’achuun dirqama isaaati. To’annoo kanas koreewwan dhaabbbii fiayyadamuu gaggeessuu danda’a. Koreewwan dhaabbbii keessaa, hojiin to’annoo dambiilee fi qajeelfamoota aangoo bakka bu’insaan ba’anii kallattiin Koorree Dhimma Seeraa fi Bulchiinsaa ilaallata. To’annoon koorree ta’us sadarkaa wixinee fi erga bahee hojiirra oolee booda ta’uu danda’a.

Sadarkaa Wixineetti


Qajeelfamoota: Mannee hojiin qorannichaان sakattaa’aman keessaa tokko kaka’umsa ofii isaaatiin wixinee qajeelfama isaaati irratti koorree dhaabbbii Caffee

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кан марисису та’ус⁸⁶, аккума дамбиеlee, qajeelfamoonnis sadarkaa wixineetti Koree Dhaabbii Caffeef hin dhiyaatan. Gabaabumatti, seeronni aangoo bakka bu’insaan ba’an (dambileeles ta’an qajeelfamoonni) sadarkaa wixineetti koree dhaabbi dhhimoota seeraa fi bulchiinsaa Caffeef dhiyaachuun adeemsi ittiin to’ataman ifatti seeraan diriiree hin jiru.

➢ Erga Ragga’anii Booda

To’annoo Caffeen dambiilees ta’e qajeelfamoota ragga’uun hojiirra jiran irratti taasisaa turee fi jiru yoo ilaalamu bu’a qabeessa kan nama jechisissu miti. Kanaafis agarsiiftuuwwan adda addaa kan jiran yommuu ta’u, kanneen keessaa seerotni aangoo bakka bu’insaan akka ba’an jedhame ba’uu fi ba’uu dhabuu isaanii hordofuu dhabuu, seerri armaan dura Caffeen baasee hojiirra jiru yommuu fooyyaa’uutti dambii fi/ykn qajeelfamni labsicha hojiirra oolchuuf ba’e sanuma faana akka fooyyaa’uuf hordoffii gochuu dhabuu, fi kkf akka fakkeenyaatti kaasuun ni danda’ama.⁸⁷ Labsiwwan meeqaaf dambiileenii fi qajeelfamoonni akka ba’anii fi hin baanes adda ba’ee galmaa’ee hin beekamu.⁸⁸ Labsiwwan dhimmoota adda addaaaf dambii baasuun barbaachisaa akka ta’e akeekan baay’eef dambiin waggoota dheeraa osoo hin bahiin tureera.⁹⁰ Kun ammoo gama tokkoon, caffeen dambiilee inni akka bahaniif aangesse bahaa jiraachuuf dhisiisu isaanii akkasumas warri

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⁸⁸ Af-gaaffii Ob. Isaa Boruu, olitti yaadannoo lak. 62flater.
bahan bu’uura aangoo kenneemefiin ta’uu isaanii irratti to’annoo karaa koreewwan dhaabbiin gaggeeffamu kan hin jirre ta’uu agarssiisa.

Gama biraan, rakkoowwan dambiilee fi/ykn qajeelfamootni akka bahanii Caffeen angeffaman yeroon bahuu dhabuuf hanqinni seeraa akkasii yeroo dheeraaf kan turan yoo ta’ellee, kan hubataman dhiyeynya kana ta’uu Labsii Gurmaa’a’ina, Hojimaata, Naamusa Miseensotaa, fi Sirna Walgahii Caffee Mootummaa Naannoo Oromiyaa IRRa Deebiidhaan Murteessuuf Bahe, Lak. 201/2009 irraa tilmaamuu ni danda’ama. Aangoo fi hojii Koreewwan Dhaabbi Caffee Oromiyaaaf labsii kanaan kennaman keessaa tokko seerotni Caffeedhaan bahan qixa barbaadamuun hojiirra akka oolan gochuuf dambii fi qajeelfamaan deeggaramuu isaanii hordofuu fi to’achuu dha.90 Dabalataan, qaamni dambii ykn qajeelfama bakak bu’iinsaan akka baasuuf aangoon seeraa kenneemef seerichi erga bahee booda ji’oota sadii keessatti baasuuf dirqama qaba.91 Qaphxiin kanaan walqabatee ka’uu malu yeroon ji’oota sadii labsichaan kenneem kun gahaadhaamoo gahaa miti? kan jedhu dha.

Kana ilaalchisuun yaadotni adda addaa kan jiran yoo ta’ellee92 akka waliigalaatti garuu, yeroo ji’oota sadii kana Caffeen Oromiyaa muuxannoo paarlamaa federaalaa irraa kan fudhate akka ta’e hubachuun danda’ameera.93 Qabatamaan garuu, erguma labsiin lak. 201/2009 ba’ee booda ji’oota sadii keessatti haalli dambiin itti hin baane ni jira. Fakkeenyaaf, Labsii Lak.201/2009 hojiirra oolchuuf Caffeen dambii baasu u akka qabu labsichumti kwt.74 jalatti tumeera. Labsichi guyyaa Caffeen ragga’e irraa kaasee hojiirra kan oole ta’us (Guraandhala 24, 2009), hanga yoonaaati dambiin osoo hin ba’iiniif jira. Dabalataan, Labsii Gibira Galii Mootummaa Naannoo Oromiyaa IRRa Deebiidhaan Fooryyeesuuf Bahe Lak.202/2009 Adoolessa 1, 2008 irraa ka’ee hojiirra kan oole yoo ta’us, hanga yoonaaati dambiin labsicha hojiirra oolchuu bu’uura kwt.92 tiin hin ba’iin jira. Hojiirra oolmaa labsichaan

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90Labsii Gurmaa’a’ina, Hojimaata, Naamusa Miseensotaafi Sirna Walgahii Caffee Mootummaa Naannoo Oromiyaa IRRa Deebiidhaan Murteessuuf Bahe, Lab. Lak.201/2009, kwt.45(5).
91Labsii Gurmaa’a’ina, Hojimaata, Naamusa Miseensotaafi Sirna Walgahii Caffee Mootummaa Naannoo Oromiyaa IRRa Deebiidhaan Murteessuuf Bahe, Lab. Lak.201/2009, kwt.32 (3).
93 Af-gaaffii ob. Isaa Boruu, Olitti yaadannoo lak. 62 flaA
madaaluuf yeroon gaheera jedhamuu baatus, yeroon ji’oota sadii jedhame kun qabatamaan hojiirra oolaan kan hin jirre ta’uu waanti namatti agarsiisu ni jira.

Haa ta’u malee, dhimmirurteessaan asitti ilaalamuu qabu yeroon ji’oota sadii dheerateera ykn gabaabateera jedhamuuf ka’umsa ta’uu kan qabu labsichi durumaan yoomuu qophaa’utti qorannoobu’uureffeeteetimoo miti? kan jedhu ta’uu qaba. Labsiin qorannoob gadi fageenya qabu irratti hundaa’eeti yoo ta’e, yeroo gabaabaa keessatti dambii ykn qajeelfama qopheessuun rakkoo waan hin taaneef ji’i sadii gahaadha jedhanii yaaduun ni danda’amaa. Gama biraatiin, adeemsi qophii labsichaan qorannoob gadi fageenya qabu irratti kan hin hundofne yoo ta’e, dambii ykn qajeelfama bu’a-qabeessa ta’e qopheessanii hojiirra oolchuuf yeroon kun hin gahu jedhanii yaaduun nama hin dhibu.

Akka waliigalaatti, Caffeen rakkoowwan seeroti aangoo bakka bu’insaan ba’an qaban kan hubatu dursee osoo hin taane erga komiiin hawaasaa isa dhaqqqabee booda dha. Rakkoo jiru erga beekeee boodas to’annoo bu’a qabeessa ta’e taasisaa kan jiru miti. Fakkeenyaaaf, adabbii tumuuun Dambii Bulchiinsaa fi Itti Fayyadama Lafa Baadiyaa Oromiyaachaa Lak.151/2005 daangaa aangoo bakka bu’insaa kenameefiin ala akka ba’e (ultra virus) Caffeen kan hubate Koreen Dhaabbii Dhimma Bulchiinsaa fi Seeraa hojiirra oolmaa seerota gamaaggamuuuf wayita marii taasisu ture.94 Rakko kana erga hubatee booda, tarkaanfiin fudhate yoo jiraate qaamni raawwachiisaan akka sirreessuuf xalayaadhaan qajeelfama kennuu dha.95 Haa ta’u malee, akkaataa qajeelfama kenameen hanga guuyaa har’aatti sirreeffamii gama qaama raawwachiisaan taasifame hin jiru. Dambichis har’as akkuma duraan turetti hojiirra oolaan jira. Kun Caffeen Oromiyaachaa dambiilee fi qajeelfamoota aangoo bakka bu’insaan ba’an to’achuu irratti ejjennoon qabu laafaa ta’uu agarsiisa.

3.2.2. To’annoo Qaama Seera Hiiktuun (Manneen Murtiin) Ta’u

Akka Itoophiyaattis ta’e, Naannoo Oromiyaatti aangoon abbaa seerummaan kan mana murtiiti.96 Manneen murtii Oromiyaachaa Heerummaa

94 Ob. Isaa Boruu, Akkuma 93ffaa.
95 Ob. Isaa Boruu, Akkuma 94ffaa.
96 Heera Mootummaa RDFI, Kwt 79 (1) fi Heera Mootummaa Naannoo Oromiyaachaa, Kwt 61 (2) walfaana dubbisaa.
Qabatamaa, to’annoon kallattii kanaan jiru maal akka fakkaatu beekuuf dhimmoota qatabamoo sakatta’uuf yaaliin kan taasifame ta’us, galmeewwan haala kanaan murtaa’an baay’inaan argachuu hin dandeeyne. Sababni isa: Tokkoffa, falmiiwwan akkasi jalqabumarraa gara mana murtiitti hin dihiyatan; mana murtiittis dhimmoonni waan itti baay’ataaniiif, seerotni sadarkaa sadarkaan jiran (labsii, dambii fii qajeelfamni) walsimu fii simuu dhabuu sakatta’uu caalaa seeruma dhimmichi bu’uureffatee dihiyatee hiikkuun furmaata kenna. Lammaffaa, abootiiin murtii, badii naamusaa seera ifa jiru cabsuun himatamuu dandeeyna sodaa jedhuun osuma beekanii dhiibanii itti hin deemani. Haa ta’u malee, qajeelfama dambiin wal hin simne, ykn dambii labsiiin wal hin simne hiikku seeraatiin fudhatama dhubsisuu hojiima idilee manneen murtii waan ta’eef, sodaan asumaa achi seera ifa jiru cabsuun naamusaan nan himatama jedhu sirri miti.

Sadaffaa, manneen murtii qaamni falmiitti jiru dambii ykn qajeelfamni falmiin irratti hundaa’ee dihiyatee fudhatamummaa qabaachuu akka hin qabne hanga falmii kaasutti eeguun bal’inaan bal’inaan bal’inaan.

97Heera Mootumaa Naanno Oromiya, Kwt 46.
98 Af-gaaaffiiwwan Ob. Wandimmuu Kabbadaa, Gaggeessaa Adeemsaa Hojjii KTAS; Dabalee Xilaahn, A/Murtii MMO Godina Arsii; Bazzuu Lammii, A/Murtii MMO Godina Arsii; Gammachu Dabalaa, A/Murtii Godina Arsii waliin 4/5/2010 gaggeeffame
101 Af-gaaaffii Ob. Biqilaa Abaarra, Pirezidaantii MMO Godina Addaa Adaamaa; Ob. Badiirtemaam Umar, Gaggeessaa KTAS MMO Godina Addaa Adaamaa; Soloomon
sodaa namuusaan nan himatama jedhuu fi manneen murtii tarkaanfii akkasii fudhachu danda’uu irrattis hubannoon jiru walfakkaataa ta’uu dhabuudha. Fakkeenyaaf, aangoon seera hiikuu mana murtii hanga seera hojiirra oolee jiru fudhatama dhabsiisuu hin gahu; kana gochuu kan danda’u Koomishinii Hiiktuu Heera Mootummaa dha jedhanii yaaduun ni jira. Haa ta’u malee, walitti bu’insi akka kanaa kan jiru taanaan gareewwan walfalman kaasanis kaasu baatanis, manni murtii dambii ykn qajeelfama aangoo bakka bu’insaan ba’e kana fudhatama dhabsiisuu irraa waanti isa daangessu hin jiraatu.


Manni Murtii Aanaa ragaan sirriitti erga qulqullaa’ee boda murtii itti fakkaate haa kennu jechuun dhaddacha gaafa 18/5/2007 ooleen Mana Murtii Aanaatti gad-deebiseera.


Dhimma biraa tokko irratti tumaaee adabbi dambii 151/2005 tiin wal qabatu tokko irratti Abbaan Alangaa galmee Mana Murtii Aanaa Wandoo Lakk. 02170 ta’e irratti himamattooonni (N-2) Seera Yakkaa bara 1996 bahe kwt 32(1A), 433 fi Dambii Bulchiinsaa fi Itti Fayyadama Lafa Baadiyyaa Lak. 151/2005 kwt 33(1) irra darbuun lafa bal’inni isaa hektaara 0.4 ta’u daangaa isaa kallatti hundaan ibsuan seeraan ala qabatan jechuun himatamaniiru. Manni Murtii Aanaa himanni itti banamee ragaan barbaachisu Waajjira Lafaaf

102 FakkeenyAAF, biyya Awustiraaliyaatti, seerotni mirga namoota dhuunfaa irratti dhiibbaa dhaqqabsiisu danda’an aangoo bakka bu’insaan ba’uu hin danda’an (SCOPE OF DELEGATED LEGISLATION available at: https://www. abyssinialaw. com/ component /k2/ item/310 ) < Onkoloolessa 20,2010 kan ilaalame>


Kana irraa waanti hubatamu, sadarkaa Dhaddacha ijibbaataa Mana Murtii Waliigala Oromiyaatti to’annoon seerota aangoo bakka bu’insaan bahan irratti taasifamu cimaa akka ta’ee fi hubannoon dhimmicha irratti jirus gaarii ta’uu dha.

3.2.3. To’annoo Qaama Seera Raawwachiisaan Ta’u

Qaamni biraa dambiilee fi qajeelfamoota aangoo bakka bu’insaan bahan irratti to’annoo gaggeessu qaama seera raawwchiistuu dha. Akka Naannoo Oromiyaattis to’annoon gama qaama raawwchiistuun taasifamu ni jira. Adeemsaalee dambiivwan keessa darbuun qophaa’an Dambii Hojimaata Mana Marii Bulchiinsa Mootummaa Naannoo Oromiyaa Lak. 131/2003, kwt.15 jalatti tarraa’ee jira. Haaluma kanaan, Biiroo Haqaa Oromiyaa keessatti adeemi hojii ijoo tokko hundaa’uun wixineewwan dambiilee sekteroota qaama raawwchiistuu adda addaa qophaa’anii dhiyaataniif seerota biroo waliin walsimu fi walsimu dhabuu isaanii sakatta’uun sirreeffamni barbaachisu akka fuadhatu taasisa jira.103 Kana booda, wixineen sirreeffame qo’annoo gaggeeffame fi yaadota falmisiisaa fi murtii barbaadan haala agarsiisuu danda’uun qophaa’ee xalayaadhaan waajjira Pirezidaantiif ni ergama. Dameen seeraa waajjira Pirezidaantiit qaama wixinee qopheessee fi Biiroo Haqaa Oromiyaa waliin ta’uun ilaalee; barbaachisaa ta’e yoo argame qaamota biroo dhimmi ilaalu wajjiin marii gaggeessuun wixinichi akka gabbatu taasisa. To’annoon akkasii kun sadarkaa wixineetti kan jalqabu

103 Maqaan guutuu adeemsa kanaa Adeemsa Hojii Ijoo Qorannoo fi Qophii Wixinee Seeraa jedhama.
ta’ee dambiilee hunda irratti fi qajeelfamoota muraasa\textsuperscript{104} sekteroota adda
addaatiin raawwatamanis kan dabalatu dha.\textsuperscript{105}

Iddoo kanatti, walitti dhufeenyi Biiroo Haqaa Oromiyaa fi Damee Seeraa
Waajjira Pirezidaantii jidduu jiru maal akka ta’e gaaffiin ka’uu mala. Haaluma
kanaan, qaamoleen lachuu hojii waldeeggarsaa (cooperative) kan hojjetan
malee hojii walmorkii (competing) kan hojjetan miti.\textsuperscript{106} Fakkeenyaaf,
qabiiyee wixinee seeraa irratti qaamoleen lachuu yaadaan waliigaluu yoo
dadhaban maalti ta’a? gaaffiin jedhu ka’uu mala. Kana ilaalchisee afgaaffii
gaggeeffamerraa kan hubatame hanga yoonaatti falmii ogummaa gaggeesseuun
yero isaan waliigaluu dadhabuun addaan ba’an kan hin jirre ta’uu dha.\textsuperscript{107}
Qaamoleen lachuu qaama raawwachiiftuu waan ta’aniif bifa kanaan hojii
waldeeggersa hojjechuun isaanii loojikaawaa dha jechuu ni danda’ama.
Kun kan agarsiisu, akkuma Kaabineen biyya Ingiliiz Koree Dhimmoota
Seeraa (Legislative Committee) hundeessuun seerota aangoo bakka bu’insaan
ba’an to’atu, Oromiyaa keessaatts Biiroon Haqaa fi Waajjirri Pirezidaantii
dambiilee hundaa fi qajeelfamoota muraasa kan to’atu ta’uu dha. Kanas
to’annoo qaama seera raawwachiiftuu jechuu daneenya.

3.3. DAMBIILEE FI QAJEELFAMOOTA AANGOO BAKKA
BU’INSAAN BA’AN IRRATTI RAKKOOWWAN
QABATAMAAN MUL’ATAN

3.3.1. Daangaa Aangoo Bakka Bu’insaa Kennameen Ala Ba’uu
(Ultra Vires)

Dambiin Bulchiinsaa fi Itti Fayyadaa Lafa Baadiya Oromiyaa Lak.151/2005
rakkoo akkasii qaba. Dambichi tumaalee labsii inni bu’uureffatee bahe

\textsuperscript{104} Akka fakkeenyaatti, qajeelfama kenniinsa mana jireenyaa barsiisotaa fudhachuun ni
danda’ama.

\textsuperscript{105} Af-gaaffii ob. Addisu Laggaas, Olitti yaadannoook lak. 60\textsuperscript{flaa}; Hajii Arsee, Olitti yaadannoook
lak.65\textsuperscript{flaa}; Sulxaan Abdo, Biiniyaam Makibab, Leeyilaa Mohaammad, fi Galataa Akkumaa,
Olitti yaadannoook lak. 80\textsuperscript{flaa}.

\textsuperscript{106}Afgaaffii Addisu Laggaas, Olitti yaadannoook lak. 60\textsuperscript{flaa}; Hajii Arsee, olitti yaadannoook lak.
65\textsuperscript{flaa}; Sulxaan Abdo, Biiniyaam Makibab, Leeyilaa Mohaammad, fi Galataa Akkumaa,
Olitti yaadannoook lak. 79\textsuperscript{flaa}.

\textsuperscript{107}Afgaaffiiwwan Addisu Laggaas,Olitti yaadannoook lak. 60\textsuperscript{flaa}; Hajii Arsee, Olitti yaadannoook
lak.65\textsuperscript{flaa}.

3.3.2. Mirga Ol’iyyannoo Sarbuu ykn Dhiphisuu

A) Mirga Ol’iyyannoo Sarbuu


\(^{108}\)Darbinsi yeroo kun falmii qaama lafa namootaan seeraan ala qabame debisuuuf aangoo qabu (mootummaa) fi nama dhuunfaa giddiutta ki’a qofa akka ilaallatu dambichiarraa ni hubatama. 

\(^{109}\)Dambichi kwt.36 (3) jalatti yaada murtee koreen naamusaa dihiyeessu irraa ka’uun murteen badii naamusaa gocha yakka malaammatummaa walqabatee raawwatuun Daarikteera Ol’aanaan kennaan kan dhumaa ta’a jechuun tumeera.

himatameera. Koreen naamusaa dhimmicha ilaales waggaa lamaaf sadarkaa fi mindaa irraa akka gadi bu’u bu’uura yaada murtii dhiyeeseen Daarikteerri Abbaa Taayitaa Galiwwanii Oromiyaad adabbicha cimsuun mirkanesesseera.

Ol’iyyataan komiin ol’iyyannoo kan dhiyeffate murtii adabbii kana komachuun yoo ta’u, Manni Murtii Bulchiinsaa Mootummaa Naannoo Oromiyaas komii dhiyaate simachuun D/kennaan dhiyaatee debbii akka kennu ajajus guuyaa beellamaatti dhiyaatee debbii waan hin kennineef akkaataa dambii lak.36/1996 kwt.42 (a)tiin mirga debbii kennuu bira darbuun bakka hin jirretti ilaaluun ol’iyyannichi ragaa gahaadhaan hin mirkanoofne jechuun adabbicha haqun bu’uura labsii lak.61/94 kwt.72 (1) tiin ol’iyyataa bilisaan gaggeesseera.


B) Mirga Ol’iyyanno Dhiphisuu


Aangoon Gumii Godinaa, balleessa naamusaa salphaa abbootii alangaa godinaa fi aanaa irratti dhiyaaatu qulqulesesse murtii itti kennuu yommuu ta’u, gareen murtii kenname irratti mormii qabus ol’iyyanno isaa Gumii


Dabalataan, sababa balleessaa naamusaa cimaatiin himatni Abbaa Alangaa Godinaa ykn Aanaa Gumii Waliigalaatti dhiyaatee yommuu qulqullaa’u, balleessaa naamusaa salphaa ta’ee yoo argame Gumii Waliigalaaf ofii isaatiif adabbii murteessuu ykn Gumii Godinaatti deebisuuf ni danda’a. 116


Badii naamusaa ilaalchisee qaamni aangoo adabbii murteessuu qabu Gumii yoo ta’u, innis Gumii Godinaa fi Gumii Waliigalaatt jedhamuun caa adda lamaan gurma’ee kan jiru dha.

112 Dambii Ittiin Bulmaata Abbootii Alangaa, Kwt.90 (1).
113 Dambii Ittiin Bulmaata Abbootii Alangaa, Kwt.80 (1).
114 Dambii Ittiin Bulmaata Abbootii Alangaa, Kwt. 80.
115 Dambii Ittiin Bulmaata Abbootii Alangaa, Kwt. 80.
116 Dambii Ittiin Bulmaata Abbootii Alangaa, Kwt. 80 (3).
117 Haalli murtii irra deebi’amee itti ilaalamu Dambicha kwt.91. jalatti akka itti aanutti ibsameera: Kwt. 91 Mirga Murtii Irra Deebi’amee Ilaalamu
1. Abbaan alangaa naamusa cimaatiin himatamee adabbii cimaan irratti murtaa’ee murtiin kennname Gumii Waliigalaatiin akka irra deebi’amee ilaalamuu fifiyyoono isaa Hoogganaaf dhiyeeffachuu ni danda’a.
2. Iyyannoo murtii irra deebi’amee akka ilaalamuu dhiyaatu guyyaa murtiin kennname irraa kaasee guyyoota 30 keessatti dhiyaachuu qaba.
3. Iyyannoo akkaataa keewwata kanne kaewwata xiqqaa (2) tiin hin dhibaahne fudhatama hin qabu; haa ta’u malee sababni humnaa ol ta’e yoo isa mudate akka hayyamamuuf Hoogganaaf iyyata dhiyeeessuu ni danda’a.
3.3.3. **Aangoo Qaama Biraaf Kennname Irratti Seera Baasuun**

Seerota qorannoo kana gaggeessuuf sakatta’aman keessaa Qajeelfama Abbaa Taayitaa Eegumsa Naannoo, Bosonaa, fi Jijjiirama Qilleensaa Naannoo Oromiyaan ba’e tokko irratti rakkoon akka kanaa mul’ateera. Qajeelfamnii kun Qajeelfama To’annoo Sochii Bu’aa Bosonaa fi Itti Fayyadama Bu’aa Bosona Mootummaa Naannoo Oromiyaay jedhamuun kan ba’e dha.⁰¹¹ Qajeelfamichi Abbaan Taayitichaa galii bu’aa bosona naannichaa seera qabeessa ta’e kамиyyuu irraa argamu (royality fee) ofumaaf sassaabuun misooma bosona mootummaaf, dawoo bineensota bosonaa eeguu, fi misoomsuuf oolchuu akka danda’uuf aangesseera.⁰¹² Haa ta’u malee, hojiin kun abbummaan Dhaabbata Bosonaa fi Bineensota Bosonaatiif kan kennee dha.

3.3.4. **Bifa Seerri Qabaachuu Malu Qabaachuu Dhabuu**

Seerri bifa (form) ittiin bahu kan mataa isaatii qaba. Fakkeenyayaf, lakkoofsaa fi bara itti bahe, seensa (preamble), seerichi maal bu’uureffachuun akka bahe ni caqafama. Haa ta’u malee, qajeelfamootni tokko tokko yeroo itti bifa waliigalaa seerri tokko qabaachuu qabu osoo hin qabaatiin bahan ni jira.⁰¹³ Fakkeenyayaf, Qajeelfamni Abbaa Taayitaa Eegumsa Naannoo, Bosonaa, fi Jijjiirama Qilleensaa Naannoo Oromiyaan ba’e tokko rakkoo akkasii qaba. Qajeelfamichi, Qajeelfama To’annoo Sochii Bu’aa Bosonaa fi Itti Fayyadama Bu’aa Bosona Mootummaa Naannoo Oromiyaaay jedhamuun bahe.⁰¹⁴ Mata-duree isaa, “Qajeelfamni kun labsii manneen hojii mootummaa naannoo Oromiyaay lak.199/2008 Bosonaa irratti hundaa’ee kan qophaa’ee jedhamee waamama” jedha. Silaa mata-dureen qajeelfamichaa waan qajeelfamichi bituuuf yaadamee ba’e haala agarsiisu danda’uun ta’u qaba ture. Akkasumas, qajeelfamichi kewwattoota tartiibaan hin teechifne.¹²² Rakkoon kun

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⁰¹¹ Qajeelfamni kun lak.oofsaa fi bara kan hin qabnee fi bifa qajeelfamni tokko qabatee ba’uu of keessatti qabateera jechuuf kan hin danda’amne dha.
⁰¹² Qajeelfamichi Qajeelfama To’annoo Sochii Bu’aa Bosonaa fi Itti Fayyadama Bu’aa Bosona Mootummaa Naannoo Oromiyaaay jedhamuun kan waamamu yoo ta’u; mata duree qajeelfama bosona mootummaa naannoo oromiyaaay jedhu jalatti hiikoo adda addaa kan teechiseera.
qajeelfamichi yerro ba’u ogeessa seeraa akka hin hirmaachisnee fi qaamolee dhimmichi ilaallatu hirmaachisuu dhabuu irraa akka maddu hubachuun hin rakkisu.

3.3.5. Seerri Caffeen Tume Yeroo Fooyyaa’u Kan Aangoo Bakka Bu’insaan Ba’u Duuka Fooyyaa’uu Dhabuu


Fakkeenyaaf, bosonaa fi abbaan qabeenyummaa bosonaa kutaa kana jalatti hiikoon kenameearaf. Qajeelfamichii garuu irra deebiyudhaan mata duree abbummaa qabeenya bosonaa kan jedhu jalatti irra deebiin hiikeera. Kana malees qajeelfamicheena siila seensa keessatti kan teechifamuu qabu hiikoo jechootaatti aansuuf teechiseera.

123 Af-gaaffii Ob.Isaa Boruu, Olitti yaadannoo lak. 62ffaa; Addisuu Fallaqaa, Olitti yaadannoo lak. 78ffaa.
124 Fakkeenyaaf Dambii Labsii Dhaabbilee Misooma Mootummaa Naannoo Oromiyaa Lak..

183/2008 ilaaluun ni danda’ama.
3.3.6. Dambiilee fi Qajeelfamoonni Aangoo Bakka Bu’insaa Yeroo Jedhame Keessatti Ba’uu Dhabuu

Akka Naannoo Oromiyaatti, Caffeen qaama mootummaa ol’aanaa bu’uuraan aangoo seerota baasuq qabu dha. Seerotni Caffeen ba’an hojiirra oooluu isaanis qaama ol’aantummaan to’atu dha. Qabatamaan garuu, Caffeen qaama dambii ykn qajeelfama akka baasuuf aangeffee horodofoon dambii ykn qajeelfama jedhame yeroon ba’aa adeemuu irratti to’annoo sirnaan akka hin gaggeessine ta’uu afgaaffiwwan gaggeeffamee fi sakatta’a seerotaa tokko tokko armaan olitti kutaa 3.2.1.B jalatti agarsiifne irraa kan hubatamu dha.

3.3.7. Dhimmoota Labsiin Aangeffamuu Malan Qajeelfamaan Aangessuu


126 Af-gaaffii Isaa Boruu, Olitti yaadannoo lak. 62ffaa; Addisuu Ballaqaafi Abdii Kadiir, Olitti yaadannoo lak. 78ffaa; Istaatiksii labsiwwan caffee bahan meeqaaf dambiin akka bahee fi hin baane illee bira gahuun rakisaadh. Labsii Caffee ammaa 207 irra gaheera; kanneen keessaa meeqaaf dambiin bahe ykn hin baane kan jedhu mataa isaa tiin rakkoo akka ta’e af-gaaffii Efereem, Daarikteera Daarektoreetii Kenna Deeggersa Ogummaa, Hojii Seera Tumuu, fi Hordoffii fi To’annoo Caffee Oromiyaaw waliin gaafta 07/05/2010 gaggeeffame ni agarsiisa.

127 Seerota kanniin wayita to’annoo Caffeen dambiilee fi qajeelfamoota irratti taasisu xinnallu (3.2.1.B) fakkeenyaaf wa an agarsiifneef, irra deddeebii hambisuu jecha asitti osoo hin agarsiissiin bira darbameera.

128 Labsii Hojjettoota Mootummaa Naannoo Oromiyaaa Lak. 61/1994, Kwt.70.

129 Haaluma kanaan, Manni Murtichaa:

1) Seeraan ala hojiirraa dhorkamuudhaan yookiin tajaajilli isaa addaan cituudhaan;
2) Adabni naamussaa cimaan waan irratti mutraa ‘eef;
3) Seeraan ala mindaan isaa yookiin kaffaltiin biroo kan jalaa qabame yookiin cite ta’uu isaan;

3.3.8. Dhimmoota Qajeelfamaan Ba’uu Qaban Dambii Baasuu

Ejensiin Galmeeessa Ragaalee Bu’uuraq Hawaasummaa Naannoo Oromiyaa Dambii Lakk 169/2006 tiin kan hundaa’ee yoo ta’u; kaayyoon isaas hojiillee galmeeessa ragaalee bu’uuraa hawaasummaatiin walqabatan hoogganuu dha.132 Aangoo fi gahee hojij Jajeeschaa keessaa tokko galmeen ragaalee bu’uuraa hawaasummaa naannicha keessatti haala barbaachisuu raawwatamuu fi waraqaan ragaa kennamuu isaa to’achuu dha. Dambichi waraqaan ragaa ragaalee bu’uuraa hawaasummaa akkamitti akka kennamuu fi kaffaltii tajaajilicchaa hangam akaa ta’e hin tumne. Ejensiin boordiin kan bulu yoo ta’u; boordichiis aangoo qajeelfamaa baasuuf ni qaba.133 Dambichi kana raawwachiisuuf qajeelfama barbaachisu keessaa inni tokko hanga kaffaltii tajaajila ragaalee bu’uuraa hawaasummaati. Fakkeeyaaaf, ragaag dhalootaa, kan du’aay jeechuu dha. Haa ta’u maleee, dhimmoota olitti tarreeffaman

4) Miidhaa haala hojjii isaan irra gaheen haala walqabateen mirgi isaa hir’achu u isaatii hojjetaan mootumma komii qabu ol’iyyanno inna dhiyeuffatu ilaalee murteessuuf aango ni qaabata (kwt. 71, Lab. Lak. 64/1996 ilaala)

130Qajeelfama Raawwii Ramaddii Hojjetoota Mootummaa Gitoota Hojjii Mala Qabxiin Madaaluuufi Sadarkeessuu Hojiitiin Madaalamannii Sadarkeeffaman Irratti Gaggeessuu Qophaa’e Lak.10/2009 kwt 32 fi 36 (3) walsaana yoo dubbifamu.

131Fakkeenyaaf, dhimmoota falmii hojij JEG lak. T-947/10; Tigist Biyaaziniliny Waaseey Fi Waaajjira Bulchiinsaa Fi Nageeyaa Godina Wallagga Bahaaw fi Galmee W-909/10; Wargiduuf Safaraa fi Aabbaa Taayitaa Daandiiwwan Oromiyaa jidduutti gaggeeffamne ilaaluun ni danda’aama.


kanaaf Kaffaltii Tajaajilaa Kenniinsa Waraqaa Ragaa Ragaalee Bu’uuraa Hawaasummaa murteessuuf dambitu bahe.134 Dhimmi dambii kana keessatti téechifames dhimma qajeelfamaan tumuuu danda’u kan akka hanga kaffaltii tajaajila hawaasummaa murteessuuf dha.

3.3.9. Dhimmoota Hunda Hammachiisuu/Diddiiriirsuuf Dhabuun Hojiirratti Rakkoo Uumuu

goddachuun\(^{137}\) kan hojratu ta’ee, dabalataan aangoo fi hojii inni hojjetus (a-j) tti tarresseera. Dambii 186/2008 kwt 43 irratti aangoo qajeelfama baasu Biirro Industirii fi Misooma Magaalaa/yeroo ammaa Biirro Misooma Magaalaa fi Manneeniif kenneera. Aangoo kutaa magaalaa ilaalchisee Biirichi qajeelfama baasuu yoo jedhu dambii keessa waan hin jirreef, qabatamatti rakkoo uumeera.\(^{138}\)

4. YAADOTA GUDUNFAA FI FURMAATAA

Xiinxala waliigalaa gaggeeffame irraa ka’uun argannoowwan armaan gadii argamaniiru.

\(\text{Qophiin dambiilee fi qajeelfamootaa ija to’annoo waliigalaatiin yoo ilaalamu, qaawwa seeraas ta’e kan raawwii ni qaba. Iddoo tokko tokkotti (fknf: qajeeltoo beeksisuu) uwwisi seeraa hin jiru; hojimaa tanis itti hojjetamaa hin jiru.Iddoo tokko tokkotti ammoo (qajeeltoo hirmaachisuu, fi maxxansuu) uwwisi seeraa jira. Hojiirra oolmaan isaa garuu, hanqina guddaa qaba.}\)

\(\text{To’annoon qaamoleen mootummaa adda addaan, keessattuu Caffee fi Manneen Murtiin dambiilee fi qajeelfamoota irratti taasifamaa jiru hanqina bal’aa qaba.}\)

\(\text{Qaama raawwachiftuun sadarkaa wixineetti dambiilee irratti to’annoo akka taasisu sirni dandeessisu diriiree jiraachuu isaa akka gaariitti kan ilaalamu ta’us, qajeelfamoota ilaalchisee warreen adeemsaa qophii dambiilee hordofuu ba’an yoo ta’e malee sirni ittiin to’atamu diriiree hin jiru. Dambiilee ilaalchisees qabatamatti qaawwa isaan agarsiisaa jiran irraa ka’uun yoo ilaalamu, to’annoon jiru bu’a-qabeessa jechuun hin danda’amu.}\)

\(\text{To’annoon dambiilee fi qajeelfamoota irratti taasifamu cimaa akka hin taane dhimmootni akka sababoota ijootti ilaalaman uwwisi seeraa gahaa}\)

\(^{137}\)Dambichi silaa aangoo fi hojiiwwan kutaan magaalaa hojjetu tarreessuun isaan keessa warra kamtu ganda magaalaafoodamuu akka danda’an ibsee gaarii dha.

\(^{138}\)Afgaaffii Jamaal Usmaan, Olitti yaadannoo lak. 70\(^{\text{tha}}\).
ta’e jiraachuu dhabuu, bakka uwwisi seeraa jirutti ammoo hojiirra oolmaan laafaa ta’uu fi hubannoon gahaa ta’e dhabamu dha.

Kana irraa ka’uun yaadotni furmaataa armaan gadii akeekamaniiru:

✓ To’annoon waliigalaa fi qaamolee mootummaa adda addaan dambiilee fi qajeelfamoota irratti taasifamu bu’a qabeessa taasisuuf Caffeen Oromiyaa seera bulchiinsaa qindaa’aa yoo baase gaarii dha. Seerri ba’u kun bu’uuraan:

  a) Sirni kenninsa aangoo bakka bu’insaan dambiilee fi qajeelfamoota baasuq qabiyyee, kaayyoo, fi daangaan ifa akka ta’utti dhimmoota seerota kannin baasuq irratti barbaachisu adda baasuq keewwata-keewwataan akka ta’utti osoo tume gaarii dha.

  b) Adeemsi qophii dambiilee fi qajeelfamootaa qajeeltoowwan beeksisu, uummata hirmaachisu, fi maxxansuu keessa darbuu akka qabu kan dirqisiisuu ta’uu qaba.

  c) Dambiileen hundi ragga’uun dura sadarkaa wixineetti Caffeef dhiyaachuun seera qabeessummaan isaanii akka to’atamu kan dirqisiisuu ta’uu qaba.

  d) Qajeelfamoonni, keessattuu warreen dantaa uummataa fi mootummaa kallattiin hidhata qaban (fakkeenyaaaf, qajeelfamootni bulchiinsa lafa magaalaa fi baadiyyaa, investimentii, taaksii fi gibira, faayinaansii mootummaa fi dhaabbilee misooma mootummaa) sadarkaa wixineetti Caffeef dhiyaachuun akkaataa aangoo bakka bu’insaan ba’uun isaanii akka to’atamuuf kan dirqisiisuu ta’uu qaba. Kana bu’a-qabeessa taasisuuf humna namaa Caffee baay’inaa fi qulqullina barbaadamuu guutuun barbaachisaa dha.

  e) Caffeen Oromiyaas dambiilee fi qajeelfamoota sadarkaa wixineetti dhiyaataniif yeroo seeraaan murtaa’e keessatti sakatta’ee duubdeeboor barbaachisu qaama wixinicha ergeef kennuu qaba. Yeroo jedhame
keessatti erguu yoo baate, wixineen dhiyaate bahee hojiirra kan ooluun akka ta’uttis saxaxamuun qaba.

✓ Caffeen Oromiyaa dambiilee ykn qajeelfamoota hojiirra jiran seera ofii baasee jiruun (labsiin) wal simuu dhabuu isaanii yoo beeke qaama seericha baase dirqisiisuun sirreeffamni barbaachisaa akka ta’u gochuq qaba.

✓ Manneen murtiif falmiin dhiyaatu dambii ykn qajeelfama kan bu’uureffate yoo ta’e, tumaa dambichaa ykn qajeelfamichaa qofa irratti hundaa’uun dhimmicha murteessuu (akka amma bal’inaan mul’atu) osoo hin taane; dabalataan, seerota rogummaa qaban biroo (heeraa fi labsii) waliin walbira qabuun xiinxaluun gaarii ta’a. Haaluma kanan;

- Heera waliin walitti bu’insi kan jiru yoo ta’e, karaa Gumii Calaltuu Heeraan gara Koomishini Hiiktuu Heera Mootummaatti qajeelchuu;

- Labsii Caffeen baase waliin walitti bu’insi kan jiru yoo ta’e, sodaa tokko malee ofumaaf hiikkoo kennnuun akkuma haala isaatti dambicha ykn qajeelfamicha bu’aa yoo dhabsiise gaarii dha.


✓ Seekteroonnii mootummaa, keessattuu warreen sadarkaa Biirootti jiran caasaa ogeessa seera gahumsa qabu itti qacaratan diriirsuu gaarii dha; warreen caasaa akkasii qabanis dhimma wixinee seeraa irratti leenjii kennuun gahoomsaa adeemuun murteessaa dha.
KENNIINSA KOROORAA FI DHIIFAMA SIRREEFFAMTOOTA SEERAA NAANNOO OROMIYAA: SEERAA FI HOJMAATA*

Geetaachoo Fayisaa**
Abdusalaam Aabbee***

ABSTRACT

This article focuses on examining practical and legal aspect of parole and pardon granting in oromia regional state. It is found that the assessment of the inmate in rehabilitation center takes place only when the candidate served his 2/3 of penalty. Also poor documentation of inmate profile and Wrong assessment of 2/3 penalty have been observed. The cause of wrong assessment roots in judgments not identifying when the penalty began to be served. Additionally Most of behavioral assessment by rehabilitation center lack individuality of the inmate. Under selection process some times all inmate given the same evaluation while some other time a single inmate got two different evaluation. The very objective of parole is to ensure the rehabilitation through looking after the inmate within community before serving the whole sentence while Our court simply sign the warranty as to release of the inmate without setting the condition to be observed after release. Regarding pardon, it is found that the board is not dully established and functioning in regular basis as described in the pardon proclamation. The crime designated as ineligible is not identified based on research. The organizations of zonal committee for pardon are not in accordance with the proclamation. The time frame, in which selection of candidate for pardon undertakes, unable the inmate to file their complain dully. Like parole also, inmates are released by pardon without condition to be observed after release. It is recommended that the rehabilitation center has to modernize the assessment and documentation system of inmate profile. Also courts have to give due attention for parole procedure in implementing rules in criminal code. The pardon board needs to be organized with all necessary staff so that function properly in regular basis. The pardon proclamation or the directive has to be revised and properly address issue after release.

Key words: Courts Inmate Institution, Discretion, Pardon, Pardon Board, Parole

*Barruun kun qorannoo Inistiitiyyuutiin Leenjii Ogeessota Qaamolee Haqaa fi Qorannoo Seeraa Oromiyyaa bara 2010 gaggeessee ture irraa gabaabbatee kan dhiyaate dha.
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1. SEENSA


Haa ta’u malee kennisaa fi bulchiinsa kororaa fi dhiifamaa keessatti hanqinoota hedduutu jira. Sirreeffamaan korooraan gadiifamuuuf ulaagaan waliigalaa ilaalamu, yommuu abdbiiin itti mutraa’ee raawwataamaa turetti hojii yookiin amala isaatiin fooyya’uu isaa kan agarsiise, miidhaa qaqqabsiiseef akkaataa manni murtii itti murteesseen yookiin midhamtoota waliin araaram ee behnyaa kanfaluu isaaaf kan ragaa dhiyeesseen fi amallii fi haalli jireeynaa isaa gaarii ta’u fi korooraan yoo gadi dhiifame bu’aa gaarii

1 The Purpose of Criminal Punishment, https://www.sagepub.com/sites/default/files/upm-binarie
2 Joycelyn M. Pollock, The Philosophy and History of Prisons (Texas State University–San

Marcos, 2005), FF4-5.
ni argamsiisa jedhamee kan itti amanamu ta’uu akka qabu tumaa seera yakkaa keenya kwf 202(1) irraa ni hubatama. Haa ta’u malee sirreeffamaan mana sirreessaa erga galeen booda akkaataa nama miidhame waliin walargee itti araramu irratti haalli mijachuu dhabuun kenneensa dhiifamaa fi korooraa waliin kan walsimatu miti. Qaamoleen gaaffii korooraa fi dhiifamaa dhaga’uun ajaja kennanis murtii kaayyoo barbaadame galmaal gahu kennuu hin danda’ani.

Manni sirreessaa sirreeffamaan simatee hubannoo laachuu irraa eegalee, ragaa qabatamaa irratti hundaa’uun fooyya’iinsa amala sirreeffamaa madaaluu fi loogii irraa bilisa ta’ee tajaajila korooraa fi dhiifamaa kennuu irratti hanqinootni jiru.


Kanaaf barruun kun hojiin kenneensa korooraa fi dhiifamaa haala kamiiin raawwataa akka jiruu fi hanqinoota mul’atan addaa baasu irratti xiyyeeffata. Keessumattuu, hojiin sirreeffamtoota korooraa fi dhiifamaa qopheessuu irratti hojjetamu maal fakkatu; akkaataa calallii fi kenneensa korooraa fi dhiifamaa, kenneensa korooraa fi dhiifamaa booda hojiin sirreeffamaa hawasatti makuu fi rawwii isaa hordofuu haala kamiiin gaggeeffamaa akka jiruu fi hanqinoota mul’atan kan agarsiisuudha.

Hojimaataa fi hanqinoota bulchiinsa korooraa fi dhiifamaatiin walqabatee akka naannoo Oromiyaatti mul’atu hubachuuf daataan bifa afgaaffii, marii garee, sanadootaan (galmeewwan) funaanaman seerota fi hogbarruuwwan jiran faana xinxaalamaniiru. Bu’uura kanaan, afgaaffiin baay’inaan 149 ta’u, hoggantootaa fi ogeessota mana sirreessaa, mana murtii, biiroo fi waajjiraalee abbaa alangaa, boordii fi koreee calallii dhiifamaa akkasumas, sirreeffamtoota waliin taasifamee jira. Manneen sirreessaa adda addaa keessatti mariin garee 10 sirreeffamtoota waliin gaggeeffameera. Mana murtii, mana sirreessaa fi biiroo haqaa (kana booda barreeffama kana keessatti abbaa alangaa waliigalaa
jedhamee kan caqamu) irraa galmeen 168 ta’an ilaalamaniiru. Kana amalees,
bargaaffiin 143 ogeessota mana mutrii, biirro fi waajjiraalee haqaa, mana
sirreessaa fi sirreeffamtoota irraa funaaname xinxaalamee jira. Daataan
qoranichaaf oolan mala eddattoo kiiyyeefftaaf (purposive sampling)’tii
godinaalee Oromiyaa 10 fi aanota 14 irraa sassabame. Godinaalee fi aanoleen
kunneenis: Godina Addaa Oromiyaa Naannawaa Finfinee (Buraayyyuu), Arsii
Lixaa (Aanaa Shashamannee, Dodolaa), Jimmaa (Jimma, Aggaaroo),Gujii
(Adoolaa, Nageellee Booranaa), Shawa Kibba Lixaa (Waliso), Iluu Abbaa
Booraa (Mattuu, Aallee ), Shawaa Lixaa (Aanaa Ambo), Wallaggaa Lixaa
(Gimbii), Baalee (Aanaa Sinaanaa) fi Harargee Lixaa (Aanaa Habroo) ti.

Barreeffamni kun kutaad saditti kan qoodame yoo ta’u, seensa kanatti aansuun
kutaan lammaffaa hogbarruuwwan waa’ee korooraaf dhiifamaa hubachiisan
xinxaala. Kutaan sadaffaa keessatti immoo daataan barreeffamicha ilaalchisee
funaaname xiinxala. Kutaa isa dhumaa fi afraffaa keessatti immoo yaada
guduunfaa fi furmaataatu dhiyaata.

2. SAKATTA’A HOB'BARRUUWWAN KOROOAA FI
DHIIFAMAA

2.1. MAALUMMAA KOROOAA FI DHIIFAMAA

Koroorrii fi dhiifamni tarkaanfiwwan hidhaan alaa mutrii booda hojiirra
oolan keessaa kanneen beekamoo dha. Haaromsa sirreeffamtootaa keessatti
hawaasa hirmaachisuu fi namoonni yakka raawwatan miira itti-
gaaafatamummaa akka horatan jajjabeessuuf taarkaanfiwwan yooki
adabbiwwan hidhaan alaa fayyadamuuun dhimma xiyyeefannoo argate
ta’eera. Kanumaafis Gumiin Waliigalaa Dhaabbata Biyyoota Gamtoomanii
(UN General Assembly) barbaachisummaa fi itti-fayyadama adabbiwwan
hidhaan alaa irratti murtoo dabarsee jira.3 Adabbiwwan hidhaan alaa mutrii
qaamni aangoo qabu, nama yakka raawwachuuun shakkame, himatame yookiin
itti murtaa’e haalduree fi dirqama hidhaatiin ala jiran akka raawwatu ittiin
taasifamu dha. Adabbiwwan kunneen sadarkaawwan sirna bulchiinsa haqa
yakkaa mutrii duraa fi booda jiru keessatti hojiirraa ooluu danda’u.4

3 United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules),
Adopted by General Assembly, Resolution No. 45/110, 1990.
4 Commentary on the United Nations Standard Minimum Rules for Non-custodial Measures
(the Tokyo Rules), F8.
Tarkaanfiwwan akka hojii humnaa, adabbii daangessuu, miidhamaa fi yakkamaa walitti araarsuu, beenyaa kanfalchiisuu fi kaneen biroo akka fakkeenyatta kaasuun ni danda’ama.

2.2. SEENAA FI MAALUMMAA KOROORAA

Jechi koroora ‘parole’ jedhu jecha Faransaay ‘Parole d’Honnuer’ jedhu irraa akka dhufe ta’uu himama. Sirreeffamaan mana sirreessaatii bahee hawaasa keessatti seeraa fi duudhah hawaasaa kabajuun jiraachuuf kan itti waadaa galu jechuu dha.5 Faransaay bara 1830’ootaa jalqabdee yaadrimaa haaldureedhan bilisoomsuu (conditional liberty) jedhu fayyadamuu sirreeffamtooota hawwaasati makaa turte. Haal-dureen bilisoomsuun yakkamtootni to’annoo jalaah bahan bilisumma guyttu osoo hin qabaatiiin to’annaa mana sirreessa jala haala ittiin turan kan agarsisu dha.6 Koroorri sagantaa haaroomsaa ta’ee yakkamaan adabbii itti murta’e keessaa hanga tokko mana sirreessaa keessatti erga raawwateen booda haal-dureedhaan mana sirreessaatii bahee hordoffii fi deeggarsa waliin hawaasatti akka makamu sirna dandeessisu dha. Ogeessi Neeseer jedhamu jecha koroora jedhu yeroo ibsu akkaatataa sirreeffamaan adabbii manni murtii kenne hawaasa keessa turee itti raawwatu irratti waliigaltee dhaabhatni sirreessaa fi sirreeffamaan seeraa taasisanidha jechuun hiikeera.7 Hiikkoowwan armaan olii irraa akka hubatamuu danda’u koroorri haala yakkamaan adabbii itti murtta’e keessaa adabbii xiqqaa seeraa teechifame erga raawwateen booda haal-dureewwan teechifaman kabajuun yeroo adabbii hafee hawaasa keessatti dabarsuuf waada seenuu dha.

Koroorri yaadamawwan adda addaa kaneen akka yaaddama waliigaltee (consent or contract theory), yaadama eegumsaa (custody theory) fi yaadama kennaa (privilege theory) irratti bu’ureeffata. Akka yaadama duraatti koroorri waliigaltee manni amala sirreessaa sirreeffamaa waliin raawwatu yommuu ta’u haal-duree yakkamaan hawaasa keessa turuun lammii seera kabaju akka ta’u haaloota biroo waliigaltee keessatti teechifaman kabajuuf dirqama seenu

5 Raphael Tuhafeni Hmunyela, The Granting or Refusal of Parole in the Namibian Correctional Service (A Dissertation Submitted in Partial Fulfilment of the Requirements for the Degree of Bachelor of Laws (LLB) of the University of Namibia).
6 Howard Abadinsky, Probation and Parole: Theory and Practice (7th ed.), F204.
dha. Waligaltte kanaan yakkamaan erga hidhaa gad-lakkifamee haalota kabajuuf waadaa seene yoo kabajuu baate deebi’ee mana hidhaa seenuu akka danda’u ni godhama. 8 Yaadamni lammaffaan immoo yakkamaan mana sinueessaa tii erga bahee booda hanga yeroo murtaa’ee hordoffiin irratti kan gaggeeffamu ta’uu agarsiisa. Sirreeffamaan hawaasatti makamuun isaa qaamuma raawwii murtii adabbii waan ta’eef mirgoonni sirreeffamichaa ammas daanga’u itti fufu. Kana jechuun sirreeffamaan korooraa bahe akka gariin hidhamaatti (quasi-prisoner) ilaalama. 9 Akka yaadama sadaffatti, namni adabbii yakkaa itti murtaa’e mana sinueessaa keessaa bahuu kan danda’u adabbii erga xumuree booda qofa ta’us, haala addaatii osoo yeroon gin hgaardiin gad-lakkifamuuf fooyya’iinsa amalaa fiduu isaa qaama haaromsa isaa hordofu amansiisuuq irraa eegama kan jedhu qaba. 10 Haaluma walfakkaatuuun koroorri yaadama sirreeffamtootni seeraa adeemsaan deeggarsii fi to’annoon dhiyeeyaanaa taasifamaafi hawaasa keessa tursiisuun, sirreeffamtoota lammilee seera kabajan taasisuuf fi haaromsa isaaniiif gahee olaanaan qaba yaada jedhu kan bu’uureffatee dha.

Haalduuwewaan sirreeffamaan korooraaan gad-lakkifamee akka kabaju barbaadamuu akka haala isaatti dhiphachuu yookiin baldhachuu danda’us isaan bu’uuraa: seera kabajuu, dhugaatti fi baala sammuu hadoochaa fayyadamuu irraa fagaachuu, miidhamtoota yakkaa waliin wal-qunamuu dhiisuu, hojii argachuu fi ogeessa hordoffii irratti taasisuuun walitti dhufeeyaa jiru kabajuu fa’a dha. 11 Gama biraatiin, sirreeffamaa yeroon adabbii isaa osoo hin xumuramiin gad-lakkisuuun hordoffii taasissa jireenya hawaasaaka akka baratu gochuuf fi hawaasa immoo gocha yakkaa irraa eeguuuf yaadameetti. 12 Yaadamoonni kunleen Seera yakkaa biyya keenyaa keessattis haala wafakkaatuuun ibsamamiiru. Sirreeffamaan korooraaan gad-lakkifamuuun dura adabbii itti kennaa keessaa harka lama raawwachuu fi fooyya’iinsa amalaa fiduu isaa dhaabbata haaromsaam amansiisuuq irraa eegama.13 Gama biraatiinis

8 Howard Abadinsky, Olitti yaadannoo lak. 6ffaa.
9 Akkuma 8ffaa.
10 Akkuma 9ffaa.
11 Francois Christiaan, Olitti yaadannoo Lak 7ffaa, F 204.
12 Thamsanqa Elisha Nxumalo, Parole Supervision: A Penological Perspective (Submitted in Fulfilment of the Requirements for the Degree of Master of Arts, 1997), F30.
13 Seera Yakkaa RDFI, Labsii Lak. 414/96, Kwt 202(3).
sirreeffaman erga korooraan gadi dhiifameen booda, hawaasa keessatti hordoffiin akka irratti taasifamu, akkasumas sochiin sirreeffamaa haala mutaar’een daangeffamuu akka danda’u ni akeeka. Kun immoo sirreeffamaan bilisummaa guutuu akka hin qabne beekoo of-eeggannoon hawaasa keessa akka jiraatu taasisa. Kana malees sirreeffamaan erga mana sirreessaa baheen booda haal-dureewwan teechifaman yoo kabajuu dhabe gara mana sirreessaatti deeb’ee adabbiis isaa akka raawwatu tumamee jira.


2.3. SEENAA FI MAALUMMAA DHIIFAMAA

Aangoon dhiifama gochuun yeroo jalqabatiif kan ibsame dhaloota Kiristoots dura jaarraa 18ffaa keessa seera Hamuuraabii keessatti dha. Dhiifama gochuun aangoo moootichaa akka ta’eefii, namoota yakka raawwatan adabbiis irraa salphisiu yookiin murtiiwwan adabbiis balleesummaan wal-qabatanii

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14 Seera Yakkaa RDFI, Kwt 198,199, 206.
15 Seera Yakkaa RDFI, Kwt 200(1).
17 Seera Yakkaa Itoophiyaa Bara 1949 Bahe, Kwt 207.
18 Seera Yakkaa Itoophiyaa Bara 1996 Bahe, Kwt 201.
19 Seera Yakkaa Itoophiyaa Bara 1996 Bahe, Kwt 201.
20 Jody c. Baumgartner and Mark H. Mmorris, Presidential Pardon Unbound: A Comparative Look at Presidential Pardon, P4
jiran akka hafan taasisuu aangoo dandeessisu dha. Dhiifamni gocha qaamni raawwachiiftuun aangoo seeraan kenneemef bu’uura godhachuun namoota yakka raawwatan adabbiin seerii teechise akka irratti hin raawwatamne yookiin akka irraa salphatu ittiin taasifamu dha. Dhiifamni kennaa moootummaan (pirzeidaantiin) nama adabbiin itti mutaa’eef kennu malee dhimma akka mirgaatti gaafatamuun miti.21 Adabbiin manni murtii seera qofa ilaaluun murteesse bu’aa hin barbaadamne yoo fidee fi adeemsa seera biraatiin furmaata argachuun hin dandeenyee yoo ta’e, qaamni raawwachiistuu, keessumattuu Pirezidaantiin aangoo dhiifama gochuun seeraan kenneemef fayyadamuun dogongora hanqina seeraatiin raawwatame sirreessuuf itti tajaajilama.22


22 Akkuma 21 ftaa.
23 Heera Moootummaa Naannoo Oromiyaa, Labsii Lak.49/94, Kwt 57(3).
qajeelfama calallii dhiifamaa keessatti yakkootni dhiifamni irratti hin taasifamne tarreeffamaniiru.25


2.4. KAAYYOO KOROORAA FI DHIIFAMAA

Sirreeffamaa korooraan gadihiisun hawaasatti makamee nagaan jirachuu akka danda’u mirkaneessuufi. Imaammanni haqa yakka biyya keenyaatis kayyoowwan tarkaanfii hidhaan alaa sirreeffamaa haaromsuuun hawwasatti makuu, nagaan jirachuu akka danda’uufi nageenyi hawwaasaas akka eegamu dandeessisuu akka ta’e ni ibsa.28 Namootni yakka raawwataniin mana sirreessaa seenan carraan yeroon adabbii osoo hin xumuramiin korooraan bahuu jirachuu yoo hubatan, fooyya’inssa amalaa akka fidanii fi duudhaa hawasa bal’aaka kabajan kaka’uumsa waan ta’uuf nageenyi hawwaasaas eegsisuu fi lammii gaarii horachuuf ni fayyada.29 Gara biraan immoo, manneen

28 Imaammata Haqa Yakkaa Itoophiyaa Bara 2003 Bahe, Kwt 5.3.
29 Bronwyn Naylor and Johannes Schmidt, Do Prisoners Have a Right to Fairness before the Parole Board?, F1.
sirreessaa sirreeffamtootaan akka hin dhiphanne taasisuun baasiwwaan mootummaan haaroomsa sirreeffamaatiif baasu hir’isuufis ni gargaara.\(^{30}\) Kaayyoo dhiifamaa keessaa inni guddaan, hojiirra oolmaan seera yakkaa bu’aa hin barbaadamne yommuu uumu rakkoowwan mudatan sirreessuu dha. Dabalataan mootummaan nageenya hawaasa bal’aaf barbaachisaa yoo ta’e dhiifamatti fayyadama. Hojimaata sirna haqaa keessatti namni dogoggoraan murtiin adabbi yommuu itti murtaa’u, dhiifamni akka falaatti gargaara.\(^{31}\) Kanaan wal-qabatee akka naannoo Oromiyattis namoonni raga sobaatiin kan itti murt’a te’aan yoo mirkana’e akka dhiifamaan gad-lakkifamu danda’an teechifamee jira.\(^{32}\) Haallii kun hawaasni bal’aan sirna haqa biyyaa irratti amantaa akka hin dhabne taasiisuu akkasumas haqa jallate sirreessuuf akka furmaataatti kan tajaajilu dha.

Labsii dhiifamaa naannoo Oromiyaa irraa akka hubatamu, kaayyoon dhiifamaa sirreeffamtoota yakka dalaguu isaaniiitti gaabbanii haarooman jireenya hawaasaatti makamanii lammii oomishaa akka ta’an taasisuun, fedhii hawaasa bal’aa, mootummaa fi sirreeffamtoota eeguu dha.\(^{33}\) Akkuma dhimma korooraa sirreeffamtootni yeroon adabbi isaanii osoo hin gahiin carraa mana hidhaatii bahuu uuma waan ta’eef, sirreeffamtootni fooyya’iiinsa amalaaf kaka’uumsa akka qabaatan ni taasiswa. Kun immoo kaayyoo seerrr dhiifamaa gama sirreeffamtootaan lammii oomisha akka ta’aniif qabu galmaan gahuu keessatti gahee ol’aana taphata.


\(^{31}\) Solomon A.M. Ekwenze, Olitti yaadannoo lak.21, F4.

\(^{32}\) Qajeeffama Calallii fi Raawwii Dhiifama Sirreeffamtoota Seeraa, Qaj. Lak.05/2009, Kwt 15(1).

\(^{33}\) Imaammata Haqaa Yakkaa Itoophiyaa, Olitti yaadannoo 28, Kwt 3.
2.5.QAJEELTOOWWAN RAAWWII KOROORAA FI DHIIFAMAA

Tarkaanfiwiwwan hidhaan alaa hojiirra oolchuu keessatti yaadotni bu’uuraa xiyyeffannoo argachu u qaban jiru. Qajeeltoowwan kunneenis waliigalteewwan idil-addunyaa keessumattuu, istaandaardiwwan Dhaabbanni Mootummoota Gamtooman raawwii tarkaanfilee hidhaan alaa (non-custodial measures) irratti baase irraa kan dhufani dha. Koroorrii fi dhiifamni gosoota tarkaanfiwiwwan hidhaan alaa keessaa kanneen ijoo waan ta’aniif qajeeltoowwan kunneen tarkaanfiwiwwan kanaafis ni oolu.

Jalqabarratti, adabbiin hidhaa filannoo isa dhumaa ta’uu qaba. Waliigalteewwan idil-addunyaa hedduun qaamoleen sirna haqaa rakko hidhaan qaaqqabsiiisu hubachuun akkaataa serri hayyamuun adabbi hidhaan alaatiif dursa kennu akka qaban ni akeeku.34 Dabalataan adabbiin hidhaan alaa logii sanyumaa, bifaa, saala, umurii, afaaan, amantaa, ilaalcha siyaasaa fi kanneen biroo wal fakaaten irratti osoo hin bu’uureffatiin hojiirra ooluu qaba.35 Adabbiwwan kenneen hojiirra oolchuu keessatti murtii wal fakaatu kennu akka qaba qeexumaa jirutti ta’ee, haalota bu’a-qabeessumaa adabbiwwan kanaaf fayyadan hubachuun hojiirra oolchuun barbaachisaa dha. Dhimmoonni ilaalamuu qabanis: akaaku fi cimina yakka raawwatamee, seenaa fi eenyummaa nama yakka raawwateee, hawaasaaf eegumsa gochu fi adabbi hidhaa haala hin malleen fayyadamuu dha.36 Hojiirra oolmaan adabbi hidhaan alaa mirgoota namoomaa nama yakka raawwatee akka hin miine, dursee seeraan kan ibsamee fi kan murtaa’e (principle of legality) ta’uu qaba.

Qaamoleen tarkaanfiwiwwan kenneen hojiirra oolchuuf aangoon yookiin bakka bu’iinsi kenneemefis aangoon isaanii ifatti ibsamuu qaba. Haaluma wal fakkaatuun adabbi hidhaan alaa hojiirraa oolchuuf namni yakka raawwatee dhimma kana beekee, mirga isaa akka hin tuqne itti amanee fedhii isaan kan hirmaatu ta’uu qaba. Namni yakka raawwatee adabbiin hidhaan alaa kun yoo kan irratti raawwatu ta’e maal akka argatuufi maal akka dhabu dursee akka

35 The Tokyo Rules, Olitti yaadannoo 4.
36 The Tokyo Rules, Olitti yaadannoo lak.34, Rule 2.3.
beeku gochuun barbaachisaadha. Hojiirra oolmaa adabbiiwann hidhaan alaa keessatti hirmaannaan hawwaasaab baay’ee murteessaa dha. Hojiirra oolmaan adabbii hidhaan alaa mirgaa fi bilisummaa sirreeffamaa akka hin miine giddu lixummaan qaamoolee haqaa hanga danda’ametti gadd aanaa akka ta’uu fi nageenya hawaasaa qofa eegsissu irratti kan xiyyeyeffate ta’uu qaba. Akka waliigalaatti sirreeffamaan tarkaanfii hidhaan alaa kanneen akka korooraa fi dhiisamaati akka haaromu yommuu muttaa’u qaajetoowwan kanneen ilaalcha keessa galchuu raawwachiisuuun baay’ee barbaachisa.

2.6. QAAMOLEE BULCHIINSA KOROORAA FI DHIIFAMAA KEESSATTI GAHEE QABAN


Aangoon sirreeffamaa koroora yookiin dhiisamaan gadi dhiisuu aangoo mana murtii moo aangoo qaama raawwachiiftuu ta’uu qaba dhimmi jedhu falmisiisaa dha. Koroorri kan mana murtii kennamu fi kan boordii korooraan kennamoo jedhamee iddo lamatti qoodamuu danda’a. Biyoota sirna adabbii muttaa’e qaban keessatti yeroo fi haala kenniinsa korooraan kan murteessu mana murtiti. Biyyoota sirna adabbii hin murtoofneen fayyadaman keessatti immo aangoo sirreeffamaa korooraan gadhiisuu kan qabu boordii

38 Akkuma 37fiaa, F19.
korooraa ti. 40 Qaamoleen lamaan kunneen kennisasaa fi hordoffii korooraa keessatti gahee guddaaf taphatu.Yeroo ammaa biyyoota liixa hedduu biratti dhimma korooraa bulchuu keessatti aangoon bal’aa kan qabu boordii korooraa ti.

Dhiifama ilaachissee aangoon murtessummaa kan pirezidaantiiti. Kennisasaa dhiifamaa keessatti Ministeerri Haqaa yookiin Abbaan Alangaa muummichaa iyyata dhiifamaa calaluun yaada muttoo dhiyeessuu pirezidaantii ni gargaaru.41 Haa ta’u malee sirni bulchiinsa dhiifamaa hanga kan korooraa kan gabbate miti.

Akka biyya keenyatti yoo ilaalle, kennisasaa korooraa keessatti mannii murtii gahee olaanaa taphata.42 Manni murtii iyyannoo korooraa sirreeffamaan yookiin mana amala sirreessaan dhiyaate qeebaluun ulaagaawwan seeraan ta’a’an faana madaalee sirreeffamaan akka korooraa gadihiifamuu ajaja kenna. Dabalataan mannii murtii haal-duree sirreeffamaan yommuu korooraa gadihiifamuu akka eegu mana amala sirreessaas fi qamolee dhimmi ilaaluun qophaa’es qoratee ni mirkanessa. Sirreeffamaan haal-duree tteehifame kan hin kabajne yoo ta’e aangoon korooriccha haqquus mana murtiif kenneemaa.

Qaamni biraa kennisasaa korooraa keessatti aangoo qabu mana amala sirreessaati. Manni sirreessaasaa, sirreeffamaan jalqaba yommuu gara isaanii dhufu haala sirreeffamaa fi carraa inni fuulduratti korooraa gadihiifamuuf qabu irratti hubannoo kennuufii qaba. Turtii sirreeffamaan mana sirreessa keessatti godhunin, fooyya’insa amalaa fi gochaa sirreeffamaa sirnaan hodofuu, bu’uura seeraa fi qajeelfamaatiin korooratti akka fayyadamus gahee isaa bahachuutu irraa eegama.43 Sirreeffamtoota korooraan gadihiifamuu qabanis ulaagaawwan tteehifaman irratti hundaa’uun loogii malee mana murtiif dabarsuu qaba. Sirreeffamaa korooraan gadihiifaman hordofuu fi to’achuu irratti qaamoleen siivikii gahee akka qaban tumaalee seera yakkaa

41 Fakkeenyaaaf, USAtti qaama Abbaa Alangaa muummichaa biyyattii kan ta’e,’U.S. Department of Justice, Office of the Pardon Attorney’ jedhamu tajaajila kana kenna.
42 Seera Yakkaa Itoophiyaa RDFI, Kwt 112,113 fi 201(210).
43 Seera Yakkaa Itoophiyaa RDFI, Kwt 202 fi 203 walirratti yoo dubbifamu.
irraa hubachuun ni danda’a.\textsuperscript{44} Qaamoleen kunneen haalduree sirreeffamaan korooraan gadhiifamu kabajuu qabu mana amala sirressaa waliin ta’uun qopheessuu irraa eegalee sirreeffamaa haala kanaan gadhiifame, gorsuu, qajeechuu, deeggaruu fi hordofuu gahee isaanii bahachuu danda’u.


Akka biyya keenyaattis yoo ilaalee caaseekfamni qaamolee kenniinsa dhiifamaa keessatti hirmaan dhaa qaamolee adda addaan akka ta’u; akkasumas, akkaataa kenniinsa dhiifamaa seera iftoomina qabuu akka qajeelfamu kanneen taasinan dha.

\textsuperscript{44} Seera Yakkaa Itoophiyaa RDFI, Kwt.208.
\textsuperscript{46} Heera Mootummaa RDFI, Kwt 28.

Gama biraatiin, pirezidaantiin bulchiinsa mootummaa naannoo Oromiyaa immoo bu’uura Heera Mootummaa Naannoo Oromiyaa kwt. 57(3) (i) fi labsii lak. 114/98’tiin sirreeffamtoota naannichaaf dhiifama gochuuf aangoo qabu. Sirreeffamtoota dhiifamni godhamuufii qabu qulqulleessuun yaada murtii pirezidaantiif kan dhiyeessu boordiin dhiifamaa ogeessota manneen hojjii addaa addaa irraa walitti babba’an irraa akka hundeeffamus labsiileen lachuu ni ibsu.

Labsiiin dhiifamaa naannoo Oromiyaa, labsiiin lak. 114/98 boordiin gaaffii dhiifamaa qulqulleessuun yaada murtoo pirezidaantiif dhiyeessu hundeeffamuuf fi hojiilee hojjetu ibsuun ala, aangoon qajeelfama baasuuf ifatti hin kennamneef. Qajeelfamoonni boordichi haga ammaa baasu tumaa labsichaa kwt. 6(4), gaaffilee dhiifamaa haala saffisaa ta’een deebii kennuuf ullaagaa barbaachisaa ta’e baasee hojiirra oolcha kan jedhu bu’ureeffateeti. Tumaan biraa ifatti aangoo qajeelfama baasuuf boordiif kenne hin jiru. Haa ta’u malee yeroo ammaa yakkootaa fi sirreeffamtoota dhiifama argachuu qabanii fi hin qabne irratti boordiin qajeelfama baasaa jira. Boordichi dhiifamaa haalduree irratti hundaa’uun kename, sirreeffamaan kan hin kabajne ta’uu yoo himanni irratti dhiyaate qoratee pirezidaantiidhaaf yaada murtii ni kenna. Qajeelfamni calallii fi kenniinsa dhiifamaa, namoota dhiifamaan bahan koreen calallii godinaa fi aanaa gara poolisii fi caasaa bulchiinsaa fi nageenya gandaatiin akka hordofu ni ibsa.47

Akka waliigalaatti seerotni koroora fi dhiifama bulchuuf bahan (kan naannoos ta’e kan federaalaa) yommuu ilaalam, xiyyeeffannoon isaanii akkaataa calallii fi kenniinsa irratti akka ta’e ni hubatama. Sirreeffamaan bu’uura koroora fi dhiifamaan haalduree waliin hawasatti makamu hordofuu

47 Qajeelfama Calallii, Qaj. Lak. 5/2008, Kwt 7 fi 9.
fi raawwachiisuu irratti sirni dandeessisu jiraachuunis dhimma xiyyeeffannoobarbaadudha.

2.7. ULAAGAA KENNIINSA KOROORAA FI DHIIFAMAA

Sirreeffamaan adabbii itti mutaa’e keessa 2/3ффаа kan raawwate ta’uu (adabbii hidhaa umurii guutuu yoo ta’e waggaa digdama kan raawwate ta’uu), yerro raawwii adabbii sirreeffamaan hojjii fi amala isaatiin fooyya’iinsa kan agarsiise yoo ta’e, miidhaa geessisiseef hanga danda’e’en beenyaa mana murtiin muttaa’e yookiin qaama midhameen waliigalame yoo kanfalee fi amall sirreeffamaa korooraan gadihiisuun bu’aa argamsiisa tilmaama jedhu kan deeggaru yoo ta’e Korooraan gadihiifamuu danda’a. Ulaagaaawwan kunneen wal faana guutamuq qabu. Sirreeffamaa yakka amaleeffateef (persistent recidivist) koroorri akka hin kennamne tumichi ni ibsa.


Qajeelfamni boordii dhiifamaa akka naanoo Oromiyaatti yerroo adda addaatti tumamu ulaagaawwan dhiifamaa fi sirreeffamtoota dhiifamni hin taasifamneef ni ibsu. Fakkeenyaaaf qajeelfama dhiifamaa lakk.4/2008 keessatti sirreeffamtoota seeraa dhiifamni ilaallatuufi hin ilaallanne, akkasumas qabxii kenniinsa dhiifamaa keessatti ilaalamuq qaban jechuun tumaaleen adda addaa ulaagaa dhiifamana wal qabataan teechifamiiru.48 Haaluma kanaan sirreeffamaan adabbii hidhaa umurii guutuu itti muttare’e, waggaa 15, kan hidhaan baattii 6 hanga hidhaa cimaa waggaa 25 itti muttare’e, 1/2ффаа yoo raawwate dhiifama argachuu danda’a.49 Qajeelfamichi sirreeffamtoota ragaa sobaatiiin adabaman, dubartoota daa’ima waliin mana sirreessaa galan, kanneen umuriin isaanii waggaa 55 ol ta’e, kanneen dhibee fayyyuu hin

48 Qajeelfama Dhiifamaa Naanoo Oromiyaa, Qaj. Lak.4/2008, Kwt 13-16.
49 Qajeelfama Dhiifamaa Naanoo Oromiyaa, Qaj. Lak.4/2008, Kwt 14.
dandeenye kan akka HIV’n qabamaniif dhiifamni haala addaatiin godhamuuufi malu ni teechisa.

Gara biraatiin, yakkoota ciccimoo fi xiyyeeffanoo argatan kanneen akka shororkeessummaa, yakkoota daa’immanii fi dubartoota irratti raawwataman, diinagdee fi bu’uura misoomaa irratti raawwataniin himatame sirreeffamaan adabame dhiifama akka hin arganne ni ibsa. Qajeelfamichi adabbii hidhaa waliin adabbiin maallaqaa kan mutrraa’e yoo ta’e sirreeffamaan adabbii qarshii raawwatu malee dhiifama akka hin arganne tumeed jira.50

2.8. SIRNA IYYANNOO FI KENNIINSAA KOROORAA FI DHIIFAMAA

Iyyatni korooraan gad-lakkifamuu sirreeffamaa dhuunfaan yookiin akkuma haala isaatti haalotni korooraan gad-lakkifamuuuf barbaachisan guutaman jedhee yommuu amanutti dhaabbata amala sirressuun mana murtii dhiyaachuu danda’a.51 Manni murtii erga iyyanni dhiyaateef haalota korooraan gad-lakkisuuf barbaachisan jedhamanii seera yakkaa kwt 202(1) jalatti tarreeffaman guutamu isaanii mirkaneeffatee sirreeffamaan yerro yaaliin akka gad-lakkifamu ajaja. Sirreeffamaan yommuu korooraan gad-lakkisamee hawaasa keessa turu qajeelfamni amala inni hordofuu qabu akkaataa tumaa seeraa waliigalaa waa’ee adabamaa murtii adabbii fi raawwiin adabbii irraa daangeffameen kan qajeelfamu ta’uu seerri yakkaa keenya ni ibsa.52

Haaluma kanaan manni murtii sirreeffamaa yommuu korooraan gad-lakkisu qajeelfama amalaa, hordoffii fi eegumsa sirrii itti fakkaate ni murteessa. Qajeelfamni sirreeffamaan gad-lakkisamee akka hordofu mana murtichaan kennamu umurii, carraa yakkkaaf saaxilamuu, haala maatii isaa, hojjii ogummaa akkasumas haala jireenya hawaasummaa bu’uura kan godhate ta’uu qaba.53 Qajeelfamnii kennamu kunis sirreeffamaan kun baruumsa ogummaa mutrraa’e tokko akka baratu, iddoo mutrraa’e tokko akka turu, hojjatu yookiin akka jiraatu taasisuu, namoota muraasa akka wal hin quunnamne taasisuu,

50 Qajeelfama Dhiifamaa Naannoo Oromiyaa, Qaj. Lak.4/2008, Kwt 14(3).
51 Seera Yakkaa RDFI, Kwt.203(2).
52 Seera Yakkaa RDFI, Kwt.205.
53 Seera Yakkaa RDFI, Kwt.205(1).
iddoowwan muraasa irraa daangeessuu, galii hojii isaa irraa argatu guutummaan yookiin gar-tokkeen maatiif yookiin nama isa bulchuuf akka kenne akkasumas qajeelfamoota biroo bu’aa argamsiisuu danda’an kan biroo murteessuu ni danda’a.54 Kenniinsa korooraa keessatti miidhamaan yakkaa haalli itti hirmaatu seeraan ifatti hin tumamne.

Manni murtii yommuu sirreeffamaan akka gad-lakkifamuu ajaju yeroon yaalii teechifame yeroon hangamiif akka turu ni murteessa.55 Yeroon yaalii mannii murtii murteessu kun haala kamiinu waggaa lamaa gad kan hin taaneefi waggaa shan kan hin caalle ta’a. Yeroon turtii kun sirreeffama murtii umrii guutuuf yeroon waggaa shanii gad hin taaneefi waggaa torba kan hin caalle ta’a.56

Akkaataa iyyannoo fi keniinsa dhiifamaa yoo ilaalle immoo, labsiin dhiifama naannoo Oromiyaa lak.114/98 haala, yeroon fi qaama iyyannoon dhiifamaa itti dhiyaatuu qabu teechisee jira. Dhiifamni kaka’uumsa qaamolee sadiiitin godhamuu danda’a. Kunis iyyannoo nama murtii adabbii irratti darbe yookiin bakka bu’aa isaa, kaka’uumsa pirezidaantii naannichaa fi gaaffii Biroom Haqaa (yeroon ammaa Mana Hojii Abbaa Alangaa) dhiyeessuuun ta’uu mala.57

Iyyanni dhiifamaa murtii dhumaan kenneemee yeroon kamittuu akkasumas erga iyyanni duraa kufaa ta’ee ji’a jahaan booda boordii dhiifamaa naannichaaf dhiyaachuu akka danda’u teechisee jira58. Murtii dhumaan jechuunis adeemsa oliyyannoo kan fixate akka ta’e ni hubatama. Iyyatni dhiyaatus qabiyyee maal qabaachuu akka qabu labsicha keessatti tarreefamee jira. Kunis iyyattni dhiyaatu maqaa, hojii, yakkaa raawwachuu waggaa shaniin dura teessoo isaa, yakkaa ittiin himatame, adabbii, haala raawwii, mana murtii adabbii murteesse, lakoofsa galme, yakkaa sanaan dura itti adabame yoo jirate, mana sirreessa keessatti argamu, sababa dhiifamnii itti taasifamuuuf, ragaaleen kana deeggaran yoo jirate yooiin iddoo itti argamu, namoota sadi firooma dhiigaafii ga’a’ila hin qabne kan dhiifama deeggaran sababa isaanii waliin, idaa mootummaa qabaachuu fi dhiisuu isaa guutee dhiyaachuu qaba59.

54 Seera Yakkaa RDFI, Kwt.198
55 Seera Yakkaa RDFI, Kwt.204
56 Seera Yakkaa RDFI, Kwt.204
57 Labsii Kenniinsa Dhiifamaa Naannoo Oromiyaa lak.114/98, Kwt.12 fi 13
58 Labsii Kenniinsa Dhiifamaa Naannoo Oromiyaa lak.114/98, Kwt.15
59 Labsii Kenniinsa Dhiifamaa Naannoo Oromiyaa lak.114/98, Kwt.14
Dabalataanis iyyatni dhiifamaa gama Biiroo Haqaatiin (yeroo ammaa Mana Hojii Abbaa Alangaa) dhiyaachuu akka danda’uu fi garagalchi iyyannaas nama gafatameef akka dhaqqabuu qabu dha. Iyyata dhiyaate akka barbaachisummaa isatti Boordichi galmee Mana Murtii,Waajjira Haqaa akkasumas namoota adda addaa irraa ququllecceesuu yadaa murtii pireezidaanti naannoo Oromiyaatiiff dhiyeessuu akka hayyamamu ni taasisa. Tumaa seera armaan olitti ibsamu irraa akka hubatamu sirreeffamaan yommuu dhiifamaa gaafatu gaaffii isaa ragaadhaan akkasumas sababaan deeggaree dhiyeessuu akka qabu dha. Boordiin dhiifamaas iyannoofi raagaa dhiyaate akkasumas, raagaa fi qaama barbaachisaa ta’e qorachuun yadaa murtoo waliin pireezidaantiiff dhiyeessa. Pirezidaantiinis raagaa fi yaada murtoo boordichaan dhiyaateef, akkasumas barbaachisaa yoo ta’e qaama kamirraayyu yadaa fudhachuun gaaffii dhiifamaa dhiyaate raagaa gaafisuu yookiin kufaa gochuu danda’a. Labsichi ifatti kaa’uu baatus murtii dhiifama irratti pireezidaantiin kennamu kan dhumaa ta’uu muuxannoo jiru irraa ni hubatama.

2.9.HORDOFFII SIRREEFFAMTOOTA KOROORAA FI DHIIFAMAAN GADHIIFAMANII


Seera yakka keenya yommuu ilaallu, hordoffiin sirreeffamtoota korooraan gadhiifamanii adeemsota kaneen lachuu kan of keessaq qabu ta’uu ni

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60 Labii Kennaessa Dhiifamaa Naanoom Oromiyaa lak.114/98, Kwt.13(2)
61 Labii Kennaessa Dhiifamaa Naanoom Oromiyaa lak.114/98, Kwt 6
63 Richard P. Seiter, Supervision Styles in Probation and Parole: An Analysis of Activities, (Marshal University, 2003), F4.
hubatama.\textsuperscript{64} Manni murtii qajeelfama sirreeffamaan kabajuq qabu erga murteesseen booda namni sirreeffamaa korooraan gad-lakkifame bulchu, ogeessi amala sirreesaa yookiin ogeessi eegumsa waliigala iratti ramadamee (poolisii) jireeyna sirreeffamaa hawaasa keessatti akka hordofu ni ajaja.\textsuperscript{65} Qamni sirreeffama akka hordofuuf ajajame walitti dhufeeyna uumuudhaan manaa fi iddo hojii isaatti daawwachuun akkasumas yeroon boqonnàa isatti hordoffii irratti taasisuun sirreeffamaa kun hanga danda’ameen haala jireeyna isaa akka fooyyefatu ni gargaara. Kun adeemsa \textit{casework} jedhamun kan walfakkaatu dha. Hordoffiin taasifamu akka barbaachisummaa isatti dhoksaan gaggeefamuu kan danda’u yommu ta’u qaamni hordofu yoo xiqqate komishini amala sirreessaf ji’a sadii yookiin yeroon barbaachisaa ta’etti gabaasa akka dhiyeessu ni taasifama.\textsuperscript{66} Adeemsi kun immoo adeemsa \textit{survillance}’n walfakkata. Tajaajjìlli hordoffii korooraan dhaabbiilee siivikii yookiin dhaabbiilee mootummaa yookiin dhuunfàa hirmaachisuun raawwatamuu akka danda’us tumaan seera yakkaa ni agarsiisa.\textsuperscript{67} Akkaataa hordoffii sirreeffamtoo dhiifaman gadihiifamaniir irratti kallattiin seeraan kaa’ame hin jìru.

Yeroon yaalii milkaa’inaan xumuruufi dhabuun bu’aa hordofiisu yoo ilaalle, sirreeffamaan korooraan gadhiifame yeroon yaalii keessa qajeelfama kennamee hordofuun amala gaarii agarsiisee yoo xumure, to’annoo fi adabbii jalaa guutummaan bilisa ta’a.\textsuperscript{68} Haa ta’u malee, qajeelfamoota ta’an yoo cabse manni murtii yeroon yaalii dheeressuu danda’a. Darbees, yeroon yaalii bu’aa akka hin qabaanne yoo mirkanesse ajajni korooraan gad-lakkifamuu kenname hqame sirreeffamaan gara mana sirreessatti akka deebi’u ni taasisa.\textsuperscript{69}

Dhiifama ilaalchisees, haal-durreewwan teechifaman kabajuq dhabuun dhiifama kenname ni haqsiisa. Dabalataanis namoonni dhiifama dogongorsuun argatan himanni irratti dhiyaatee boordiin qoratee yaada murtii pirezidaantiif dhiyeessuu murtee argata.\textsuperscript{70}

\begin{itemize}
\item[64] Seera Yakkaa RDFI, Kwt 199(1).
\item[65] Seera Yakkaa RDFI, Kwt.199 fi Kwt.208 wal-faana dubbisuun
\item[66] Seera Yakkaa RDFI, Kwt.199.
\item[67] Seera Yakkaa RDFI, Kwt.210
\item[68] Seera Yakkaa RDFI, Kwt.206(3).
\item[69] Seera Yakkaa RDFI, Kwt.206 fi Kwt.200 wal-faana dubbisuun.
\item[70] Seera Yakkaa RDFI, Kwt.6(3).
\end{itemize}
3. XIINXALA DAATAA

Itti aansuun dhimmoota xiyyeefannoo barruu kanaa ta’an irratti daataa bifaa af-gaaffii, bar-gaaffii, galmee fi marri gareetiin funaanaman kan itti xinxaalaman ta’a. Kutaa kana keessatti calalliin korooraan fi dhiifamaa haala kamiin gaggeefamaa akka jiru; manni murtii gaaffii korooraan dhiyaatu haala kamiin simatee ajaja akka kennu; akkaataan kenneensa dhiifamaa maal akka fakkaatu; hordoffii sirreeffamtoota dhiifamaa fi korooraan bahanii maal akka fakkaatuu fi hanqinoota kanneen keessatti mul’atan daataa argaman waliin kan xinxaalamu ta’a.

3.1. SIRREEFFAMAA KOROORAA FI DHIIFAMAAMEF QOPHEESSUU IRRATTI HAALA QABATAMAA JIRU

3.1.1. Simannaa fi Hubannoo Uumuu

Sirreeffamaan adabbiin itti murtaa’ee mana sirreessaa yommuu galu, turtii isaa keessatti fooyya’iinsa amalaa yoo agarsiise yeroon adabbii isaa osoo hin dhumiin dursee gadhiifamuu akka danda’u manni sirreessaa hubachiisuu akka qabu seerri yakkaa ni ibsa.71 Kunis sirreeffamtootni hubannoo fi abdii qabaatanii akka of-qopheessaniif fayyada. Hojjirra oolmaan tumaan kanaa manneen sirreessaa biratti maal akka fakkaatu hubachuuf hirmaatotni afgaaffiiin godhameef hubannoo uumuu irratti hanqinni guuttaan akka hin jirre agarsiisa.72 Bargaaffii sirreeffamtoota seerra waliin gaggeefameen hirmaattotni 85.3% ta’an haala korooraan fi dhiifamaan bahuun itti danda’amu irratti hubannoon ni kennama yommuu jedhan 14.4% kan ta’an immoo hubannoon nuuf uumamee hin jiru jechuun deebisanii jiru. Hojiin hubannoo uumuu fooyya’aa akka ta’e yaada afgaaffii fi bargaaaffii kanarraa hubatama.

71 Seera Yakkaa RDFI, Kwt. 203.
72 Afgaaffii Waashihuun Taakkalaa sirreefamaa seerra mana sirreessaa Godina Gujii waliin gaafa guyya 22/05/10; Ob. Nugusee Xaahir sirreefamaa seerra mana sirreessaa Godina Harargee lixaan waliin gaafa guyyaa 01/05/10; marri garee sirreeffamtoota seerra Mana sirreessaa Godina Harargee lixaan waliin gaafa guyyaa 01/05/10 taasifame.
3.1.2. Madaallii Fooyya’iiinsa Amalaa Sirreeffamaa

Sirreeffamaan yakka raawwate irraa baratee, amallii isaa fooyya’uu isaa haala iftoomina qabuu gamaggamaa deemuun kennisaa korooora fi dhiifamaatiif baay’ee barbaachisaa dha. Gama kanaan hojimaatni manneen sirressaa maal akka fakkaatu madaaluuf daataa funaaname irraa fooyya’iiinsi amala sirreeffamaa haala saayinsawaa fi idilaa’aa ta’een madaalamaa akka hin jirre hubatameera.

Ogeessonni mana sirressaa baay’een fooyy’iiinsa amala sirreeffamaa yeroo yeroon hordofaa deemuun humna namaa fi baajata manni sirressaa qabu faana ulfataaa waan ta’eeef, qabxiin sirreeffamaa yeroodhuma sirreeffamaa koroooraan bahu tilmaamaan kan guutamu akka ta’e ibsu.73 Qabxiin kennamu ragaa irratti hundaa’ee akka hin taanes ni ibsu.74 Akkuma armaan olitti ibsame galmeewwan sirreeffamtootaa sakatta’aman irraa qabxiixwwan madaallii sirreeffamaaf kennaman tilmaamaa akka ta’e hubachuun ni danda’ama. Fakkeenyaaaf sirreeffamtoota mana sirressaa keessa jiran maraaf qabxii walfakkaataa kennuu75, iddoowwan tokko tokko irratti immoo qabxii gosa lama kennuu ni jira.76 Galmeewwan manneen sirressaas muraasa sakatta’aman keessatti qabxii madaallii duuchumaan dhibbeentaa hammanaa argate jechuun qofa ibsuunis ni mul’ata. Kanaaf, qabxii madaallii kenname irraa bu’uura maaliin akka kenname waanti ibsu hin jiru.77 Yeroo tokko tokko immoo

76 Fakkeenyaaaf, unkaa xala.lak 18/7/75/2007 gaafa guyyaa 27/5/05 (Lak. Galmee mana murtii Aanaa Liban 10241) mana sirressaa Go/Gujii irraa mana murtii Aanaa Libaniit dhiyaateen qabxiille madallii tokkoon tokkoon guutamanii sirreeffaman id’a’ama 90% akka argatee yommuuu ibsu fuala itti aane jiru fi koreen madaallii irratti mallatteessenji jiran irratti sirreeffamanaa qabxii madallii waliigala 80% akka argate ibsa. Haaluma wal fakkaatuun xala.lak. 18/7/10/06 mana sirressaa Go/Gujii irraa barreefame (Lak.. Galmeeman mana murtii Aanaa Liban 10275); Lak.. Galme MMO Go/Gujii 12794.
‘sirreeffamaan amalli isaa fooyya’ee jira, hozii misoomaa irratti hirmaatee fi yakka raawwatetti gaabbe’ bifa jedhu qofaan sirreeffamaan korooraan akka bahu yommuu itti gaafatmus ni jira.78


Kana irraa kan hubatamu madaallii yoo kiin gamaaggamni amma manneen sirreeessaa Oromiyaatti gaggeeffamaa jiru haala saayinsawaa fi sirnaawaa ta’een gaggeeffamaa akka hin jirre ni hubatama.

78Xalayaa mana sirreessaa GAONF lak.AdHISSS/223/08/10, Mana sirreessaa GAONF xal. lak.. AdHISSS/1863/08/2010, Mana sirreessaa GAONF xal.lak.. AdHISSS /129/08/2010,
3.2. SIRNA IYYANNOO FI CALALLII KOROORAA FI DHIIFAMAA

3.2.1. Iyyannoo Dhiyeessuu

Sirreeffamtooiti iyyannoo korooraa fi dhiifamaa qaama aangoo qabuuf dhiyeeffachuuun walqabatee hanqinootni akka mul’atan hubatameera. Sirreeffamtooiti mana sirreesaa mana murtii iyyannoon korooraa itti dhiyaatu irraa fagaatanii jiran qaamni iyyannoo isaanii mana murtiiiti dhiyeessu waan hin jirreef rakkataa akka jiran hirmaattotni ni ibsu.81 Mana murtii dhimma korooraa keessummeessu irratti hubannoo fi hojimaata adda addaatu jira. Godinaalee hedduutti dhimmi korooraa mana murtii adabbii dabarsetti dhiyaatee furmaata argataa jira. Godina muraasa keessatti immoo dhimmi korooraa manuma murtii dhiyeenya qabutti dhiyaatee ilaalam. Fakkeenyaaf, Godina Wallaggaa Lixaatti dhimmi korooraa mana murtii aanaa Gimbiitti dhiyaatee ilaalam.82 Adeemsi kun sababa fageenyaatiin sirreeffamtooiti gaaffii korooraa dhiyeeffachuul keessatti rakkoo isaan mudatu kan hiiku ta’us, mannii murtii ragaa sirreeffamaa guutuu osoo hin argatiin ajaja akka kennu taasisee jira.

Calallii dhiifamaa walqabatee yeroon calallii dhiifamaa gageefamu baay’ee gabaabbachuu irraa kan ka’e adeemsa labsii dhiifamaa keessa jiru hordofuuf rakkisaa ta’uu ogeessonni ni ibsu.83 Dabalataanis iyyannoo dhuunfaan dhiyaatuuun wal-qabatee deebiin itti kennamaa kan hin jirre ta’uu sirreeffamtooiti ni dubbatu.84 Gama biraatiin immoo iyyannowoowan dhiifamaa iddoowwan itti dhiyaachuu qaban beekuu dhabuu waajjira pirezidaantiitti yeroon ergaman ni jira. Kun rakkoo waajjirri boordii hunda’uu dhabuu irraa kan ka’ee dha.85

81 Afgaaffii Ob. Yaadataa Gonfaa ogeessa Mana sirreessaa Godina Sh/Lixaa, Ob. Tafarraa Fallaqaa ogeessa Mana sirreessaa Godina Sh/Lixaa.
83 Afgaaffii Wuddinash I/G Wajjira Haqaa GAONF, Ob. Zarihuun I/G Wajjira Haqaa Go/Guji waliin taasifame.
84 Marii garee sirreeffamtoota seerra Go/Har/Lixaa Waliin gaafa guyyaa 01/05/10 taasifame.
85 Ob. Addisuu Laggaa, Waajjira Pireezidaantiitti Mootummaa NannoOromiyaawaliin gaafa guyyaa 14/07/10 taasifame.
3.3. CALALLII FI KENNIINSA KAROORAA FI DHIIFAMA

itti aansinee calallii fi keniinsi korooraa fi dhiifamaa haala kamiiin gaggeeffamaa jira kan jedhuu fi hanqinootni mul’atan maal faadha kan jedhu haa ilaallu.

3.3.1. Calallii fi Kneninssa Korooora

Ulaagaleen calallii korooraa iftoomina qabaachuu adda baasuuf hirmaatotni qorannoo hubannoo isaanii akka ibsan bargaaaffiin dhiyaatee ture. Abbootii seeraa fi ogessonni mana sireessaa hedduun ulaagaan keniinsula korooraa ifa ta’uu ibsaniiru.86 Bu’aan bargaaaffii kun iftoomina seeraa fi hubannoo ogessotaa irratti hanqinni guddaan akka hin jirre agarsiisa. Haa ta’u malee dhimmoonni ogessonni hubannoo adda addaa fi hojimaata wal hin fakkaanne irratti hordofan akka jiran afgaaafii hubatameera. Fakkeeyaaaf, sirreeffamtootni yakkamaa irra deedebebii ta’anii fi kaneen adabbii hidhha faana adabbiiin maallaqaa itti murtaa’eef koroorri ni kennaamu moo hin kennaamu dhimma jedhu irratti hubannoonis ta’e hojimaanii jiru garaagarummaa ni qaba.87 Manneen sirreessaa hedduun namoota kanaan dura yakka raawwataanii mana sireessaa turaniif koroorri akka hin kennaamu yoo ibsan, muraasa biratti immoo sirreeffamtootni deddeebi’oon korooroo akka argatan ogessoonni ni dubbatu.88

Keniinsula korooraa keessatti tumaalee jiran kaneen sirnaan hojiirra ooluuf fi dhabuu adda baasuuf daataa saassabamerraa hanqinoota heeddun jirachuu hubatameera. Rakkooleen kuneen mana sireessaa calallii korooraa raawwataanii fi manneen murtii korooroo kenna biratti sadarkaa sadarkaan keneen jiraa dha. Yommuu calalliiin raawwatamu manneen sireessaa keessatti 2/3̂ fmaa adabbii raawwachuu sirreeffamaa sirnaan adda baasuuf

86 Ogeessota mana sireessa keessa 92.3% ulaagaleen korooraa iftoomina qaba jedhu, sirreeffamtoota keessa immo 85.7% iftoomina qabaachuu ibsu, Abbootii seeraa bargaaaffii guutan keessa 81% ulaaga korooraa irratti hubannoo akka qaban yoo ibsan kaneen hafan immoo hubannoo gahaa akka hin qabne agarsiisa.


dhabuun ni jira.  


Murtii armaan olii irraa akka hubatamu sirreeffamaan korooraa yoo kan gad-lakkifamu ta’e dirqamatti kan hidhamu baatti 4 dha. Garuu sirreeffamaan erga murtii keneen baatti 1 fi guyyaa 6 qofa hidhamee kan bahe. Ragaan iddo turtii biraa bakka ibsamee hin jirretti 2/3 an adabbi raawwateen jira haalli itti jedhamee mana sirreefsaa itti calalame iftoomina kan qabuu miti. Manni murtii korooro kana kennaan dura ragaalee dhiyaatan sirnaa hin sakattaane. 

Rakkoon biraa calallii fi keneen korooraatiin wal-qabatee jiru inni biraa ulaagalee tzechifaman mara wal-biratti ilaalu dhabuu dha. Ogeessotnii af- 

gaaffiiin waliin taasifame akka dubbatanitti ulaagaa kororoaa seera yakkaa 

kwt.202(1) fi dambii ittiin bulmaata sirreeffamtoota nanoo Oromiya keessatti ibsam keea jeeala midhamaa beenyaa kan falu u yooqiin araaramuu jedhu hojiirra akka hin oolchine ifatti dhabuu. Kunis sirni kana raawwachuu dhiyaan dhabamuu irraa kan ka’eedha. Manneen sirreefsaa muraasa biratti sirreeffamaa fi midhamtootnii yakka akka araaraman gochuuf yaalamee jira. Fakkeenyaaf, Godina Shawaa Lixaatti ‘Bokkuu Cittuu’ irraa sirreeffamaan sirna araaraa irraatti akka hirmaatu xalayaan gaafatamee manni sirreefsas sirreeffamaa sagantaa araaraa irraatti akka hirmaatuuf haala

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89 Fakkeenyaaf Galmee lak.,10241 himataamaa Mahammad Ahmmadinenuur gaafa guyyaa 12/03/07 addabbi baatti 4 akka adabamu manni murtii Aanaa Liban murteeesse Manni sirreeessaa Godina Gujii iyayata unukaa gaafa guyyaa 27/05/07 guutameen sirreeffamaan addabbi 2/3 an gaafa guyyaa 28/05/07 xumura jeechuun dhiyeessee sirreeffamaan yeroo turtii iddo biraa akka hin qabnuu iyayata keessatti caqasee jira; mana sirreefsaa keessattis guyyoota saadeetama akka hidhaman caqasee jira. Gaafa itti murti’a ce irraa yommuu herreegamu sirreeffaman kororooraan 2/3 an addabbi (baatti 2 guyyoota 20 ) xumuree kan bahuu qabu gaafa guyyaa 02/06/07. 

90 Dhimma Naashaa A/Gisaa vs A/Alangaa L.G MMO 37223 Go/Jimmaa.

91 Afgaaffii Kom. Andualam Xilhaaun I/Gaafatamaa mana sirreeessaa Go/Har/Lixaa waliin gaafa guyyaa 01/05/2010 taasifame.
mijeessuun hubatamee jira.\textsuperscript{92} Manni sirreesaata tattaaffii walfakkaataa taasisanii sababba hanqina humna namaam fi loojistikiiitiin addaan kutanis jiru\textsuperscript{93}.


\textsuperscript{92} Fakkeenyaaf, Xalayaa gaafa 02/08/2008 Bokkuu cittuu irraa mana sirreesaa godinia shawaa lixaaf barreeffame, Afgaaffii Kom. Taklulu Lataa Hooggana Mana Sirreesaa Godina Sh/Lixa.

\textsuperscript{93} Afgaaffii Insp.Ayyaanaa Baqqalaa Ogeessa Mana sirreesaa Go/Jimaa waliin afgaaffii gaafa 24/5/2010 taasifame.


\textsuperscript{96} Dhimma Nagaash Dhaabaa Jilchaa fi A/Alangaa Go/Sh/Lixaat. Galmee MMO 12761
akkuma hubatamu hanqina raawwatameen sirreeffamaan murtii hidhaa baatti 8 itti murtaa’e keessaa torban lama qofa akka raawwatu godhamuu isaati.


97 Afgaaffii Ob. Mallasaa Abrahaam A/seeraa fi gaggeessaa garee yakkaa MMO Godina Baalee waliin gaafa guyyaa 29/05/10, Ob. Midhaksaa Magarsaa A/s MMO Godina Baalee waliin gaafa guyyaa 29/05/10, Ob. Mokonniin Raggaaasa Pireezidaantii MMO Godina Baalee waliin gaafa guyyaa 29/05/10 , Ob. Dassalany Galatoor A/seeraa MMA sinaanaa waliin gaafa guyyaa 29/05/10 taasifame


99 Xalayaa lak. 18/775/2007 gaafa guyyaa 27/05/07 (Lak.. Galmee mana murtiin Aanaa Liban 10241) mana sirreesaann Go/Gujii irraa mana murtii Aanaa Libaniiif dhiyaateen qabxiilee madallii takkoon takkoon guutamaniin sirreeffamaan ida’a amaa 90% akka argate yommuu ibsufuula itti aaneec jiru fi koreen maddallii iratti mallaateessanii jiran iratti sirreeffamaan qabxii madallii willalgalaa 80% akka argate eegalu. Haaluma wal fakkaatuu xal.lak. 18/710/07 mana sirreessa Ga/Gujii irraa barreeffame (Lak.. Galmeem mana murtii Aanaa Liban 10275). Lak.. Galmeem MMO Go/Gujii 12794.

dhiyaate irratti ajaya yommuu kennan sirreeffamaan qaaman akka dhiyaatu gochuun haal-dureen hin teechisan.101 Dhimma korooraan xiyyeeffannoon akka hin ilaalles galmee koroora irraa ni hubatama.102

3.3.2. Calallii fi Kenniinsa Dhiifamaa

Calallii fi keniinsa dhiifamaa ilaalconse, hanqinoota jiran haguuggiin seeraa gahaan dhabamu, qaamoleen seerota kaneen raawwachiisan sirnaan gurmaa’uu dhabu fî seerotuma jiraniyyuu sirnaan hojiiru ooluu dhabuutu mul’ata.


101 Afgaaffii Darajje Faanta A/seeraa MMO Godina Harargee Lixaa waliin gaafa guuyaa 01/05/10 Abdi outfyaan sirreeffamaa mana sirreeessa Godina Harargee Lixaa irraa korooraan bar 2009 bahe waliin gaafa guuyaa 02/05/10, Ob. Aliyyii Kadiir Abbaa seeraa MMO Godina Harargee Lixaa waliin gaafa guuyaa 02/05/10 Buzunah Guutamaa pirezidaaintii MM Magaala Burrayyuu waliin gaafa guuyaa 07/05/10, Baayisaa Sorsaa A/seeraa MM Magaala Burrayyuu waliin gaafa guuyaa 07/05/10, Dajanee Iddechaa A/seeraa Mana murtii Aanaaa Adaamii tulluu waliin gaafa guuyaa 09/05/10 taasifame


rakkoo iftoominaa akka qabuu fi ogeessotnii fi sirreeffamtootni hubannoo gahaa kan hin qabne ta’uu ni hubatama.


Waajjirri boordii dhiifamaa bu’uura labsichaatiin akka hin gurumoofnee fi itti gaafatamaanis akka hin ramadamne hubatamee jira.108 Kana irraa kan ka’e ragaawwaan kenninsa dhiifamaan wal qabatan adda addaa haala qinda’a’aa ta’een argachuun hin danda’amne. Qaamolee bu’uura labsichaatiin miseensa boordii ta’aniin alas qaamoleen biruu gahee qaban kaneen akka Biirro Leenjii Teekinikaa fi Ogumma Oromiyaa fi Biirroon Dhimmaa Hojjetaa fi Hawwaasumma Oromiyaa miseensa Boordichaa ta’uu dhabuun hojii sirreeffamaa haaromsanii hawwaasatti makuu sirnaa akka hin hojjetamne

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106 Afgaaffii Kom Tanaanyee Walduu Hoggantuu Mana sirreessa Go/I/A/Booraa waliin gaafa 25/5/2010 taasifame.

107 Afgaaffii Kom Tanaanyee Walduu Hoggantuu Mana sirreessa Go/I/A/Booraa waliin gaafa 25/5/2010 taasifame.
dhiibbaa gochuus himamee jira. Hojiin gaaffii dhiifamaa simachu fii qulqulleessuu, akkasumas yaada murtii pirezidaantiif dhiyeessuu hojii itti mutfinsaan hojjetamu akka ta’e tumaalee labsii 114/98 irraa ni hubatama. Boordiiin hojii kana hojjetus boordii dhaabbataa akka ta’e labsichi ni akeeka. Haa ta’u malee miseensotni boordichaa namoota manneen hojii biraa, kanneen hojii idilee biraa qaban qofa akka ta’an gochuun immoo hojichi akka hojii idileetti akka hin fudhatamne godhee jira. Rakkoon kun boordiiin hojii isaa haala labsichi hin hayyamneen qaamolee biraaf akka qoodu yookiin dabarsee kennis dirqamsisiiseera.


Iyyanoomo dhiifamaa hundinuu ragaa fii yaada murtii waliin pirezidaantiif dhiyaachuu akka qabu labsichi ni kaa’a. Haala hojimaata naannoo Oromiyaa amma jiru yoo ilaalle garuu, koreen calalliis ta’e boordii iyyanoo sirreeffamaa dhiyaatu yookiin kaka’uumsa isaanitiin calalan keessa kanneen bu’uura ulaagaatiin dhiifama ni kennisisa jedhanii itti amaan qofa pirezidaantiif dabarsuu. Kun immoo boordii fi koreewwan calallii kunneen aangoo dhiifama irratti murtessuu akka qabaatan godhee jira.

Hanqinni biraal mul’atu immoo dhimmoota murtii addabbi xumuraa hin arganne irratti dhiifamaa gochuun wal qabatee rakkoolee uumamani dha. Labsii lakk. 114/98 irratti gaaffiiin dhiifamaa murtii dhumaa manni murtii kenne bu’uureffatee akka ta’e ibsa. Murtii dhumaa jechuuniis sina kennisinsaa mana murtii keessatti carraawwan jiran (oliyyanoomo fi ijibbaata) kan fixate yookiin carraa adeemsa kana keessa darbuu akka hin qabaanne ta’uu qaba. Kunis

112 Toora interneetii www.vocabulary.com/dictionary/final%20decision gaafa guyyaa 24/08 /10 ilaalam
kenniinsi dhiifamaa falmii yakkaa dhimma yakkaa waliin haala wal simateen akka deemuuf kan gargaaru dha.


Tumaalee qajeelfamaa fi labsii dhiifamaa keessa ta’aan keessaa kanneen sirnaan hojiirra oolaa hin jirres hedduu dha. Namoota umuriin dullooman, akkasumas dhibee hin fayyine qabaniiif haala addaatii dhiifamni godhamaafii akka hin jirres ibsamee jira.113 Namoota sababa umuriittiin dhiifamni godhamuufii qabu ilaalchisee, umuriin waliin dhahuu irraa kan ka’e, hojiirra oolchuun akka hin danda’amne hoggantootni kaasaniiru.114 Dhibee fayyuu hin dandeenyee kan jedhu ilaalchisee sirreeffamtootni hanqina hubannoo fi ragaa mana yaalaa haala qajeelfamni gaafatuun dhiyeessuu dhabuun akka itti hin hojjenne gochuun hoggansaan ibsamee jira.115

Sirreeffamtoota murtii du’aa itti mutrata’e irratti murtichi raawwatamaa hin jiru. Haa ta’u malee sirreeffamtootni kun dhiifamnas argataa akka hin jirree fi

113Marii garee sirreeffamtoota Mana Sirreessaa Godina Shawaa Lixaa waliin gaafa 04/05 /2010 taasifame.
114 Afagaaffii Ob. Tashoomaa Girmaa, Olitti yaadannoo lak. 108 waliin taasifame.
115 Afagaaffii Ob. Tashoomaa Girmaa (Akkuma 114ffaa).

Haala addaatiin dhimmoota sirreeffamaaf dhiifamaa kennisisiisan keessaa tokko adabbii ragaa sobaa iratti hundaa’e kenname dha.Nama ragaa sobaatiin itti murtaa’eef haala addaatiin dhiifamni akka taasifamuuuf, qajeelfamootni dhiifamaa ni ibsu. Sirreeffamtootni mana sirreessa detaan irraa funaaname keessa jiran hedduun yakkiif fi adabbiiin ragaa sobaan kan iratti murtaa’e akka ta’e ibsuumu dhiifamni akka taasifamuuuf kan gaaftan ta’uu hubatamee jira.

Manneen sirreessa hedduu keessatii sirreeffamtootni ragaa sobaan adabamuun iyyatan dhiifamaa akka argatan gochuun akka hin danda’amne hoggantootnii fi ogeessotni mana sirreessa akkasumas sirreeffamtootni ibsanii jiru. Tumaan kun hojiirra akka hin oolle kan godhe, iyyatni ragaa sobaabu’uurreffatu garmalee heddummachuu fi kana qorachuu deebii kennuun ulfaataa ta’uutu ibsame. Sirreeffamaan tollok tumaa kanatti fayyadamee

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118 Fakkeenyaaf, Mana Sirreesa Godina Shawaa Lixaa keessatti bara 2010 qofa sirreeffamtoota jiran keessaa 673 kan ta’an ragaa sobaan adabamne waan ta’eeef qoratamee dhiifamni nuuf haa kennamu iyyata jedhu dhiyeessuu daataa mana sirreesichaa irraa argame irraa hubatameera.
dhiifama argachuu isaa hogganaa ibsan jiru. Kunis, iyyata ragaa soabaatiin adabamuu dhiyaate irratti hundaa’uun abbaa alangaa fi poolisiin hawwaasaa fi maatii midhamaa waliin ta’uun sirreeffamichi yakkicha akka hin raawwanne kan mirkaneessan ta’uu ibsaniiru.


119 England, Wales, Northern Ireland, Scotland, Norway, Canada and the United States are some of Countries that have officially responded to the problem of wrongful conviction and implemented significant governmental bodies and other legal mechanisms for the identification and correction of wrongful convictions, Weathered, Lynne, the growing acknowledgement of wrongful conviction (The Australian Response with international context, Victoria Univesity law and Justice Journal, 2013, F79)


121 Texas State Board of Pardons and Paroles Rules, §143.2. Pardons for Innocence.
3.3.3. Hanqinoota Biroo Calallii fi Kenniinsa Korooraa fi Dhiifamaa Keesatti Mul’atana

Hanqinootni biroon calallii fi kениinsa korooraa fi dhiifamaa kessatti mul’atan keessaa tokko rakko sirreeffamtooata jijirraan dhufan korooraa fi dhiifama argachuu irratti isaan qunnamu dha. Sirreeffamtooiti manneen sirreesaa naannoo biraa irraa gara Oromiyyaa dhufan manneen sirreesaa Oromiyaatiin yommuu simataman ragaa sirreeffamaya guutuu waliin waan hin simatamneef kениinsa korooraa irratti rakkoon isaan mudata. Ragaa barbaachisu qaama jiru biraa nama yookiin qaama fiduuf hin argatan. Kanaaf koroora malee adabbii itti murtaa’e yommuu mana sirreesaa kessatti fixuuf dirqaman ni mul’ata.122 Haalli calallii fi keniinsa dhiifama sirreeffamtooota iddo maratti hojimaata walafakaataa akka hin taane ibsameera. Kunis calallii fi keniinsi dhiifama sirreeffamtooata keneenii yeroo tokko tokko kan Oromiya faana yoo raawwatu yommuu biraa immoo qofaatti kan raawwatu ta’uu ogessonni ni ibsu.123 Sirreeffamattoota calalliin isaanii raawwatamee gara boordii dhiifamaa federaalatti ergamuun wal-qabatee garuu yeroon furmaata argachuu dhabuun ni mul’ata.124

Ogeessota calallii korooraa fi dhiifamaa raawwatan biratti rakkoon naamusaa akka mul’atus ogessontii fi sirreeffamtooonti afgaaffiiin godhameef ibsaniiru. Rakkoowwan naamusaa kunneenis faayidaan hojjechuu, walitti dhufeeyna dhuunfaa irratti hunda’uun sirreeffamaan koroora yookiin dhiifama aka argatu gochuu, sirreeffamtooota gidduutti loogii uumuu, ragaa sobaatii sirreeffamaan koroora yookiin dhiifama aka argatu gochuu fi kaneen

122 Afgaaffii Insp.Ol Waqooy Burqaa Hooggganaa Mana Sirreesaa Godina Harargee Lixaa waliin gaafa guyyaa 03/05/10 taasifame, Afgaaffii G/Insp. Mashuutee Abdulqaadir, Ab/Ad/sirreesaa sirreeffamtooata M/Sir/Gooonnaa Baalee waliin gaafa guyyaa 28/05/10, Marii garee sirreeffamtooota Go/Har/Lixaa waliin gaafa guyyaa 01/05/10 taasifame
123 Insp. Olaanu, Damee Fufaa Mana sirreesaa Godina Wallagga Lixaa.
124 Afgaaffii Kom. Andualam Xilaaahun, Hoggaaanaa Mana Sirreesaa Godina Harargee Lixaa waliin gaafa guyyaa 02/05/10, Asfaaw fiqaaaduu, H/Gabriel Jadu, Sirreeffamtooota Mana Sirreesaa Go/Sh/Lixaa waliin afgaaffii gaafa 04/5/2010 gaggeeffame.
fakkaatani dha.125 Rakkoon naamusaa jiraachuu galmeed ogeessota himatamaamii adabaman irraa hubachuunis danda’ameera.126

Akkaataa calaliin korooraan fi dhiifamaa itti gaggeeffamu irratti sirreeffamaan komii qabu dhiyeeffachuu irratti hanqinni jira.127 Kunis sirni komii mijataa fi walfakkaataa ta’e diririiru dhabuu fi yeroon calaliin dhiifamaa itti gaggeeffamu baay’ee gabaabaa ta’uu irraa kan ka’e dha.

3.4. HORDOFFII SIRREEFFAMAA KORORAA FI DHIIFAMAA BAHEE

Sirreeffamtootni yeroo korooraan akka gad-lakkifaman murtaa’u jireenyi isaanii hawaasa keessatti akkaataa kamiin akka hordofamu seerri yakkaa teechisee jira.128 Dhiifamni immoo bu’uura qajeelfamoota boordiin dhiifamaa baasuun koreen calallii godinnaa gara caasaa poolisii fi bulchiinsaafii nageenya gandaatiin akka hordofu teechisee jira.129 Itti aansuun hordoffiin sirreeffamtoota korooraan fi dhiifamaan bahanii qabatamaatii maal akka faakkaatu ha'a ilaallu.

Hordoffiin sirreeffamtoota korooraan gad-lakkifaman irratti taasifamu jiraachuu sakatta’uuf bagaaffii fi afgaaffiiin oggeessota waliin taasifameera. Bargaaffii abbootii seeraa irraa funaanameenis abbootiin seeraa harki 97.8% ta’an sirreeffamtooti yommuu korooraan gadhiifaman manni murtii sirreeffamaan hawaasa keessatti akka hordofamu ajaja hin kenu jedhaniiru. Bu’aa afgaaffii irraayis hordoffii sirreeffamtoota korooraan gadhiifamanini ilaalchisee manni murtii ajaja akka hin kennine, qaamni to’atus akka hin jirre hubatameera.130 Abbootii seeraa hordoffii ilaalchisee maaliif ajaja akka hin

125 Afgaaffii Ob. Gizaachaw Asaffaa, Ab/Ad/Qo/Yakkaa fi Murtii Haqaa Kennisiisaa, Waajjira Haqaa Aanaa Adoolaa waliin gaafa 24/05/10; Ob. Kiyya Salamoon, sirreefamaa seeraa korooraan mana sirreessaa Godina Baalee irraa gad-lakkifame waliin gaafa 29/05/10 gaggeeffame.
126 A/Alangaa fi It/A/Ins.Waaqshuum Abarraa, MMO Go/W/Lixaa, L.G 05233 murtii gaafa 06/11/2009 kenne.
127 Afgaaffii Kom. Fiqiruu Kabbaddaa, I/G Mana Sirreessaa Aanaa Adoolaa waliin gaafa guyyyaa 23/05/10 taasifame.
128 Seera Yakkaa RDFI, Kwt.199(1).
130 Afgaaffii Darajje Faantaa, Abbaa seeraa MMO Godina Harargee Lixaa waliin gaafa 01/05/10; Garamaw Ababaayyoo Abbaa seeraa MMA Dodolaa waliin gaafa 17/05/10; Ob.
kennine yommuu gaafataman, qaamni ajajamu hin jiru jechuun deebisaniiru. Sirreeffamaan korooraan bahe yakka biraa raawwateee itti mutraa’ee deebi’e haalli koroorri isa dura itti haqamu kan hin jirre ta’uu isaa ogeessonni mana sirreessaa fi abbootiin seeraa ni ibsu. Ogeessota bargaaaffii deebisan keessaa 81.8% kan ta’an sirreeffamtooootni korooraan erga bahanii booda badii yoo raawwatan sababa koroora duraatiif jedhamee carraan to’atamuu isaanii gadaanaa akka ta’e ni ibsu.

Hordoffii sirreeffamtoooota dhiifamaan bahani ilaalchisees, hoggantootni miseensa koreee calalii godinna ta’anii fi afgaaffiiin waliin gaggeeffame sirreeffamaan erga dhiifamaan gadhiifamee booda haal-duree tereoof efam eeguu fi dheisuq qaamni hordofu akka hin jirre ibsaniiru. Sababoonnin haqqina hordoffiiff ka’uumsaan ta’anis koreee dhiifamama yeroodhuma dhiifama calaluuf barbaachise qofa kan wal gahu ta’uu fi xiyyefannoof fi haqqinni humna namaa rakko ta’uu dha. Hordoffiin waan hin gaggeeffameeneef haga ammaas sirreeffamaan haalduree dhiifamaa cabse jedhamee mana sirreessaatti deebifame akka hin jirre hubaachiisaniiru. Sirrefamtooootni dhiifamaan ba’anii yeroo yaalii keessatti yakka dalaganis ni jiru. Haa ta’u malee sirreeffamtooootni kunneen yakka lammataaf akka itti gaafataman gochuun ala

Taariikuu Filaa, Abbaa seeraa MMO Godina Gujii waliin gaafa 22/05/10 fi Ob. Mallasaa Abraham, Abbaa seeraa fi Gaggeessa Garee Yakkaa MMO Godina Baalee waliin gaafa 29/05/10 taasifame.

Afgaaffii Ob. Sisaay Mul’ataa, Abbaa seeraa MMO Godinnaa Gujii waliin gaafa guyyaa 22/05/10 taasifame.

Afgaaffii Ob. Mokonnin Raggaaasaas Pireezidaantii MMO Go/Baalee waliin gaafa guyyaa , Ob. Aliyyii Muhammad Abbaa seeraa MMO Go/Har/Lixaa waliin gaafa guyyaa 02/05/10, I/A/Insp. Mashutee Ab/Ad/Sirreessa Sirreessa, Mana Sirreessa Godina Baalee waliin taasifame.


Afgaaffii G/Saj.Muhaammad Jundii, Itti Gaafatama Waardiyyaa Mana Sirreessa Godina Harargee Lixaa waliin gaafa guuyaa 01/05/10 taasifame.

Afgaaffii Sirreeffamtooota Mana Sirreessa Godinnaa Go/W/Lixaa yakka ajjechaa sirreefamaa dhiifamamaa bahe iratti raawwachuur himatamaniit itti mutraa’ee waliin gaafa 7/5/2010 godhame;Afgaaffii Inspeektar Urgee Abarraa, Qindeessaa Tajaajila Poolissii Hawwasummma Aanaa Amboo waliin afgaafii gaafa 03/5/2010 gaggeefame, Ob. Geetuu Margaa, Abbaa alangaa Aanaa Najjo waliin gaafa guuyaa 05/05/10 taasifame.

haalli dhiifamni isaanii haqamee mana sirreessaatti itti deebi’an akka hin jirre ogeessotni kunneen ni kaasu. Sirreefamtootni dhiifamaan mana sireessaatii bahanii osoo yeroo yaalii hin xumuriin yakka biraa raawwatan yookiin isaan irratti yakki raawwatame akka jiran galmee irraa hubachuunis ni danda’ama.


4. YAADOTA GUDUUNFAA FI FURMAATAA

4.1.YAADOTA FURMAATAA

Fooiya’iinsa amala sirreeffamaa haala saayinsawaa, walfakkaataaa (objective) fi iftoomina qabuun madaaluur irratti manneen sirreessaa keessatti hanqina guuddatu mul’ata. Qabxiin fooyya’iinsa amalaa agarsiisu haala iftoomina

137 Afgaaffii Ob. Mukataar Sharaafiddiin, A/Alangaa Go/Jimmaa waliin taasifame.
qabuu fi fooyya’iinsa amala sirreeffamaa ibsuun kennamaa hin jiru. Ragaalee haaromsa sirreeffamaa waliin hidhata qaban haala sirnaawaa ta’een qabachuu irratti hanqina guddaatu jira.


Iyyannoo korooraa simatanii ajaja kennuu irratti mana murtii bira hojimaatni garaagarummaa qabu ni mul’ata. Ajaja kennuu keessatti ulaagaalee seera yakkaa kwt 202 jalatti ibsaman, kaneen akka adabbii murtaa’e keessaa 2/3 fiiooxa raawwachuu, beenyaa kanfaluu yookiin araaramuu, fooyya’iinsa amalaa fi kkf hojiirra oolchuu irratti hanqina guddaatu jira. Rakkoon kun, hanqina qulqullina murtii adabbii keessatti mul’atu; sirreeffamaan korooraa gadhiifamuun dura sirni miidhamtoota waliin walitti dhufuun araaraman yookiin dhiimma beenyaa itti xumurateen dhabamu; fi keniinsa korooraaaf xiyyeyeffannaa kennuu dhabuu irraa kan maddu dha. Akkaata namoonni irra deebiin yakka raawwatanii fi akka daddabalamaa raawwatan akkasumas adabbii hidhaa fi maallaqaa wal faana yoo itti murtaa’e korooraaan gadhiifaman irratti hanqinni hubannoo ogeessota biratti ni mul’ata.

Sirreeffamtootni naanno biraq irraa jiijirraan gara manneen sirreeffaa Oromiyaa dhufan tajajila korooraa fi dhiifamaa argachuu irratti haala addaan rakkoon isaan qunnamaa jira. Kunis, yommuu simataman ragaa guutuu waliin simatamuu dhabuu; fi iyyannoo isaanii qaamolee dhiimmi isaa ilaalatuuf dhiyeyeffachuuf rakoo dhaqqabummaa irraa kan ka’e dha. Tajaajilli kennamus wal fakkaataa ta’uu dhabuu ni mul’ata.
Ogeessota calallii korooraa fi dhiifamaa raawwatan bira rakoon naamusaa kanneen akka, faayidaa fi walitti duhfeeyaan hojjechu, hojji calallii qulqullinaan hojjechu dhabuu fi tajaajila si’ataa ta’e sirreeffamaaf kennuu dhabuu ni mul’ata. Komii kenneensa korooraa fi dhiifamaa keessatti mul’atan hiikuuf mana sirreessaa keessatti sirni diriire hin jiru.


**4.2.YAADOTA FURMAATAA**

Argannoowwan qorannoo kana irratti hundaa’uun yaadotni furmaataa itti aanan akeekamaniiru.

Fooyya’insi amala sirreeffamaa haala wal-fakkaataa fi iftoomina qabuun madaalamuuf, sirna madaallii saayinsaawaa fi ifa ta’e diriirsuuun barbaachisaa dha. Sirna qabannaa ragaa sirreeffamtootaa fooyyessuu fi ammayyeessuunis mana sirreessaa irraa ni eegama.

Boordiin dhiifamaa yakkoota yookiin sirreeffamtoota dhiifamni hin taasifamneef qajeelfamanaa murtessuun dura qorannoo kanaaf isa gargaaru taasisuq qaba. Dhimmichis caffee yookiin mana maree bulchiinsa mootummaa naannoottaa akka murtaa’u gochuun barbaachisaa dha. Akka filannootti, qajeelfama boordiin qophaa’u pirezaantiin akka mirkanessuq gochuun ni danda’ama. Qajeelfamni boordihaan bahu, iftoomina adeemsa kenneensa dhiifamafaak kan gargaaru malee aangoo pirezaanti daangessuuf akka hin taanetti hubatamuus qaba.

Sirreeffamanaa gaaffii dhiifamaa yeroo fi haala mijatuun akka dhiyeeffatuufi deebii argachu danda’utti qaamolee gaaffii dhiifamaa simatanii fi calalan tajaajila idilaa’aa akka kenneenn gochuun hundeessuun waajjira Pirezaantiin fi Boordii dhiifamaa sadarkaa naannoottii hundeesfame irraa eegama. Gaaffilee dhiifamaa kanneen akka umurii, dhukkubaa fi ragaa sobaa irraa ka’uun
dhiyaatan hundaafuu debbi kennuu akkataa danda’amu irratti hojimaatni akka diriru manni sirreessaa Biiroo Haqaa fi boordii dhiifamaa waliin ta’uun hojjechuun irraa eegama.

Manneen murtii, murtii fi ajaja adabbii yommuu kennan ragaawwan jiran hunda qulqulleessuun guyyaa adabbiin sirreeffamaa irraa eegalu haala iftoomina qabuun ibsuutu irraa eegama. Mana murtiis ta’e manni sirreessaa hojii kennisna korooraaf xiyyeeffannoon hojjachuu qabu.

Manni sirreessaa qaamolee nageenyaa, abbootii gadaa fi jaarselee naannoo waliin ta’uun akkataa sirreeffamaan korooraan osoo hin gadhiifamin dura midhamaa waliin araaramee nageenyaan jiratu ilaalchisee sirna barbaachisu dirirsuutu irraa eegama.

Inistitiyuutiin Leenjii Ogeessota Qaamolee Haqaa fi Qorannoo Seera Oromiyaa dhimmoota kenniinsa korooraa sirreeffamtoota deddebi’oo fi yakka dachaa raawwatan akkasumas namoota adabbi hidhaan dabalataa mallaqaan adabaman ilaalachisee ogeessota mana sirreessaa fi abootii seeraaf leenjii yoo kenne rakkoo hojimaataa fi hubannoo furuun ni danda’aama. Dabalataan Inistitiyuutichi akkaataa madaalliin fooyya’iinsa amala sirreeffamaa irraa eegalu haala walitti dhufeenyaan hojjechuu, hordoffiin qulqullinaan hojjechuu dhabuu fi tajaajila si’ataa ta’e sirreeffamtoota qabu irratti mana sirreessaa keessatti mul’atu.

Hanqina kenniinsa dhiifamaa sirreeffamtoota jijjiirraan dhufanii furuuf, moootummaa naannoo Oromiyaa aangoo sirreeffamtoota kanneeniif dhiifama gochuunis hara bakka bu’iinsaatiin yoo kiin seeraan akka qabaatuuf moootummoolee naannoo naamoo na sirreessaa kenniinsa irraa eegama. Manneen sirreessaa sirreeffamaa yommuu simatan ragaa haaromsaaf oolu hunda qulquleessanii simaachuun irraa eeggama.

Rakkoo hanqina naamusa furuuf, manni Sirreessaa sirna kennisna tajaajilaa iftoomina qabu (keessattu qabiinsa ragaa fi sirreeffamtoota hirmaachisu irratti) fi itti gaafatamummaa mirkanessuun danda’u hundeessuun tajaajila si’ataa fi qulqulluu ta’e kennuu qaba. Sirna naamusa ogeessotaa fi sirna komii sirreeffamtootaa hundeessuun fi kanned jiraniis hojjirra oolchutu irraa eegama.

Akkataa hordoffiin namoota dhiifamaa fi korooraan gadhiifaman itti gaggeefamu irratti sirna cimaa aadaa fi duudhaa hawaasaa bu’ureeffatee fi hirmaachisu hundeessuun barbaachisaa dha. Koroora ilaalchisee manneen murtii tumaalee seera yakkaa keessatti teechifaman hojjiiti hiikuu qabu.
Rakkoo hordoffii sirreeffamtoota dhiifamaan bahanii ilaalchisee caffeen labsii dhiifamaa lakk.114/98 yookiin boordiin qajeelfama amma jiru haala qajeeltoo kannen haammateen fooyyessuun furmaata ta’a.
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Ergama, Mul’ata, Toorawwan Xiyyeffannoo, fi Duudhaalee Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qo’annoo Seeraa Oromiyaa

Ergama

Leenjii ogeessota qaamolee haqaa itti fufiinsaan kennuun gahumsaa fi qulqullina ol aanaa gonfataniir sirna heeraa fi seeraa kabajanii fi kabachiisan horachuu, gahumsa ogeessota seeraa mirkaneessuu fi rakkoowwan sirna haqaa irratti qorannoo fi qo’annoo gaggeessuun yaada haaraa burqisiisuun fooyyaa’insi sirna haqaa itti fufiinsaan akka jiraatu dandeessisuu dha.

Mul’ata

Bara 2012tti gahumsa hojii leenjii fi qorannoo seeraa fi haqaatiin Inistiitiyuuticha sadarkaa biyyaatti filatamaa, akka Afirikaatti beekamaa gochuu dha.

Toorawwan Xiyyeffannoo

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2. Qo’annoo fi Qorannoo

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- Gahumsa
- Iftoomina
- Maamila Giddu galeessa godhachuu
- Kalaqummaa fi
- Dursanii yaaduu

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f:Oromia Justice Sectors Professionals Training and Legal Research Institute
Adama, Oromia, Ethiopia
Mission, Vision, Thematic Area and Core Values of Oromia Justice Sector Professionals Training and Legal Research Institute

Mission

To ensure the competence of our justice organ professionals in protecting the constitutional and legal order by giving an uninterrupted training and conducting legal research to identify and to resolve problems of justice system in order to bring about continuous justice reform.

Vision

To be a preferred centre for justice organ professionals training and legal research competency in Ethiopia and a recognized one in Africa by the year 2020.

Themes

a. Competence of the Justice Sector Professionals
b. Studies and Research

Core Values

- Competence
- Transparency
- Customer-centered
- Innovation
- Foresight

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1. Submissions should be articles (not published elsewhere) related to legal, economic, political and social issues arising in relation to Oromian, Ethiopian, and other related International Laws. Contributions could also be other works such as essays, comments on legislation, book reviews, and court cases (with or without comments).

2. Contributions may be submitted in Afan Oromo, English or Amharic

3. Submissions shall be computer typed, 1.5 space, in 12 font, Times New Roman; footnotes in 10 font, 1.0 space, Times New Roman (for Afan Oromo & English). These considerations also work for Amharic submissions except that the font size for footnote is 9.

4. The length of a contribution shall not exceed 30 pages for articles and essays. Other contributions like book reviews, case comments, etc shall range from five to ten pages.

5. The contribution should be organized into title page, abstract, introducion, body and conclusion.

6. Footnotes should be numbered consecutively with superscript Arabic numerals in the text.

N.B. A contribution may at any time be submitted to the Editorial Committee (bekele.teferi@yahoo.com or tesfayeboresa2005@gmail.com) in soft copy or hard copy. Submissions in hard copy should not reveal the identity of the author in anyway.

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