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The Relationship between the Federal and Regional States' Constitutional Review System in Ethiopia: The Case of Oromia Regional State

Allocation of Costs and Fees of Civil Litigation in Federal Supreme Court Cassation Division: 'Does One Approach Really Fit All'?

Kenninsaa fi Barreessa Murtii Dhimmoota Hariiroo Hawaasaa Manneen Murtii Oromiyaa: Seeraa fi Hojimaata

The Share of Women during Succession under State Laws and Sharia Law: Comparative Study

Land Governance in Ethiopia: Towards Evaluating Global Trends

## **Taajjabbii Reflection**

Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qorannoo Seeraa Oromiyaa: Hojiiwwan Gurguddoo Hanga Yoonaatti Hojijete

# **JOORNAALII SEERAA OROMIYAA**

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## THE RELATIONSHIP BETWEEN THE FEDERAL AND REGIONAL STATES' CONSTITUTIONAL REVIEW SYSTEM IN ETHIOPIA: THE CASE OF OROMIA REGIONAL STATE

*Muluken Kassahun\**

### ABSTRACT

*Ethiopia follows non-judicial model of constitutional review system, which empowers the House of Federation (HoF) and the Council of Constitutional Inquiry (federal CCI) at federal level. At Oromia level, the Constitutional Interpretation Commission (CIC) and the Regional Council of Constitutional Inquiry (regional CCI) are the organs entrusted with the task of constitutional reviewing. This article has examined the vertical relation between these federal and regional<sup>1</sup> constitutional review systems. The study reveals that there are no specific rules or mechanisms that govern the impact of diversity of constitutional recognition of rights between the federal government and the regional state. Moreover, there is no system to resolve or demarcate jurisdictional overlap of constitutional claims that may arise on laws, over decisions and on cases decided by cassation over cassation. Consequently, the HoF has monopolized all constitutionality claims by devouring the power and functions of the regional constitutional review organs.*

**Key Words:** *Constitutional review, FDRE Constitution, Revised Oromia Constitution(ROC), House of Federation (HoF), Constitutional Interpretation Commission (CIC), and Council of Constitutional Inquiry (CCI).*

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<sup>1</sup> Central government and Constituent units are known by different names in federal countries. Many federations refer to central government as the 'federal government' including Ethiopia, While in India (Union Government), Spain (State), South Africa (National government), and in Australia designated as a Commonwealth government. Similarly, the term 'states' commonly used in Australia, Brazil, Ethiopia, India, Malaysia, Mexico, Nigeria, and the USA. The term 'province' preferred in Argentina, Canada, Pakistan and South Africa. Other terms 'Lander' in Germany and 'Canton' in Switzerland employed. (See George Anderson, *Federalism: An Introduction*, Oxford University Press, 2008, Pp.2-3). In this paper, the terms 'central' and 'federal' are used to refer to the central government and the terms 'regional', 'state', and 'sub-national government' are interchangeably used to refer the Ethiopian Constituent units.

## 1. INTRODUCTION

Ethiopia adopted Ethnic/Multinational federalism, at least *de jure*, since the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution. At federal level, the constitution empowers the House of Federation (*here after* HoF) to entertain constitutional disputes while it is silent on how to interpret state constitutions. Due to such constitutional space, among nine regional states of the country, the Southern Nations, Nationalities and Peoples (SNNP) authorizes the Council of Nationalities and the remaining eight states entrusted the function to the organ called Council of Constitutional Inquiry (*here after* CIC).<sup>2</sup> Moreover, the regional states have adopted a diversified approach to select the members of this organ. However, in almost all states, the composition of members, expressly or impliedly involves the two-fold formula of ethnic identity and political affiliation. The Constitutional Interpretation Commission (*here after* CCI) is separately established to serve as an advisory body of these constitutional adjudicating organs.

The Revised Oromia Constitution (*here after* ROC), in force, assigns the task to the regional CIC and CCI. These organs have started operation in 2014 after nearly two decades of its recognition in the regional constitution.<sup>3</sup>

The Federal and regional constitutional review organs are empowered to perform their function independent of one another. In doing so, governing the relationship between the central and state constitutional review is vital, among other things, to balance the independent interpretation of state constitutions (self-rule) and federal unity values (shared rule), and to avoid overlap of jurisdiction that may occur between the federal and regional constitutional reviews.<sup>4</sup> Furthermore, because of a substantial number of

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<sup>2</sup> Christophe Van der Beken, *Minority Protection in Ethiopia - Unraveling and Improving Ethnic Federalism*, Recht in Afrika (2010), Pp.262-263.

<sup>3</sup> Interview with Ob. Abdi Kedir, Senior Legal Expert at Oromia CIC, Finfinne, November 28, 2015.

<sup>4</sup> Getahun Kassa, *Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian System*, Afrika Focus (2007), Vol. 20, No. 1-2, P.76.

cases that were brought to the Federal CCI arise from Oromia,<sup>5</sup> it's decisive to deal their linkage. In spite of this, there is no law which governs the relationship between central and sub-national constitutional reviews. In effect, currently, the federal constitutional adjudicating organs admit and render decisions on the cases, which is more appropriate to be entertained by regional constitutional adjudication organs. This act demises the power and function of Oromia constitutional review organs that are empowered by the ROC.

Hence, this article intends to examine the relationship between the federal and state constitutional reviews in Ethiopia with particular emphasis on the Oromia constitutional review system. To this effect, the writer have conducted interview with concerned federal and regional officials and analyzed the recently decided cases in addition to examining primary and secondary sources. In this regard, the scope of the study does not extend to considering administrative relations and investigating the standards for the success of constitutional reviews such as independence, impartiality, and competence of the organ and its members. Instead of that, the paper focuses on identifying how these organs entertain the constitutionality claims that are brought before them particularly on issues tied with human rights.

The article, in addition to introducing both tier constitutional review system, answers the following questions: How the Oromia regional state interpret the regional diversified constitutional rights within the FDRE Constitution frameworks? To what extent the regions have autonomy, from federal constitutional interpretation, to interpret the regional constitutional rights? Oromia regional state in interpreting its own constitution what possible conflict of interest over jurisdiction of entertaining constitutionality issue may arise with federal constitutional review? What is its impact and how could we resolve the problem? To what extent both tier constitutional review organs cooperate and control one another in exercising their respective powers and functions?

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<sup>5</sup> For instance, from April 20/2015- March 17/2016, 265 cases were brought to Federal CCI from all regions, including Addis Ababa and Dire Dawa cities. From all cases, 52 (nearly 20%) of them arises from Oromia region (Interview with Ms. Gebeyanesh Abebe, Federal CCI Registrar Officer, Addis Ababa, March 17, 2016).

With the view to address the above raised questions the paper is organized into six sections. Following this introductory section, section two reviews the current federal and Oromia constitutional reviews with the view to present their legal and institutional frameworks with their common features. It also highlights the general guiding rules that can regulate the relationship between each tier review system. Section three briefly examines the relationship between the federal and regional constitutions in interpreting the diversified human rights incorporated in each constitution. This helps us to understand the upshot of convergent and divergent rights on interpreting chapter three of both constitutions. Section four demonstrates the possible grounds of jurisdictional overlap and ways of fixing the problem in order to overcome the problem of forum shopping and duplication of efforts. Then after, the scope of mutual responsibility between the two review systems will be examined in section five. This section aims at showing the demarcation between the federal comity and the level of integration as well as vertical check and balance among each review systems. Finally, section six concludes the article.

## **2. BRIEF OVERVIEW OF THE FDRE AND OROMIA REGIONAL STATE CONSTITUTIONAL REVIEW SYSTEM**

According to Hans Kelsen, a constitution without constitutional review is just like not having a constitution at all since the constitutional adjudication system is an institutional safeguard for constitutionalism.<sup>6</sup> That is why adopting constitutional review system is proliferated at alarming rate since World War II. Toms Gins Burg and Mila Versteeg reveal that from 1787 of first USA constitution up to 1951, some 38% of all constitutional systems had a constitutional review, whereas, by 2011, this percentage increased to 83% out of 204 countries.<sup>7</sup> However, the existence of a constitutional review system alone is not sufficient to guarantee for constitutionalism.

In countries having federal and state constitutions, some nation's constituent units constitutions are interpreted by the federal government (e.g. by the

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<sup>6</sup>Dieter Grimm, *Constitutional Adjudication and Constitutional Interpretation: Between Law and Politics*, NUJS Law Review (2011), Vol.15, No. 4, P.18.

<sup>7</sup>Tom Ginsburg & Mila Versteeg, *Why Do Countries Adopt Constitutional Review?* Journal of Law, Economics, and Organization (2014), Vol. 30, P.588.

Federal High court in Switzerland).<sup>8</sup> In Ethiopia, HoF is the final constitutional interpreting body of the federal government. The HoF is structurally upper legislative house and functionally performs acts other than lawmaking.<sup>9</sup> This body comprises the representatives of the nations, nationalities, and peoples of Ethiopia, which the FDRE Constitution empowers them as the source of sovereign power in the country.<sup>10</sup> Currently, the House composes 153 members that weightily represent 76 ethnic groups.<sup>11</sup> Each member, legally speaking, shall be selected by State Council or directly elected by people.<sup>12</sup> In addition to this, the federal CCI, advisory

<sup>8</sup> Anne Twomey, *The Involvement of Sub-national Entities in Direct and Indirect Constitutional Amendment within Federations*, P.2 (Retrieved from <http://camlaw.rutgers.edu/statecon/workshop11greece07/workshop11/Twomey.pdf>, <last accessed on December 8, 2015>.

<sup>9</sup> FDRE Constitution, Art.53 & 62.

<sup>10</sup> FDRE Constitution, Arts. 8 and 61.

<sup>11</sup> According to Art. 61(2) of the FDRE Constitution, each nations, nationalities, and peoples shall be represented in the House of Federation by at least one member. Each Nation and Nationality shall be represented by one additional representative for each one million of its population. The current ethnic representation in the HoF looks as follow:

- i. From Oromia Region Oromo represented by 31 members,
- ii. From Amhara Region, among 29 representatives that represent six ethnic groups of the region, the representation scheme shows Amhara (24), Argoba (1), Waghimra (1), Hawi (1), Kimant (1) and Oromo (1) representatives,
- iii. From Tigray Region among 8 representatives from the region, three ethnic group represented as Tigre (6), Erob (1) and Kunama (1),
- iv. From Afar Region, Afar ethnic group represented by two (2) members,
- v. From Somale Region, Somali Ethnic group represented by 6 persons,
- vi. From SNNP among 67 representatives that represent 55 ethnic groups of the region Sidama (4), Gurage (3), Walayta (3), Kaficho (2), Silte (2), Hadiya (2), Gamo (2), Gedeo (2) and the remaining ethnic groups independently represented by 1 members in the HoF.
- vii. From Benishangul Gumuz Region, five indigenous ethnic groups (Berta, Gumuz, Shinasha, Mao, and Komo) represented by one member, separately.
- viii. From Gambella, four indigenous ethnic groups of the region (Majanger (1), Anyuak (1), Nuer (1) and Upo (1)) represented totally by four members in the HoF and
- ix. From Harari Region, Harari ethnic group represented by one member. (Interview with Ato Woldu Merineh, Constitutional Interpretation and Rights Affairs Directorate Director, House of Federation, Addis Ababa, January 27, 2016); የኢ.ፌ.ዴ.ሪ የመንግስት ኮሙኒኬሽን ጉዳዮች ጽ/ቤት፣ የኢትዮጵያ ዓመታዊ መጽሐፍ (2008)፤ P.23, 29. This data implies among 76 ethnic groups represented in the HoF only 14 (Fourteen) have more than one million population, which constitute about 18.4 % of total ethnic groups. These 14 ethnic groups occupy more than 2/3<sup>rd</sup> of HoF seats whereas the remaining 62 ethnic groups (81.6%) have below one million populations separate occupy less than 1/3<sup>rd</sup> of the house seats.

<sup>12</sup> Here, the FDRE Constitution doesn't distinguish the circumstances of State Council selects members of HoF or selection through conducting direct election. Though, the FDRE



body of HoF, comprises eleven members selected from the judiciary, HoF and those selected by parliament and executive.<sup>13</sup> The details of the establishment, organization, power, and function of HoF and CCI is provided in Proclamations No. 251/2001 and, No. 798/2013 respectively.

The 2001 ROC entrusts the function of constitutional adjudication to CIC and its advisory body, regional CCI. The establishment laws of the CIC and CCI enacted by *Caffee* are Proc. No. 167/2011 and 168/2011, respectively. The CIC has been mandated to resolve any constitutional dispute that arise in Oromia laws and has the duty to ensure regional constitutional supremacy. The body comprises of representatives nominated based on the principle of territoriality from each District Council. Each district, including Urban Councils, is represented by one member.<sup>14</sup> Thus, the CIC has composed 265 rural district and 44 Urban Council representatives.<sup>15</sup>

The Oromia CCI, advisory body of CIC has mandated to investigate the existence of a constitutional dispute and submit its recommendation to CIC for a final decision.<sup>16</sup> The organ comprises 11 members; President and Vice President of Oromia Supreme Court, respectively who serve as Chairperson and Vice Chairperson of CCI. Six lawyers are also appointed by *Caffee* up

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constitutional explanatory note tries to point out the circumstances direct election applicable. Accordingly “*direct election conducted where disagreement happen between members of State Council having more than one NNP, on who shall represent and who will be represented in the HoF*” (Translation mine). The contrario reading of this statement implies that State Councils which represent only one ethnic group to HoF such as in case of Oromia and Somale, even if disagreement arises on representation, they can’t resolve by direct election. But, this statement was not provided in the FDRE Constitution. (Constitutional Explanatory note, Unpublished, P.116 (Retrieved from <http://www.abyssinialaw.com/constitutions#>, last accessed on March 19, 2016). Practically, direct election has never been conducted.

<sup>13</sup>Accordingly, the President and Vice President of the Federal Supreme Court, serve as Chairperson, and Vice Chairperson of CCI, respectively, Six lawyers appointed by President of Republic up on the recommendation of House of Peoples’ Representatives on the basis of their professional excellence, three persons designated by HoF from its members (See FDRE Constitution, Art. 82).

<sup>14</sup> A Proclamation Enacted to Establish Oromia Region Constitutional Interpretation Commission and Determine Its Power and Duties, Proc. No. 167/2011, Art. 2(9).

<sup>15</sup> Interview with Abdi, *Supra* note 3. This number currently increased to 315 from 309 *Woreda* and Urban Councils due to recent restructure of Oromia Zones and *Woreda*’s.

<sup>16</sup> Revised Constitution of Oromia National Regional State, Proc.No. 46/2001, Art. 69(2); A Proclamation Enacted to Establish Oromia Council of Constitutional Inquiry, Proc.No. 168/2011, Art. 8(1).

on the recommendation of the Regional President and three other persons are designated by the *Caffee*<sup>17</sup> presented by the speaker of *Caffee* for approval.<sup>18</sup>

Generally, both at federal and Oromia state tier, the winners of each election, periodically make up their own constitutional adjudicator. For this reason, local government electorates of each *Woreda*/Urban Council selects the Oromia CIC members, and the *Caffee*, regionally, selects Oromia CCI members and the representatives of Oromo nation to HoF. The ROC and FDRE Constitution used the term ‘constitutional interpretation’ and ‘constitutional dispute’ interchangeably. At both tiers, each organ is empowered to entertain the cases of abstract and concrete review<sup>19</sup>, political and non-political questions<sup>20</sup> and constitutional complaints<sup>21</sup> through posteriori review system. Though, unlike Oromia CIC and CCI, the HoF is further authorized to give advisory opinion, consensually.<sup>22</sup>

In Ethiopia, there is no law which specifically regulates the relationship between the federal and regional constitutional review systems even if such

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<sup>17</sup> The English Version of the ROC Art. 68(2c) doesn’t require designation from *Caffee* members, whereas the Afan Oromo version (the final legal authority as per Art. 113 of ROC) require membership of *Caffee* for such designation.

<sup>18</sup> Accordingly, the Oromia CCI composes the first two members from the judiciary, the appointment of those six legal experts involves the role of executive and legislative and the last three members represented from legislature itself. Though, unlike Federal CCI, all Oromia CCI members are directly or indirectly selected by *Caffee*. In case of final approval of 11 Federal CCI members, it involves at least three bodies (Parliament, President, and HoF). Also, in Oromia both legally and practically, there are no different procedures to be followed during the appointment and designation by *Caffee* (See Minute of *Caffee* meeting, 4<sup>th</sup> term, 1<sup>st</sup> year, 4<sup>th</sup> regular session, unpublished, 2011, P. 39).

<sup>19</sup> The abstract review is a kind of review not incidental to cases, while the concrete review is an instant of an event of the case. The earlier is recognized in Oromia CCI Procl. No. 168/2011 of Art. 22 (4) as it says; “*A case requiring constitutional interpretation which may not be handled by courts may be submitted to the CCI by, at least, 1/3<sup>rd</sup> of the members of Caffee or regional executive bodies.* Also, Art. 3(2C) of the Federal CCI proclamation states “*constitutional interpretation on any unjusticiable matter may be submitted to the Council by one-third or more members of the federal or State Councils or by federal or state executive organs*”. Accordingly, Abstract review serves for non justiciable matters, for cases not handled by courts. Besides, the concrete review is constitutionally guaranteed in Art. 69(2) of the ROC and Art. 84(2) of the FDRE Constitution.

<sup>20</sup> Art. 22(4) of Oromia CCI Procl. No. 168/2011 and Art. 3(2C) of the Federal CCI Procl. No. 798/2013.

<sup>21</sup> See Art. 22(1) of the Oromia CCI Procl. No. 168/2011 and Art. 5 of the Federal CCI Procl. No.798/2013.

<sup>22</sup> Adem Kassie and Charles Manga Fombad, *Advisory Jurisdiction of Constitutional Courts in Sub-Saharan Africa*, The Geo. Wash. Int’l L. Rev. (2013), Vol. 46, P.98.

law is crucial to maintain the shared rule and self-rule principles of federalism, to celebrate the diversified guarantees of fundamental human rights and to overcome the possibilities of overlap of jurisdictions. Yet, there are some scattered general provisions in the FDRE Constitution that can possibly guide such relationships. For instance, the preamble swear for building one political and economic community,<sup>23</sup> supremacy of federal constitution (Art. 9), principle of federal comity (Art. 50/8), government duty towards fundamental human rights and freedoms of chapter three (Art.13)<sup>24</sup> and consistency clause (Art. 50/5) that mandate the central and regional governments conform with these provisions in performing their tasks. In the broadest sense, these clauses can also serve as guiding principles in dealing the linkage of federal and regional states constitutional review system in Ethiopia.

### **3. THE DIVERSITY OF RECOGNITION OF RIGHTS UNDER THE ROC AND FDRE CONSTITUTIONS AND ITS IMPACT ON INTERPRETING CONSTITUTION**

The issue of fundamental human rights and freedoms are one of the core areas that could arise in the relationship between the federal and states constitutional review systems. The sub-national recognition of a diversity of rights as a symbol of constitutional autonomy can either be similar to or lesser or better protection than the federal constitution. This helps us to comprehend the extent of exercising autonomy in interpreting the regional states diversified constitutional rights within the FDRE Constitution frameworks or balancing self-rule (diversity) and shared rules (unity) values.

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<sup>23</sup>According to Dr. Assefa, the notion interrelated with the protection of minorities in the constituent units in a manner that strikes proper balance between the nationalities right to self-rule and the free movement of labor and capital as a matter of necessity (*See Assefa Fisseha, Federalism and Accommodation of Diversity in Ethiopia: A Comparative Study, (3<sup>rd</sup> ed., Nijmegen: Wolf Legal Publisher (ELP), 2010),P.384.*

<sup>24</sup> This provision states that ‘all Federal and State organs’ shall have the responsibility and duty to respect and enforce the fundamental human rights provisions of Chapter three. Those rights, also, shall be interpreted in a manner conforming to the principles of the international human rights instruments adopted by Ethiopia.

This conception is deeply rooted in the understanding of state constitutionalism as an intrinsic element of federalism.<sup>25</sup>

### **3.1. IDENTICAL OR SIMILAR OR CONVERGENT PROVISIONS**

In Ethiopia, adopting the provisions that are similar to federal constitutional rights is a simple choice of states autonomy rather than ordered by the FDRE Constitution. Many of the ROC fundamental human rights and freedoms of chapter three provisions are the reproduction of chapter three of the FDRE Constitution. In relation to the interpretation of those similar rights, there is no clear legal rule developed. In other federations, such as in Switzerland, when cantonal provisions do not expand beyond federal guarantees, they have no independent impact, but in USA and Germany, both have an autonomous impact and can be interpreted independently.<sup>26</sup> Although in those countries the supremacy clause applies only in case of a conflict between two rights provisions.

In our country, arguably, pursuant to Art. 13 (1 and 2) of the FDRE Constitution, both federal and states are required to interpret human rights provisions of Chapter three of the constitution to conform to the principles of international human rights (*here after, IHR*) instruments adopted by Ethiopia. Accordingly, the constitution does not order states to follow the decision of federal precedent rather they have a responsibility to follow IHR standard. This implies there is a parallel relation between state and federal constitutional review in relation to chapter three of both tiers constitution.

### **3.2. STATE PROVISIONS LESS PROTECTIVE OR RESTRICTIVE THAN THE FDRE CONSTITUTION**

Restrictive protection of rights in state constitution occurs either of when state constitution protects the same rights as the federal constitution but restricts the scope of the protection offered, insert broader restriction or when

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<sup>25</sup> Giacomo Delledonne, *Sub-national Constitutionalism: A Matter of Review*, Perspectives on Federalism (2012), Vol. 4, Issue 2, P. E-311.

<sup>26</sup>Célin Fercot, *Diversity of Constitutional Rights in Federal Systems: A Comparative Analysis of German, American, and Swiss Law*, European Constitutional Law Review (2008), Vol. 4, No.2, Pp. 307-309.

they ignore certain rights protected by the federal constitution.<sup>27</sup> In USA, states should not go below federal constitution as Art. VI (2) of the USA Constitution declares as the supreme law of the land. Similarly, under Art. 49 of the Swiss Constitution, state constitutions can only guarantee protections that are at least equal to the federal constitutional requirements.<sup>28</sup>

The FDRE Constitution recognizes the supremacy of federal constitution under Art. 9 and Art. 50 (5) require State Councils to adopt and amend state constitution consistent with the FDRE Constitution. This means if states adopt laws inconsistent or recognize rights below FDRE Constitution their effect will be null and void. But, in practice, the regional states including Oromia have incorporated conditions on some federally guaranteed rights. For instance, according to article 39 of the ROC, the right to secession is made conditional<sup>29</sup> which the federal constitution makes it unconditional right. Some argue this is a clear violation of the federal constitution as it limits the rights guaranteed under the federal constitution while others argue that this conclusion works only in the case of regions which the right to self-determination is given to more than one ethnic groups (Divided Sovereignty).<sup>30</sup>

### 3.3. BETTER PROTECTION OF RIGHTS IN STATES CONSTITUTION

States can protect rights in a better way through broadening the scope of state constitutional rights or limit the restrictions that can be imposed on federal rights to stricter conditions.<sup>31</sup> The regional states constitution protection of rights beyond the national minimum constitutional guarantees is an important area for sub-national constitutional textual innovation and evolution, which makes states to serve as a laboratory of democracy and a place of evolution of constitutional rights. For example, in the USA, various

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<sup>27</sup> *Ibid.*

<sup>28</sup> *Id.*, Pp.310-311.

<sup>29</sup> According to Art. 39(4) of ROC, the right to secession is exercised when the right of internal self-determinations provided in Art.39(1-3) are suspended or encroached upon and when such cannot be remedied under auspices of the union with other peoples. This condition was not provided under Art. 39 of the FDRE Constitution.

<sup>30</sup> Teferi Bekele, *Human Rights Protection under the FDRE and the Oromia Constitutions: A Comparative Study*, Oromia Law Journal (2016), Vol. 5. No.1, Pp. 55-56.

<sup>31</sup> Celin, *Supra* note 26, P.311.

states have recognized privacy and socio-economic rights & in Mexico, Oaxaca state constitution has provided rights for indigenous peoples that do not appear in their federal constitutions.<sup>32</sup>

Similarly, Art. 32 of the ROC has broadened the scope and list of the components of freedom of movement<sup>33</sup> and the lists of non-derogable rights in the ROC<sup>34</sup> are wider in coverage than those provided in the FDRE Constitution. States are at liberty to interpret those rights in a better way. Yet, the Oromia CIC proclamation, Art.19 (3), and CCI statute Art. 18 (2) is problematic on the issue.<sup>35</sup> Both laws mandate each body to follow the interpretation of IHR instruments and HoF decision, not only on convergent rights but also on divergent ones. At this point, if interpretation of both documents is similar particularly on identical rights it's not as such problematic, whereas if both interpretations conflict each other, both laws are silent on which one should prevail.

However, both Art. 13(2) of the FDRE Constitution and ROC provide interpretation of chapter three should be in a way that conforms to IHR standards adopted by the country. This implies states are not mandated to follow federal precedent, rather ordered to meet the IHR standard. Also, non-inclusion of the term '*conform to HoF decision*' can't prevent to consider the

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<sup>32</sup> Robert F. Williams, *Teaching and Researching Comparative Sub-national Constitutional Law*, Penn State Law review (2011), Vol. 115, No. 4, P.1122; Martha F. Davis, *The Spirit of our Times: State Constitutions and International Human Rights*, New York University Review of Law and Social Change (2005), Vol. 30, P. 372.

<sup>33</sup>Accordingly, Art. 32 of the FDRE Constitution guarantees the right to liberty of movement, freedom to choose residence, the freedom to leave and return to the country, whereas Art. 32 of the ROC further recognize the right to work, possess and own property in the region.

<sup>34</sup>The FDRE Constitution makes the prohibition against inhuman treatment (art. 18), equality before law (art. 25) and the right to self-determination (Art. 39 (1 and 2) as non-derogable rights, while Art. 108(4) of the ROC, in addition to above rights further extends non derogability of rights to right to life (Art. 15), right to security of person (Art. 16), the right to respect human dignity of detained or imprisoned person (Art. 21(1)), the right to recognition of status of person ( Art. 24(1)), and freedom of thought, conscience and religion (Art.27(1) ).

<sup>35</sup> Christophe Van der Beken, Sub-national Constitutional Autonomy in Ethiopia: On the Road to Distinctive Regional Constitutions, Paper Submitted to Workshop 2: Sub-national constitutions in federal and quasi-federal constitutional states, P.19 (*Retrieved from <https://www.jus.uio.no/english/research/news-and-events/events/conferences/2014/wccl-cmdc/wccl/papers/ws2/w2-vanderbeken.pdf>*, <last accessed on July 8, 2017>); Teferi, *Supra* note 30, Pp. 65-66.

later, as the federal standard is a minimum guarantee to protect rights in regional states.

#### **4. JURISDICTIONAL OVERLAP BETWEEN OROMIA AND FEDERAL CONSTITUTIONAL ADJUDICATORS**

##### **4.1. GROUNDS FOR POSSIBILITIES OF JURISDICTIONAL OVERLAP**

The dual system of constitutional control could cause the problem of jurisdictional overlap over its adjudication due to a number of resemblances exhibited in the contents of both constitutions, especially chapter three of federal and Oromia Constitution.<sup>36</sup> This could possibly happen on laws and decisions as well as due to judicial practice of cassation over cassation.

##### **4.1.1. Overlap on Laws**

The jurisdictional overlap over laws could happen when the same state laws have the possibility to be entertained by both tiers of constitutional adjudicators. For instance, if a law enacted by is inconsistent with the ROC, the case should be brought before the regional CCI and CIC. This may happen when the subject matter is purely regional matter disputed with regional constitution. However, if any law enacted by the regional legislature infringes federal constitution, the case will be brought before the Federal CCI. Because, Art. 84(2) of the FDRE Constitution empowers the federal CCI to review the constitutionality of any law enacted by State Council irrespective of whether it involves both pure state matter or federal issue. Moreover, there is a possibility when a law enacted by *Caffee* contravenes with the FDRE and ROC simultaneously. It is not clear to which body the case should be brought when these jurisdictional overlaps happen.

Correspondingly, unlike the FDRE Constitution, the ROC expressly empowered CCI and CIC to entertain the subordinate legislations enacted by executives when it is contested unconstitutional with the regional constitution as per Art. 69(2) of the ROC. However, it is silent towards who

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<sup>36</sup> Getahun, *Supra* note 4, P. 95.

resolves if the regional regulation or directive contrast with the FDRE Constitution. Moreover, the FDRE Constitution has nothing to say on who should be engaged to resolve where state/federal subordinate legislations contravene with the federal constitution. In effect, at federal level, there are squabbles among scholars on the appropriate organ to entertain the constitutionality of subordinate laws of federal and regional governments.<sup>37</sup> However, irrespective of whether the constitutionality of subordinate legislations entertained by regular courts or federal CCI/HoF, it can't prevent the possibility of the occurrence of overlap of jurisdiction between the federal and states.

#### 4.1.2. Overlap on Disposing Constitutionality of Decisions

The federal and state constitutional adjudicators review the constitutionality of decisions given by organs of government or public officials or acts of customary practices.<sup>38</sup> At this juncture, constitutionality issue arises not with the law, rather with the act or decision of a government body or officials. Such decision could have the possibility of violating both tiers constitution simultaneously. For instance, in the case between *Alima Mahamad vs Adem Abdi* on the issue of possession of the rural land, the federal CCI rules decision of the Oromia Supreme Court Cassation Bench and Federal Supreme Court Cassation Bench infringes Art. 40(3) and 40(4) of the FDRE Constitution and

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<sup>37</sup>Accordingly, several scholars argue regular courts have the power to review the constitutionality of laws issued by federal and regional executive bodies based on Art. 84(2), 13(1) and 79 of the FDRE Constitution. For instance, *Assefa Fisseha* and *Menberetsehai Tadesse* argued courts are empowered by the FDRE constitution to interpret laws other than federal and state proclamations. Similarly, Ibrahim Idris concludes the constitutionality of any administrative acts/decisions is within the jurisdiction of ordinary courts. Tsegaye Regassa, also, propagates courts have inherent power to review the constitutionality claim of laws that contradicts with the constitution. Other scholars expressly or impliedly propagate the centralized approach which the HoF/federal CCI are the sole institutions to resolve constitutionality disputes of any laws including regulations and directives based on cumulative reading of Art. 83(1) and 84. For instance *Yonatan Fisseha* states the courts have the power only to apply constitution and if constitutionality issue arises their role is limited to referral. *Girmachew Alemu* also notes courts are denied the power to interpret the constitution. *Getachew Assefa* moreover concludes all constitutional disputes involving federal and state proclamation, regulation, directive and decisions of federal and state organ within constitutional interpretation is the power of HoF/ Federal CCI.

<sup>38</sup> See Art. 9(1) and 62(1) of the FDRE Constitution and Art. 9(1) and Art. 67(1) of the ROC



ROC.<sup>39</sup> This implies the existence of the possibility of jurisdictional overlap on the issue.

Also, in the cases between *Mamite Seble vs Mulu Gurmu* (possession of rural farmland)<sup>40</sup>, *Aliy Dawe vs Mahamad Adem* (sale of land)<sup>41</sup>, and *Wedere Tachbele vs Likke Gurmu* (possession of farmland and property claims)<sup>42</sup>, HoF quashed the decisions of courts based on the FDRE Constitution. The above cases can also have the possibility to be claimed before the Oromia CCI and CIC since the original claims were entertained by Oromia courts, based on regional laws. Besides, the governing proclamation of both state and federal constitutional review doesn't provide the exhaustion of local remedy by one another, except identity claims.<sup>43</sup> In such case, the claimant can bring his/her case to either of both institutions.

#### 4.1.3. Judicial Practice (Constitutionality issue in Cassation over Cassation Cases)

The current judicial practice of cassation over cassation by the Federal Supreme Court in Ethiopia, in turn, became one of the contentious issues, on its compatibility with the overall federal system and its constitutionality.<sup>44</sup> This sub-section focuses on addressing the implication of cassation over cassation on the jurisdictional overlap of constitutional review.

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<sup>39</sup> Federal CCI recommendation, *Alima Mahamad vs Adem Abdi*, File No. 713/04, Nehasie 07/2006 (August 13, 2014, Unpublished).

<sup>40</sup> *Mamite Seble vs Mulu Gurmu*, Decision of HoF, Sene 18/2007 E.C (June 25, 2015, Unpublished).

<sup>41</sup> *Aliy Dawe vs Mahamad Adem*, Decision of HoF, Sene 18/2007 E.C (June 25, 2015, Unpublished).

<sup>42</sup> *Wedere Tachbele vs Likke Gurmu*, Decision of HoF, Sene 18/2007 E.C (June 25, 2015, Unpublished).

<sup>43</sup> A Proclamation to Consolidate the House of the Federation and the Definition of Its Power and Responsibilities, Procl. No. 251/2001, Arts. 19(1) and 20.

<sup>44</sup> See Muradu Abdo, *Review of Decisions of State Courts over State Matters by the Federal Supreme Court*, Mizan Law Review (2007), Vol.1, Pp.60–74; Mehari Redae, *Cassation over Cassation and its Challenges in Ethiopia*, Mizan Law Review (2015), Vol. 9, No. 1, Pp. 175-200; Hussein Ahmed, *Uniform Application of Law in Ethiopia: Effects of Cassation Decisions of the Federal Supreme Court*, African Journal of Legal Studies (2014), Vol. 7, Pp. 203-231.

The writer observes two kinds of arguments related to the Oromia and federal constitutional adjudicator officials. Some officials argue that the case should be brought before the Federal CCI as the case once decided by federal organ, state organs and officials have no legal and moral capacity to review or reverse the federal organ (Supreme Court) decision.<sup>45</sup> While others argue, both institutions can review the case based on the claimant's constitutional basis. Accordingly, if a person bases his claim on the ROC, it should be brought before Oromia CCI and if the claimant's constitutional claim base is the FDRE Constitution, such case can be entertained by the Federal CCI.<sup>46</sup> This argument, however, come up with the problem of forum shopping in entertaining constitutionality issue.

The current practice shows that the Federal CCI and HoF accept and decide on cases decided by Federal Supreme court Cassation Bench through cassation over cassation on state matters. The federal CCI, admit each case only by considering whether the issue involves the FDRE constitutional matter, rather than deciding on whether the jurisdiction of the case is appropriate for federal or state. This limits the Oromia CIC and CCI autonomy to exercise their powers entrusted by the ROC. Also, the act infringes the doctrine of vertical separation of power and federal comity principle that is provided under Art. 50 (8) of the federal constitution.

#### **4.2. THE PROBLEM OF FORUM SHOPPING**

Forum shopping is one of the negative impacts of jurisdictional overlap that is caused by the existence of the blend of multi-state legal intercourse and legal diversity (pluralism) through the use of the jurisdictional options to affect the outcome of a lawsuit.<sup>47</sup> Such incidence occurs where a plaintiff is provided with more than one forum to be chosen by his own calculus of interest. In a federal system, forum shopping exists due to plurality of

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<sup>45</sup> Interview with Ato Woldu, *Supra* note 11; Interview with Abdi, *Supra* note 3.

<sup>46</sup> Interview with Ob. Melese Abayneh, the drafting member of Oromia CIC and CCI Proclamation, Jan. 22/2016.

<sup>47</sup> Martha A. Field, *Removal Reform: A Solution for Federal Question Jurisdiction, Forum Shopping, and Duplicative State- Federal Litigation*, Indiana Law Journal (2013), Vol. 88, P.646.

jurisdiction between federal and states (vertical) and conflict of law among states (horizontal) choice of laws.<sup>48</sup>

Ethiopia is also subject to the trouble, not only in regular court cases but also in cases of the federal and state constitutional review. In Oromia, for instance, CCI law provides 30 days period of limitation to claim for constitutional interpretation,<sup>49</sup> whereas the federal CCI law extends the time to 90 days.<sup>50</sup> So the party, who has been barred by period of limitation in Oromia, can claim his right before federal CCI. Still, according to Oromia CIC officials, if a person claims constitutional review after 30 days, they informally refer or recommend such party to claim before the federal CCI.<sup>51</sup> This may further expose defendants into a vexatious position because his opponent with the view to weakening him institutes an action in an inconvenient forum. This can be reduced either by ways of demarcating the boundaries of the jurisdiction between federal and state constitutional adjudicator, or through adopting federal choice-of-law rules, which renders the plaintiff a choice between several laws for a given case.<sup>52</sup>

#### 4.3. WHO IS COMPETENT TO RESOLVE JURISDICTIONAL OVERLAP?

In Ethiopia, we have no clear mechanism or empowered institution to delimit the respective competencies of federal and state constitutional adjudicator,<sup>53</sup> unlike other federal countries that give the function to the highest court of ordinary judicial structure (such as the USA, Canada, and Australia) or to a specialized court (like Germany and Spain).<sup>54</sup> While Art.32 of HoF proclamation stipulate, '*misunderstanding other than border dispute, first*

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<sup>48</sup> Robert A. Schapiro, *Polyphonic Federalism: State Constitutions in the Federal Courts*, California Law Review (1999), Vol.87, Issue 6, P.1468.

<sup>49</sup> See Oromia CCI Procl. No. 168/2011, *Supra* note 17, Art. 20(5) and Art. 21(4).

<sup>50</sup> See A Proclamation issued to Amend Council of Constitutional Inquiry, Procl. No. 798/2013, Art. 4(3).

<sup>51</sup> Interview with Abdi, *Supra* note 3.

<sup>52</sup> Amanda Frost, *Inferiority Complex: Should State Courts Follow Lower Federal Court Precedent on the Meaning of Federal Law?*, Vanderbilt Law Review (2015), Vol. 68, No. 1, P. 93.

<sup>53</sup> See Assefa, *Supra* note 23, P.341.

<sup>54</sup> Christophe, *Supra* note 2, Pp.262-263; Christophe Van der Beken, *Unity in Diversity – Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia*, Zuerich/Muenster, Lit Verlag, 2012, P.316.

*can be resolved through peaceful means and discussion*'. If this failed, HoF takes the responsibility to give solutions. Here, the term '*other than border dispute*' in its widest sense extends to deciding over the dispute of jurisdictional overlap between the federal and state constitutional adjudicators.

This assumes the HoF is a more competent body to resolve such conflict. Moreover, as the composition of the members of the HoF reflects the sovereignty of each nations, nationalities, and peoples, on one hand, and they are not regularly engaged in law making that can cause conflict of interest, on the other hand, makes the HoF is in a better position to be assigned to such job. Consequently, based on the scenario of Art. 32 of the HoF proclamation that provides the procedures required to be followed in resolving such misunderstanding; if such kind of dispute arise, the House first facilitate to disputant party to resolve their problem through amicable dispute resolution in order to come up with a win-win solution and only if this fails, it strives to give mandatory decision among parties on the issue.<sup>55</sup>

## **5. SCOPE OF MUTUAL RESPONSIBILITY AMONG THE FEDERAL AND OROMIA CONSTITUTIONAL REVIEW ORGANS**

### **5.1. CAN STATES REVIEW THE CONSTITUTIONALITY OF LAWS/ ACTS OF FEDERAL JURISDICTION?**

The FDRE Constitution is silent on whether states review the constitutionality of laws or acts of federal jurisdiction. However, there are common issues such as shared powers, fundamental human rights, and delegated jurisdictions which both tiers of government are entrusted with.<sup>56</sup> For instance, as per Art. 9(2) of the FDRE Constitution, all federal and state organs should ensure the observance of the constitution, and also, as per Art. 13 to respect and enforce fundamental human rights. In such case, constitutional review is one of the mechanisms to ensure the adherence of constitution and enforcing of such rights.

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<sup>55</sup> Constitutional Explanatory note, *Supra* note 12, P. 117.

<sup>56</sup> See FDRE Constitution, Art. 9(1-2), 13, 55(5), 55(2a) and 52(2d), 80(4-6).

According to Hamid, if an interested person challenges the decision of Oromia courts or tribunals as it infringes his rights guaranteed in the ROC, the CIC can review such decision even if the case is brought to it based on federal laws.<sup>57</sup> Because, the claimant challenges the decision of Oromia courts, not the federal law. But, if a person challenges the constitutionality of federal law instead of decision, such case should be brought before the federal CCI.<sup>58</sup> This implies the Oromia CCI and CIC can't review the constitutionality of federal laws. However, in connection to the jurisdiction of ordinary courts to review the constitutionality issue under the FDRE constitution, several scholars argue regular courts (even if they can't identify whether federal or state or both tier courts) are empowered to adjudicate constitutionality issue with the FDRE Constitution.

For instance, Dr. Assefa, the prominent scholar on Ethiopian Federalism, argues based on the contrario reading of Art. 84(2), “*subordinate regulations issued by the executive and decision of governmental bodies other than ‘laws’ (state and federal proclamation) were left to the courts*”.<sup>59</sup> (Emphasis added) In the article, he doesn't specify which tier of court (federal or state or both) and scope of the power of each court to entertain the case. To the author, this statement can be interpreted into three different scenarios in relation to the power of state courts to review the constitutionality claims on the laws/acts of federal jurisdiction or arise under the FDRE constitution. The first understanding is both the federal and state courts are empowered to see the constitutionality issue of their respective subordinate legislations. The Second scenario is that state courts are empowered to see the constitutionality issue of both federal and state regulation brought before them. The third approach is only federal courts entertain the constitutionality issue of both federal and state regulation and directives.

In this regard, the writer argues state courts are not empowered to see the constitutionality of any federal law. Because, primarily state courts have no original jurisdiction on ‘federal laws’, rather they have delegated

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<sup>57</sup>Interview with Ob. Hamid Hirkiso, The Director of Oromia Constitutional Interpretation Affairs at Oromia CIC, Finfinne, January 28, 2016.

<sup>58</sup> *Ibid.*

<sup>59</sup>Assefa Fisseha, *Constitutional Adjudication in Ethiopia: Exploring the Experience of HoF*, Mizan Law Review (2007), Vol. 1, No. 1, P.16.

jurisdiction.<sup>60</sup> In other words, federal jurisdictions delegated to each level of state courts are the maximum power of those courts on federal law, not minimum. That is why the FDRE Constitution has not empowered state courts to see the basic error of law aroused on federal law.<sup>61</sup> In that sense, constitutionality issue is above error of laws. Thus, if states are not entrusted to entertain basic error of laws of federal jurisdiction, it's illogical to argue that they can entertain constitutionality issue of federal laws since the constitution is hierarchically above other ordinary laws.

For this reason, if constitutionality issues arise under federal law or with federal constitution in state courts, the courts should refer such matter to the Federal CCI. But, in case where subordinate laws are in dispute with the federal constitution in state courts, the constitution is silent. In the view of the writer, if the issue cannot be resolved by primary legislations based on the principle of avoidance<sup>62</sup>, it's better to refer to federal courts having original jurisdiction on the issue as state courts are not delegated to do so.

Hence, what is left to state courts regarding federal constitution is questionable. The Oromia Regular Courts Re-establishment Proclamation No.141/2008 Art. 3 states, state courts have '*safeguarding role*' towards both the FDRE and Oromia Constitutions. So, the cumulative reading of Art. 80 (4-6) of the FDRE Constitution that delegates federal jurisdiction to state courts and Art. 3 of Oromia Courts re-establishment proclamation imply that the regional states have to ensure the observance of the federal constitution by correcting unconstitutional decisions through indirect interpretation

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<sup>60</sup> See FDRE Constitution, Art. 80 (4-6).

<sup>61</sup> The FDRE Constitution delegate states courts to see factual matters of federal jurisdiction. In such case, as delegation exceptional, it should be expressly provided and interpreted narrowly. Thus, the silence of the FDRE Constitution presumed to be a denial of delegation, not only on dealing cassation of the federal jurisdiction, but also constitutional dispute arise under the federal law or with the federal constitution in state courts.

<sup>62</sup>Based on the principle of avoidance, if subordinate federal and state laws contravene a primary legislation (proclamation), it is rendered null and void by the very reason of superior laws prevailing over inferior ones. Accordingly, direct constitutional review is the last resort remedy, and the court must attempt to resolve the constitutional issues indirectly through the application of proclamations before testing regulations directly against the constitution. Thus, there would be no need or way to test it immediately against the constitution directly, before comparing its normative content with other primary legislations which could offer solutions.(See Takele Soboka, *Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory*, African Journal of International and Comparative Law (2011), Vol.19, No.1, P.107.

(principle of avoidance) and, using the provisions of the constitution in their day to day activity other than entertaining constitutional disputes.<sup>63</sup> In this regard, the HoF decision on the case between *Aliy Dawe vs. Mahamad Adem*, also, fortifies this argument.<sup>64</sup> In this case, the HoF criticizes both the state and federal courts for non-quashing of sale of land between individuals. This implies courts have the duty to quash acts like sale of land that are constitutionally prohibited.

## **5.2. CAN THE FEDERAL CONSTITUTIONAL ADJUDICATORS REVIEW OROMIA CCI /CIC'S DECISION?**

Art. 19 (1) of the HoF Procl. No. 251/2001 stipulates that there should be exhaustion of local remedy at the state level on identity claims with the possibility of review by the HoF. However, with regard to cases other than identity issues no law allows or prohibits whether the decision of states should be reviewed by the federal CCI/HoF. Also, no cases happen yet on the issue. In other federations, such as in USA, Switzerland, and Germany though diversity is still possible in state courts it has to be checked by the top federal judiciary or constitutional court in order to avoid the risk of divergent jurisprudence that is usually considered to be dangerous to the functioning and survival of federalism.<sup>65</sup> In Ethiopia, the FDRE Constitution and ROC, as well as the Oromia CIC law, are hushed on whether the HoF reviews or not, if the state CIC renders decision that contravenes the federal constitution.

However, arguably, even if there is a federal comity, such mutual respect as it should be within the federal constitutional supremacy, various scholars and officials argue as the HoF exceptionally review state constitutional adjudicators decision.<sup>66</sup> Because of, firstly, HoF is the ultimate defender of

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<sup>63</sup> Interview with Mr. Tashoma Girma, Member of Oromia CCI Legal Expert, Finfinne, Jan. 22, 2016.

<sup>64</sup> *Aliy Dawe vs Mahamad Adam*, HoF decision Sene 18/2007 E.C (June 25, 2015, Unpublished)

<sup>65</sup> Celin, *Supra* note 26, P. 320.

<sup>66</sup> Confidential Interview with HoF official, Addis Ababa, January 2016; Interview with Melese, *Supra* note 46; Solomon Emiru, Compatibility of the Revised Oromian National Regional State Constitution with the FDRE Constitution with Respect to Adjudication of

the constitution and entrusted to correct erroneous decision of any organ against the constitution as per Art. 9 and 62 (1) of the FDRE Constitution. Accordingly, the HoF can review the CIC decision, not for the very reason of involving the FDRE Constitution issue, but if the CIC decision violate the FDRE Constitution. This emphasizes that the FDRE Constitution adopts the doctrine of constitutional supremacy, unlike USA where the Supreme Court can review state decision when it violates the '*federal law*'.<sup>67</sup> This is because USA follows federal law supremacy (paramountcy clause).<sup>68</sup>

Another justification for HoF to review the state CIC decision is the consistency clause of Art. 50(5) that apply to all regional laws and acts based on Art. 9 (1) of the FDRE Constitution. So, if any contradiction happens between the Oromia CIC decision and FDRE Constitution, HoF has the duty to ensure consistency principle through reviewing such decision. In addition, as per Art. 13 (2) of both tiers constitution, states are required to interpret chapter three of the constitution in conforming to IHR standards adopted by the country. Hence, if the Oromia CIC decides against such international standard, the HoF is required to correct the decision.

Finally, it is important to address the above arguments effect on states autonomy. In view of that, if the HoF can decide on state divergent rights that are protected in better way, it's against the principle of federal comity as such act amounts to arbitrary intrusion on states exclusive competence. Exceptionally, if such state's decision will have risk to build one political and economic community and the survival of shared rule of federalism the HoF should have the power to review such decisions. Besides, with respect to convergent matters, the diversity of decision by state constitutional

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Constitutionality Issue and Its Possible Effects(AAU Faculty of Law, Unpublished LLM Thesis, June 2011).P.69.

<sup>67</sup> In the USA, based on the Doctrine of '*adequate and independent state ground*', the Supreme court has no jurisdiction to review a state decision which is adequately based on state grounds. Consequently, state decisions which extend protections beyond those provided by the federal constitution will be respected by the federal courts and will not be subject to review even if the case also raises federal constitutional issues only so long as no '*federal law*' is violated. (See Celin, *Supra* note 26, P. 318).

<sup>68</sup> See L.F.M. Besselink, *The Protection of Human Rights in Federal Systems- The case of Ethiopia*, Ed. by Yimam, et. al, *Ethiopian Studies at the End of the Second Millennium Proceedings of the 14<sup>th</sup> International Conference of Ethiopian Studies*( Institute of Ethiopian Studies, Addis Ababa, Vol.3, 2002), Pp. 1365-1368.



adjudicators should be respected and tolerated by the federal CCI/HoF unless such judgment clearly infringes the FDRE Constitution. In doing so, the HoF should be careful from over utilizing and misusing its power.

## **6. CONCLUSIONS AND RECOMMENDATIONS**

The current model of constitutional interpretation in Ethiopia is operated by the CCI and the HoF at the federal level. This mandate is assigned to the CIC and State CCI in regional states except for SNNP that entrust the function to Council of Nationalities. The constitutional review organs at both federal and regional level are empowered to perform their function independent of one another. In Ethiopia, there is no legal parameter and institutional frameworks that govern the relationship and the impact of diversity of recognition of rights between the federal and state constitutions. However, even if states are not required to adopt identical rights provided in the FDRE Constitution, they are required to guarantee the protection of the rights at least equal to what is provided in the FDRE constitution. Actually, states including Oromia have included several identical rights, have restricted some rights and have protected some rights better than the federal constitution. Also, the ROC and, the FDRE Constitution do order states to follow the decision of HoF precedent in interpreting the rights guaranteed in the regional constitution.

Jurisdictional overlap on constitutional review between the federal and regional state mechanisms may likely occur on entertaining state laws, and final decisions of government bodies including judgments given on cassation over cassation cases. The Federal CCI and HoF are currently accepting and deciding cases decided by the Federal Supreme Court Cassation bench through cassation over cassation. This limits the Oromia CIC and CCI autonomy to exercise their powers entrusted by the ROC. Also, the problem of forum shopping is observed between each review system particularly in the case of period of limitations.

Further, this paper argues that the HoF is the more appropriate organ to resolve the jurisdictional overlap since the HoF is the ultimate defender of the constitution and reflects the sovereignty of NNP. Elsewhere, regions ensure the observance and respecting to the FDRE Constitution through indirect constitutional interpretation such as correcting unconstitutional

decisions or acts and, guided by the provision of the constitution in their regular activity other than disposing of constitutional disputes. Further, the decision of Oromia CIC should not be reviewed by HoF, unless such decision clearly violates FDRE Constitution and is to endanger the survival of federalism.

For aforementioned shortcomings,I forward the following recommendations:

- There should be guiding rules and strong governing institution that regulates the relationship between state and federal constitutional review to balance state autonomous interpretation and national unity principle. In doing so, the rights guaranteed in state constitutions should provide at least equal or better protection than federally guaranteed rights and in the event of the occurrence of lesser protection, there should be a strong institution or mechanisms that correct such errors. To realize this, it is better to establish a separate constitutional court like most European states with which Ethiopia shares the parliamentary system of government.
- In order to reduce the possibility of jurisdictional overlap the boundaries of of the jurisdiction between federal and state constitutional review should be clearly demarcated. Consequently, there should be only one jurisdiction where the plaintiff could bring suit, use system of having a federal choice-of-law rules in which the plaintiff has a choice between several laws for a given case and/or through requiring each party first exhaust the remedies of state constitutions.
- The Oromia CIC proclamation, Art. 19(3) and CCI statute, Art. 18(2) should be repealed since it limits the interpretation of fundamental human rights to the HoF decision instead of conforming to the international human rights standards adopted by Ethiopia.
- The Federal CCI and HoF should refer the constitutionality claims that are alleged based on state laws, to the concerned regional constitutional adjudicating organs.

## ALLOCATION OF COSTS AND FEES OF CIVIL LITIGATION IN FEDERAL SUPREME COURT CASSATION DIVISION: ‘DOES ONE APPROACH REALLY FIT ALL’?

*Kahsay Giday\**

### ABSTRACT

*In civil litigation resolving disputes through the regular courts has its own costs and fees, either compulsory or voluntary, but inevitable. Allocation of these costs and fees is one of the most contentious post-judgment issues in all courts. Litigant parties have competitive interest and claim, while justice and public interest may support either. To adopt the most efficient and equitable allocation system, jurisdictions tend to adopt indemnity, non-indemnity, or judge-based principles with their respective exceptions.*

*In Ethiopia, the civil procedure law left allocation of costs and fees of civil litigation to the full discretion of courts. Nevertheless, there are no guiding principles on how courts can exercise this discretion. Unlike other jurisdictions that adopted similar approach, the Ethiopian legislature and courts fail to develop uniform guiding rules and principles for allocation of costs and fees. In its decisions, the Ethiopian Federal Supreme Court Cassation Division has adopted the non-indemnity principle rigidly, though it has quashed decision of lower courts for lack of adopting ‘loser pays’ (indemnity) principle.*

*The main theme of this article is, therefore, to investigate if one approach really fits to all cases irrespective of the outcome of the case, litigation behavior of the parties and costs incurred in light of these theories and principles in a comparative perspective. The article argues that by any standard this approach cannot pragmatically fit to all cases, parties, and litigation. It further argues that lack of research based workable allocation regime is exacerbating the backlog and delay of cases of the Cassation Division.*

**Key Words:** *Fee and Costs Allocation, Loser Pays Principle, Non-indemnity Principle, Judge-based System*

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## 1. INTRODUCTION

One, if not the main, mechanism of resolving disputes is through the formal proceeding. States have been responsible to open the door of access to justices, essentially in the formal justice machinery. There have been efforts to create conducive environment of access to justice.

<sup>1</sup> As an operative element of a state, there have been clear pressures up on governments to make justice accessible to all. In the wording of Genn, *“Every civilized system of government requires that the state should make available to all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights... which every citizen has a constitutional right of access.”*<sup>2</sup> To this end, governments have incorporated access to justice in their constitution as a fundamental right.<sup>3</sup> It is not in subordinate laws but in the constitution, which is the supreme law of the land. At the heart of access to justice is access to courts.

In accessing and resolving disputes by using courts, litigant parties incur costs and fees. Once litigant parties incur these costs, they often times, than not, require courts to allocate the costs fairly and equitably. The winner requires them to shift the costs and fees to the loser while the later needs them to do the opposite. Furthermore, courts are required to take into consideration factors beyond the interests and claims of the parties such as equity and public policy.

There are various theories and different practices across jurisdictions with their respective justifications and underlying exceptions. This article deals with the allocation of costs and fees according to Ethiopian Civil Procedure and the existing practice only in the Ethiopian Supreme Court Cassation Division in light of international principles and practices. This article is not a full-fledge discussion of allocation in Ethiopian courts. Suffice it to mention that as an apex court (worth of independent study), which checks appropriate application and interpretation of laws in lower courts, it plays an indispensable role, at least theoretically, in leading the move towards the effective and efficient allocation of costs and fees of civil litigation.

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<sup>1</sup>Neil Andrews, *Fundamentals of Costs Law: Loser Responsibility, Access to Justice, and Procedural Discipline*, Uniform Law Review (2014), Volume 19, Issue 2, P296 seq.

<sup>2</sup> Hazel Genn, *Judging the Civil Justice*, 2010, P1.

<sup>3</sup> For instance, see the FDRE Constitution, Art.37.

To this end, section two deals with costs and fees of civil litigation briefly, and section three deals with the theoretical underpinnings of allocation of costs and fees. The fourth section discusses about the Ethiopian version of costs and fees allocation regime while the fifth dwells on whether the ‘one approach fits all’ stand of the Cassation Division is workable. The last section is devoted to conclusion and the way forward drawn from the whole discussion.

## 2. COSTS OF CIVIL LITIGATION: A BRIEF INSIGHT

Civil justice system<sup>4</sup>, as a wing of the entire justice system, has been urged to offer redress to those whose civil right were violated and sanction those who infringed those rights.<sup>5</sup> Likewise, parties are expected to protect their rights through the formal system by fulfilling the technical and legal requirements if they opted to litigate. As a side effect of litigation, during any proceeding, there are an inevitable costs incurred by the parties to litigation.<sup>6</sup> Often times, these are costs and fees to access the courts’ process. There are also costs incurred by the parties to hire a lawyer and to access or use evidences.

There are various definition of costs and fees of litigation. The notion of costs and fees in civil litigation, for the purpose of this article, covers litigation preparation costs, filing costs, lawyer’s cost, accommodation expenses, evidence costs like: compensation for forgone incomes of witness, experts and interpreters-the list is endless.<sup>7</sup>

Paying these costs, litigants need the court to make justice in allocating these costs and fees of litigation. Correspondingly, courts are bound to, among

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<sup>4</sup>There are two major components of justice. Namely, Criminal and Civil. Throughout this paper, civil justice comprises all areas of the justice system but not the criminal justice system. It can be taken as a ‘system that enables individuals to assert civil claims against others, and have those rights adjudicated and enforced’.

<sup>5</sup>Alon Klement et al., *Civil Justice Reform: A Mechanism Design Framework*, 2008, P53.

<sup>6</sup>The word litigation is chosen deliberately to single out the ADR mechanism in all its forms, which are beyond the scope of this paper.

<sup>7</sup>The Ethiopian Civil Procedure Law fails to define what cost is while other many civil procedure laws try to list some elements. For more detail discussion, see The American Law Institute, *Principles and Rules of Transnational Civil procedures*: American Law Institute/UNIDROIT, (Cambridge University Press, 2006), P45; Stephen M. Gerlis and Paula Loughlin, *Civil Procedure*, (Great Britain (2001), P370 seq. For UK; Mathias Reimann, *infra* note-11, P69 seq. for Austria; P513 seq.; Jack S. Emery et al., *West Legal Studies*: Thomson Learning, *Civil Procedure and Litigation*, (USA,2000), P177 seq.

other things, deal fairly; ensure litigant parties are getting equal treatment; the amount of time and money spent on case is proportionate to the amount of the claim and the complexity of the issues, etc.<sup>8</sup>

However, the parameter of their respective version of ‘fair and equitable allocation’ is divergent. Evidently, the winner party demands the court to shift all the costs and fees of the whole litigation to the loser. Conversely, the loser party demands mostly, either each party should pay their respective costs and fees; or, if the court has to order, it should be ‘reasonable’ amount and only those costs and fees of litigation. In fact, situations realistically may demand courts to take into account factors beyond the sheer interest and perspectives of parties in the litigation. The decision on, ‘who should pay what’, is wide-ranging enough to engulf issues beyond parties.<sup>9</sup> For a while, it is safe to conclude that there is no consensus on manner and ways of determining the ‘reasonable amount’ of the litigation costs and its allocation between, if not within, jurisdictions.

From the litigants’ perspective, cost and fee considerations will not only determine the price of access to justice but also will often have an important impact on the strategy, conduct and outcome of litigation.<sup>10</sup> That is to say, decision of courts manifestly affects, *inter alia*, parties’ decisions whether to file or not; the kind of litigation strategy to adopt; how and how much to invest and even whether to use formal mechanisms or not. Improper allocation of the costs and fees may limit access to justice by increasing costs and providing hurdle that prevents and discourages people from accessing the court.<sup>11</sup>

Likewise, there is also a concern that people may reach a compromise if there is a practice of unfair allocation which seriously limits the

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<sup>8</sup>For details see overriding principles of justice <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/> <accessed last on 12/07/2017>

<sup>9</sup>For instance, to protect poor and vulnerable members of the society laws prohibit the judges.

<sup>10</sup> Colin B. Picker and Guy I. Seidman, *the Dynamism of Civil Procedure: Global Trends and Developments*, (Netherlands, Springer International, 2016), P26; Peter Cashman (PhD), *The Costs of Access to Courts* ( Paper for presentation at Bar Association of Queens land Annual Conference, 2007),P3.

<sup>11</sup> Mathias Reimann (ed.), *Costs and Fees Allocating in Civil Procedure*, (USA, Springer, 2012), P23 seq.

constitutional right to appeal. It may also serve as a shield for strategic litigants. If a litigant thinks she/he will lose a great deal of money in case the litigation turned out to be successful or unsuccessful, it will have huge repercussion on the decision to litigate or not. Comparative study of more than 30 jurisdictions indicates, “...in civil ...matters where money is usually the primary object, the financial burden of litigation may well be the single most important consideration in deciding whether to fight in court. Even if a matter is deemed important enough, and even if the chances of success are considered high, a party may not be able or willing to bear the costs of litigation.”<sup>12</sup>

On the contrary, appropriate allocation is believed to increase access to justice and decrease frivolous and unreasonable litigation. Allocation of costs and fees “even provide a basis on which countries compete for legal business.”<sup>13</sup> To address the problems, jurisdictions have adopted various principles of allocation, which are discussed in the following section briefly.

### **3. APPROACHES OF ALLOCATION OF COSTS AND FEES IN CIVIL LITIGATION: A BRIEF OF LITERATURE REVIEW**

Different jurisdictions adopt various methods of allocating the entire costs and fees of litigation. Some adopt the ‘loser pays’ principle, while others adopt parties cover their respective costs. And, yet others leave it to the discretion of the judge. In other terms, the first principle is known as indemnity rule, the second non-indemnity rule while the last is known as judge-based system.<sup>14</sup> Before we jump to discussion of each, it has to be underlined that all systems have principles and exceptions that allow courts to derogate from that principle.<sup>15</sup> For instance, in systems that adopted the loser pays principle courts are allowed to deviate from the principle if law

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<sup>12</sup> *Id.* P4.

<sup>13</sup> Theodore Eisenberg et al, *When courts Determine fees in a system with a Loser pays Norm: Fees Award Denials to Winning Plaintiffs and Defendants* (Corner Law Faculty Publications, 2013), P1454.

<sup>14</sup> For more discussion on the classification of the rules see James Maxeiner, *Costs and fees allocation in civil procedure*, the American Journal of Comparative Law (2010), Vol. 58, Pp198-99.

<sup>15</sup> Reimann, *Supra* note 11, at p3 seq.

clearly dictates not to shift the costs, bad faith of the winner, if the winner is an indigent etc.<sup>16</sup>

### 3.1 . LOSER PAYS PRINCIPLE

In non-indemnity principle, parties are ordered to bear their respective costs and fees of the litigation. The loser pays principle is, by far, the most widely adopted principle.<sup>17</sup> In this principle, the loser party should prima facie indemnify, or contribute substantially towards, the costs and fees incurred by the winner party.<sup>18</sup> Those who adopted the ‘loser pays’ (indemnity) principle pursue the full compensation of winning party and deterrence of frivolous claims. The successful litigant can collect his/her legal costs and fees from the loser.

In fact, even within jurisdictions that have adopted the loser pays principle variations are inescapable on how much should be shifted to the loser.<sup>19</sup> After studying more than 30 jurisdictions comparatively, Mathias made the following eloquent conclusion:

*The reality is much more complex: no system makes the winner completely whole (although some come very close), and even in the United States, some costs are shifted to the loser (although usually only a very small part); most jurisdictions operate somewhere in between. ...what basic principle a legal system proclaims says little about which costs (and which amounts) are actually shifted to the loser: some jurisdictions announcing the “loser pays” rule arguably charge the loser for no more than in the United States... The world of cost and fee allocation in civil procedure is much better described as a broad spectrum. On one end are the systems that shift nearly all of the winner’s litigation expenses to the loser; in the middle, we find many jurisdictions shifting*

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<sup>16</sup>For instance, See James Maxier, *Cost and Fee Allocation in Civil Procedure*, the American Journal of Comparative Law (2010), Vol.58, Pp 200-2003.

<sup>17</sup> Avery W. Katz, *Indemnity of Legal Fees-7300* (Georgetown University,1999), P63.

<sup>18</sup>Andrews, *Supra* note 1, P295.

<sup>19</sup>Jennifer Corrin Care, *Civil Procedure and Courts in the South Pacific*, (Australia, Cavendish Publishing Pty Ltd, 2004), P257.



*substantial parts, but not nearly the whole; and at the other end, only a fraction of the winner's costs are recoverable*  
(Emphasis Added)

As can be understood from this conclusion, it is in rare circumstance that 'the loser pays all' the costs of the winner incurred during the litigation. Furthermore, the prime purpose of indemnity "is not intended to be compensation for a risk to which a litigant has been exposed, [but] to refund of expenses actually incurred."<sup>20</sup> This rule reflects basic justice. Responsibility for the winner's costs rests with the party who brought or defended a losing cause.<sup>21</sup>

In exceptional circumstances provided by law, the court may withhold or limit costs to the winning party when there is clear justification for doing so.<sup>22</sup> For instance, if the case is based on family law, courts can or sometimes even to exempt the loser party from covering the costs and fees of litigation, provided the conditions are fulfilled. To this end, in systems that adopted the loser pays principle, courts are allowed to deviate from the principle if the law clearly dictates not to shift the costs, if the winner is in bad faith, if the winner is an indigent. There are other exceptions like small claim cases, family law disputes, labour cases, social security cases, consumer litigation, tort cases, etc.<sup>23</sup>

### 3.2 . NON-INDEMNITY PRINCIPLE

Regarding the systems who have adopted the non-indemnity principle, the justification is, *inter alia*, "to provide access to the courts for the poor and other risk-averse persons".<sup>24</sup> There is a public need for open access to all. Costs and fees of litigation should not preclude parties from bringing their

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<sup>20</sup>*Cost and Fee Allocation in Civil Procedure Republic South Africa*, P2. available at [www.personal.umich.edu](http://www.personal.umich.edu) < last accessed 24/11/2016>.

<sup>21</sup>Neil Andrews, *Supra* note 1, P295; The American Law Institute, *Principles and Rules of Transnational Civil Procedures*: American Law Institute/UNIDROIT (Cambridge University Press, 2006), P45.

<sup>22</sup>Neil Andrews, *Supra* note 1, P297.

<sup>23</sup>For further detail discussion see *Supra* note-15, Pp16-19.

<sup>24</sup>John F. Vargo, *the American Rule of Attorney Fee Allocation: the Uninjured Persons' Access to Justice*, 42 AM. U.L.Rev. 1567, 1594 (1967) cited by James Maxeiner, , *Costs and Fees Allocation in Civil Procedure*, the American Journal of Comparative Law (2010), Vol. 58, P198.

claims or defending suits brought against them. Accordingly, parties in litigation must generally bear their own expenses. The American Supreme Court has listed the following three illustrative justifications:

*“...in many cases the result of litigation is uncertain and, as a result, it is unfair to penalize losing parties by assessing costs and fees for merely defending; if losing parties were forced to bear their opponents' costs and fees, "the poor might be unjustly discouraged from instituting actions to vindicate their rights...; claims for costs and fees would likely increase "the time, expense and difficulties of proof" in any given case and “would pose substantial burdens for the administration of justice.”<sup>25</sup>(Emphasis added)*

Pragmatically speaking, there is no pure dichotomy of ‘loser pays’, indemnity, and ‘each party covers his or her costs’, non-indemnity principles.<sup>26</sup> Even in the US that has adopted long tradition of adopting non-indemnity principle there are research based calls for costs and fees shifting for “indemnification would reduce frivolous litigation, improve case quality and lower litigation costs.<sup>27</sup> Still those who adopted the hybrid method have principles and exceptions.

### 3.3 JUDGE-BASED SYSTEM

As the name indicates, this approach holds that the allocation of costs and fee of litigation is decided not by legislation, but, left to the discretion of judges. There are jurisdictions that adopt this approach including South Africa<sup>28</sup>, Israel<sup>29</sup>, and Ethiopia. Advocates of this system list many advantages, which are summarized as follows:

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<sup>25</sup>John Yukio Gotanda, *Awarding Costs and Attorneys' Fees in International Commercial Arbitrations*, P2, available at <https://www.cisg.law.pace.edu/cisg/biblio/gotanda.html#21> <last accessed on 27/08/2017>

<sup>26</sup> Even in the US non-indemnity rule, there are states within the federation who adopted the loser pays principle. For detail discussion see Marie Gryphon, *Assessing the Effects of a “Loser Pays” Rule on the American Legal System: An Economic Analysis and Proposal for Reform*, Rutgers Journal of Law & Public Policy (2011), Vol.8: 3, Pp595-97.

<sup>27</sup> see Marie Gryphon, Id; Eric Helland and Jungmo Yoon, *Estimating Effects of English Rule on Litigation Outcomes*(Working Paper, Rand Justice, Infrastructure, and Environment, 2015), P1.

<sup>28</sup> *Cost and Fee Allocation*, *Supra* note 20.

<sup>29</sup> Theodore Eisenberg, *Supra* note 13, P1453.

*“A plausible additional approach to allocating litigation costs is to vest full responsibility for assessing them in the institutional actor with case-specific expertise, with no affiliation with the litigating sides, and with a presumed interest in promoting justice as each individual case requires the judge. Such a judge-centered system could, in theory, effectively address the problems associated with the litigation cost allocation methods already described. It might, for example, avoid the systematic underpayment of litigation costs in countries with fixed-amount or percentage-based reimbursement schedules since the judge can adjust the amount awarded as each case warrants. A judge-centered system might also avoid the harshness of litigating parties with reasonable but losing claims having to bear the full litigation costs of their opponents.”<sup>30</sup>(Emphasis added)*

This system gives a judge to decide allocation of costs and fees of litigation on case-by-case basis. It is the most flexible system. However, it lacks predictability; and is uncertain. None of the parties can be able to guess in what circumstances can the court shift or not shift to the other. Judges may also easily abuse it in case the law or Supreme Court fails to come up with practicable guidelines.

To rectify, or at least to reduce, the pitfalls of the unpredictability, jurisdictions have developed clear guiding rules on how courts should exercise the discretion in light of fairness and justice.<sup>31</sup> The discretion is expected to be “exercised judicially in accordance with established principles in relation to the facts of the case.”<sup>32</sup> The guidelines are developed through practice by the courts themselves.

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid* and Marie Gryphon, *Supra* note 26.

<sup>32</sup> Corrin Care, *Supra* note 19.

#### **4. ALLOCATION OF COST AND FEES IN ETHIOPIAN CIVIL PROCEDURE LAW**

This section provides indispensable background information about the Ethiopian legal rules governing the civil litigation costs and fees vis-à-vis its practice in the Federal Supreme Court Cassation Division.

##### **4.1 ALLOCATION IN THE CIVIL PROCEDURE LAW**

As discussed in section 3 of this research, there are various theories and practices adopted by jurisdictions with their respective justifications. The Civil Procedure Code of Ethiopia, which is designed to regulate the process of civil litigations, has plainly left allocation of costs and fees of civil litigation to the discretion of courts as follows:

*Unless otherwise provided, the costs of an incident to all suits shall be in the discretion of the court and the court shall have a full power to decide by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions to this effect.*<sup>33</sup> (Italics added)

According to this provision, courts in Ethiopia have a full power to make a decision regarding not only the amount but also who should pay. The only limitation is ‘if provided otherwise’. As it is discernible from the provision, the law gives unlimited power to the courts to decide who should pay, from what property and to what extent the party should pay.

There is slight difference in the wording of the Amharic and English versions of the provision. First, the Amharic version states that ‘unless it is provided by other laws’ whereas the English version states, “Unless otherwise provided” with no indication as to how and by whom it is provided.

In the wording of the English version, it leaves a room for parties to agree or law can dictate otherwise; but, in the Amharic version no indication as to the first. There are many unanswered questions. Of these, firstly, can this be interpreted, as courts have no discretion to decide if the parties, especially

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<sup>33</sup>Civil Procedure Code of the Empire of Ethiopia Decree No. 52/1965, Art. 462.

the loser, are able to show special circumstances? Secondly, the English version makes it mandatory for the court to have full power by using “shall” while the wording of the Amharic version connotes the possibility. The Ethiopian Civil Procedure provides courts to decide allocation of costs and fees on case-by-case basis.

This gives them maximum flexibility to accommodate changing circumstances taken into consideration the nature of the litigation, behavior of the parties, time taken etc. to make equitable and fair allocation of costs decisions. Nonetheless, the pitfall of this unlimited power lies at creating legal uncertainty due to the unlimited power and lack of guidelines on how the courts should apply their conscience, evidences, and the facts to make fair and equitable decisions.

Nevertheless, if the judge decides that the “unsuccessful party should pay” then the party for whose advantage the allocation of costs and fees has been decided “shall prepare an itemized bill of costs showing the expenses he has incurred in the suit.”<sup>34</sup> Likewise, the law requires the party to file the bill in the court of judgment and a copy of that bill be served to the other party. This in turn, indicates that the laws are in favor of litigation, oral or otherwise, on the issues of allocation of costs and fees in civil matters. This can further be substantiated by the rule that follows and demands the court to adjourn the case for “considering the bill and shall summon the parties to appear on such day.” Furthermore, the court is authorized to reduce the amount “which in its opinion is excessive and ...were not necessary or proper for the attainment of justice or for the defending of the rights of any party” provided that it considers the bill and hear the parties.<sup>35</sup>

High emphasis is given to the allocation of costs and fees of litigation though the law fails to expound on what grounds the court can ‘shift or not shift’ the costs and fees. Especially, after the court makes a decision as to the allocation of cost and fee, the law provides serious consequences if any party deviates from the order of the court.<sup>36</sup> In a similar manner, the law clearly demands that court once it renders its judgment concerning the allocation of costs and fees, it has to include in its decree, operational part of the

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<sup>34</sup> Civil Procedure Code of the Empire of Ethiopia Decree No. 52/1965, Art.463(1)

<sup>35</sup> Civil Procedure Code of the Empire of Ethiopia Decree No. 52/1965, Art.464(1).

<sup>36</sup> Civil Procedure Code of the Empire of Ethiopia Decree No. 52/1965.

judgment, “the amount of costs incurred in the suit or appeal, and by whom, or out of what property such costs are to be paid”<sup>37</sup> It has to be noted that parties can appeal on the allocation of costs and fees but such appeal is final.<sup>38</sup>

## 4.2 ALLOCATION OF COSTS AND FEES IN FDRE FEDERAL SUPREME COURT CASSATION DIVISION

The Federal Supreme Court is the highest judicial organ in the Ethiopian federal judicial system.<sup>39</sup> Its counterpart in the regions has similar position on regional matters.<sup>40</sup> Currently, the decisions of the Federal Supreme Court Cassation Division are binding on all levels of courts. In the wording of the Federal Courts Re-amendment Proclamation “ interpretation of a law by the Federal Supreme Court Cassation Division in its judgments made with not less than five judges shall be binding on federal and regional courts at all levels.”<sup>41</sup> It is there, to correct fundamental error of law for the purpose of uniform applications and interpretations of law.<sup>42</sup>

In exercising this power, the apex court has made many binding interpretations concerning ‘error of laws’. So far, the Division has published 20 volumes of its binding decisions. One of these is regarding allocation of costs and fees of civil litigation. In reversing and elaborating lower courts’ decisions, the Cassation Division has made it clear that the principle adopted

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<sup>37</sup> Civil Procedure Code of the Empire of Ethiopia Decree No. 52/1965, Art.183 (1) (e).

<sup>38</sup> Civil Procedure Code of the Empire of Ethiopia Decree No. 52/1965, Art. 466.

<sup>39</sup> FDRE Constitution, Art.80.

<sup>40</sup> It is worth mentioning that the Federal Supreme Court Cassation Division is currently exercising Cassation over Cassation on any matters decided by Federal and State courts; though Scholars are raising critical questions. For detail discussions Muradu Abdo, Review of Decisions of State Courts over Sate Matters by the Federal Supreme Court, Mizan Law Review (2007),Vol.1, No.1, Pp60-74; Mehari Redae, *Cassation over Cassation and its Challenges in Ethiopia*, Mizan Law Review (2015), Vol.9, No.1, Pp175-200

<sup>41</sup>See Federal Courts Re-amendment Proclamation No.454/2005, Art. 2 (4).

<sup>42</sup>The Decision of FSCCD should not be equated with enacting laws. Its power is limited only to rectify the fundamental error of law, “guarding the legislature’s purpose and intent”, committed in interpretation. If the Cassation division acts in the other way, it is another act that amounts to interference of powers of the legislature. For critical analysis of the flaws in the decisions of the cassation, see Bisrat Teklu and Markos Debebe, *Change for Aptness: Fighting Flaws in the Federal Supreme Court Cassation Division* available at <https://www.ju.edu.et/jl> last accessed 21/09/2017.

in Ethiopian procedure law is principally the ‘loser pays’ principle.<sup>43</sup> The Division confirms that whether the loser should pay or not, is left for the discretion of the courts, utterly of which the loser pays, is an option. In these same cases, the Division also adopted some guiding exceptions to the basic rule.<sup>44</sup>

Of the 20 volumes of binding decisions of the Division, there are four<sup>45</sup> pertinent cases worth of special discussion. The writer opted to discuss in ascending order of the published volume as follows.

#### 4.2.1 Case One

In *Abebaye Abi Deraweq V. Ato Yigerem Feye* case, the court that had first instance jurisdiction rejected both the claim and costs of the petitioner (Wro. Abebaye Abi).<sup>46</sup> The petitioner had appealed to appellate court which confirmed the decision of the lower court regarding the recovery of the court fees, though dismissed the claim. Then, she petitioned to the Cassation Division to reverse the decision of the appellate court arguing, “If the claim of the plaintiff is rejected by the court, it is error of law to order the defendant to pay the costs of the litigation who has won.” Then, the Cassation Division has reversed the decision of the Supreme Court stating “according Art. 251(1) of the Civil Procedure Code of Ethiopia, court fees are covered by person who is suing unless allocated by the court otherwise.” It further held that if the respondent made unfounded claims which were dismissed both by the appellate and lower courts; there is no legal ground that the defendant had to cover the costs and fees. Ordering the petitioner to

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<sup>43</sup>See *W/ro. Abebaye Abi Deraweq V. Ato Yigerem Feye*, *Federal Supreme Court Cassation Division Binding Decision*, File No. 4628, Vol.12, Pp320-321.; *Ethiopian Revenue and Customs Authority Dire Dawa Branch V. W/ro Hindeya Endris*, *Federal Supreme Court Cassation Division Binding Decision*, Cassation File No. 83701, Vol.14, p129-130; *Youtek Construction Plc V. Ato Fuad et al*, *Federal Supreme Court Cassation Division*, Cassation File No. 91103, Vol.15 and Vol.16, Pp188-190; *Ato Kinfe W/senbet V. Ato Sileshi Bekele et al.*, *Federal Supreme Court Cassation Division*, Cassation File No. 9859, Vol.18, Pp96-99.

<sup>44</sup> See *W/ro. Abebaye Abi*, *Federal Supreme Court Cassation Division*, File No. 46281, Vol.12 Pp320-321; *Youtek Construction Plc V. Ato Fuad et al*, *Federal Supreme Court Cassation Division*, Cassation File No. 91103, Vol.15 and Vol.16, Pp 188-190; *Ato Kinfe W/senbet V. Ato Sileshi Bekele et al.*, *Federal Supreme Court Cassation Division*, File No. 98593, Vol.18, Pp96-99.

<sup>45</sup>The decisions of these cases are rendered in Amharic and the writer provides translation.

<sup>46</sup>For detail facts of the case, see *W/ro. Abebaye Abi Deraweq V. Ato Yigerem Feye*, *Federal Supreme Court Cassation Division*, File No. 46281, Vol.12, Pp320-321.

indemnify the respondent is, therefore, is wrong interpreting of the law which has to be corrected. Here the Cassation Division is right if the loser pays principle is to be followed; the reverse would be true. That is to say, the defendant has won the case, and then plaintiff may be ordered to indemnify the reasonable costs and fees of the litigation.

Unfortunately, the Cassation Division reversed the decisions of the lower courts though it ordered the parties to cover their respective costs in the Cassation. As can be discerned from facts of the case the petitioner has come from Gambela region, hired a lawyer to defend the case, court fees incurred in the Cassation Division, appeal including court fees, evidence and other costs. The Cassation Division ignored the principle of the loser pays principle, which has been claimed to be adopted by lower courts.

#### 4.2.2. Case Two

The petitioner, Ethiopian Revenue and Customs Authority Dire Dawa Branch, has argued that the issue of allocation of costs and fees has to be entertained in the execution file not on the judgment file, which has already become dead file.<sup>47</sup> The Cassation Division has dismissed the argument of the petitioner and affirmed the decision of lower courts by stating litigation of allocation of costs and fees should be presented at the court where the judgment was rendered in a file of a judgment pursuant to Art.183 of the Ethiopian Civil Procedure Code, for it is part of the judgment. Likewise, execution is possible on a matter up on which judgment is rendered by virtue of Art.378 of the same Code. It further states that courts should exercise their discretion by allowing parties to litigate on the issue of allocation, amount and even whether the costs and fees claimed by the party are really incurred or not.

#### 4.2.3. Case Three

In another case, the Division holds that the main objective of the rules of costs and fee is to prevent frivolous litigation.<sup>48</sup> Then, if [lower] courts affirm that the litigation has no legal basis, the party who causes those costs

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<sup>47</sup> For detail facts of the case, see *Ethiopian Revenue and Customs Authority Dire Dawa Branch V. W/ro Hindeya Endris, Federal Supreme Court Cassation Division, File No. 83701, Vol.14, Pp129-130.*

<sup>48</sup> For detail facts of the case, see *Yutek Construction Plc V. Ato Fuad et al, Federal Supreme Court Cassation Division, File No. 91103, Vol.15 and Vol.16, Pp 188-190.*



and fees should indemnify the party who sustained unnecessary costs. Likewise, the Division added, that it can be discerned from the contents of the Civil Procedure provisions that the ‘loser pays’ does not mean that the loser pays all the costs and fees incurred by the winner. Conversely, the Cassation Division stressed that it is also against the objective of the civil procedure to reject the question of costs and fees indemnification if the party who is causing them is in bad-faith. After giving this reasoning, the Division has reversed the decisions of the lower courts who have denied the winning party while the loser is in bad faith.<sup>49</sup> The Cassation Court criticized lower courts for failing to give decision on the issue of shifting or not shifting of the costs and fees of the litigation.<sup>50</sup>

Regrettably, the Division left uncertainty whether courts should only adopt the loser pays principle in case of bad faith. That is to say, is bad faith the precondition to decide the costs and fees to follow the judgment? Can the indemnity cost be justified by the mere fact that loser has been found to be wrong, in fact or law? Alternatively, is any misconduct a requirement? Are there circumstances where parties are ordered to cover the costs of each side? These and other similar questions are left unanswered by the Cassation’s decision.

Unfortunately, the principle adopted by the Division was not even applied to the costs and fees incurred in the Division’s litigation of the same case. In fact, the winner who has been denied appropriate cost recovery by lower courts is also denied in the Division. What the Division did was, it remanded the case to the lower courts to decide on ‘allocation of costs and fees’ while the parties are ‘ordered to bear their respective’ costs and fees of litigation incurred in the Division.

#### 4.2.4. Case Four

In this case, after ordering the winner party to provide bill of costs, lower courts have rendered a decision, *inter alia*, on allocation of costs and fees of the litigation.<sup>51</sup> The loser has presented his petition to the Cassation Division, among others, to reverse the decision by arguing that lower courts have

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<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> See *Ato Kinfe W/senbet Vs. Ato Sileshi Bekele et al.*, Federal Supreme Court Cassation Division, File No. 98593, Vol.18, Pp96-99.

committed fundamental error of law to render the decision and if the decision is reversed then there is no issue to indemnify. The Cassation Division has affirmed the decisions of lower courts by stating that allocation of costs and fees by ordering the loser to indemnify the winner as far as the courts can render their decision based on litigation stand, contracting parties' identity and other similar circumstances. Here, the Cassation Division seems impliedly, to list some guiding principles that lower courts should take into consideration.

However, the Cassation Division ordered the parties to bear their respective costs and fees incurred at the Cassation Division, irrespective of the outcome of the case, costs incurred, stand of the parties and their litigation behavior. The winner of the litigation has incurred visible costs like advocate fees, court fees, forgone opportunity costs and other costs to defend the case.

In all its published binding decisions, including the cases under-discussion, the Division rigidly follows one approach; each side of the litigation should cover the costs of litigation irrespective of the nature of the case, behavior of the parties before or during litigation, costs covered, time taken to complete the case etc.<sup>52</sup>

### **4.3 . DOES THE ONE ALLOCATION APPROACH FIT ALL?**

One may argue that the prime purpose of Cassation Division is not to entertain cases as regular courts but to check of if the laws are correctly applied and interpretation by all courts in their respective jurisdiction. It reverses if courts of any level have committed fundamental error of law, not to entertain the facts of the case. Consequently, allocation of costs and fees of civil litigation is not a fundamental issue at the Cassation Division.

However, this argument does not make sense for a number of reasons. First, every-litigation has its own costs and the right person should pay that cost. Parties pay huge cost to proof their claim or defend claims brought against them. Court fees, advocate fee, transport and accommodation costs are only some of these costs incurred. Second, if lower courts erred in interpreting or applying laws and have awarded costs mistakenly, it would be unjust for the

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<sup>52</sup>See all Federal Supreme Court Cassation Division Vol.1-20.

party who has won in reversing the judgment. For this person winning may be turned to be losing in reality given the huge costs and delay of decisions in the Federal Cassation. Third, even though the loser party committed no fault at all, this does not mean that the winner party should shoulder the costs and fees alone. Fourth, if the Division is desired to provide justice then, it should render justice fully, from all perspectives. Fifth, if the Division is to correct ‘fundamental error of law’ it should incorporate laws of allocation of costs and fees. Six, if lower courts are required to adopt the ‘loser pays’ principle why not the Cassation Division. In one system, how can one expect different approaches, at least, theoretically? Is the spirit and letter of the law demands courts to shift the costs and fees towards the loser in bad-faith; is the Division above the law?

Adopting the non-indemnity principle inflexibly all times, for all parties, in all cases irrespective of the outcome of the case would keep on, the existing public outcry, backlog and delay of cases. It would be absurd to treat all individuals, petitioners and respondents, identical while justice demands otherwise. What if the losing party petitioned with a full knowledge of the outcome of the case? What, if that party or his advocate clearly contributed to the wrong interpretation of laws at lower courts?

Even the loser who acted in bad faith showing illegitimate behavior in the courtroom to win the baseless or vexatious claims will pay no costs and fees of the litigation initiated inappropriately to merely harass the winner party. It would be unjust and incomprehensible for it is a matter of inherent justice that the person who causes damage intentionally to others should make it good.<sup>53</sup>

To decrease unfounded harassment and frivolous litigation, losers with bad faith should pay the costs and fees of civil litigation at the Division. The party who lost the case due to his/her frivolous claims must bear the costs thereof to deter similar acts and conducts if it is proportional and the winner acted in good faith.

However, caution must be taken that the practice of the Cassation Division must not deter reasonable and meritorious claims for fear of incongruous

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<sup>53</sup> Andrews, *Supra* note 1, P297.

allocation of costs.<sup>54</sup> If the Division adopted the loser pays all, petitioners who have no financial capability to cover the costs and fees of the whole litigation would be discouraged to bring their case to the courts.

The downsides of one-approach fits-all-cases should be reducing by adopting hybrid system that incorporates maximum amount of attributes of the three systems while keeping pitfalls to the least possible. To this end, the Division should develop workable guiding principles that helps to build a more efficient and equitable allocation system. The system should provide fairness to prevailing litigants if justice demands so. Above all, “*making parties financially responsible for unreasonable claims and defenses will not only release wholly justified victorious parties from their financial burdens but also free up the courts, to hear more meritorious cases.*”<sup>55</sup> The costs of litigation are expected to be more affordable and more proportionate to the value and complexity of the case.

If the current approach of Cassation Division persists, winning means practically losing. Coupled with the high costs and delay of dispensation of Cassation cases, the ‘one-approach fits all’ cases and parties at all time will continue dismissing the sense of effective and equitable allocation of costs and fees system. Above all, the non-indemnity principle would not be always consistent with promoting just, cost-effective and efficient resolution of disputes.

## 5. CONCLUSION AND THE WAY FORWARD

Courts have full discretion of allocating costs and fees of litigation in Ethiopia. This discretion is guided by neither clear practically drawn rules nor legislative rules that can reduce the dangers of wide discretion. The ‘devil’ is observable in the practice. As can be discerned from the cases discussed in this article, section 4, there are divergent practices of allocation of cost and fees of civil litigation. Besides, the Cassation Division of the Supreme Court has adopted one ‘approach fits all’.

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<sup>54</sup> Maxier, *Supra* note16, P198.

<sup>55</sup>David A. Root, *Attorney Fee-shifting in America: Comparing, Contrasting, and Combining the “American Rule” and “English Rule”*, IND. INT’L & COMP. L. Rev., Vol.15, Issue-3, P617.

One may argue that the prime purpose of Cassation Division is not to entertain cases as regular courts but to check of if the laws are correctly applied and interpretation by all courts in their respective jurisdiction. It reverses if courts of any level have committed fundamental error of law, not to entertain the facts of the case. Consequently, allocation of costs and fees of civil litigation is not a fundamental issue at the Cassation Division.

However, this argument does not make sense for a number of reasons. First, every-litigation has its own costs and the appropriate person should pay that cost. Parties pay huge cost to proof their claim or defend claims brought against them. Court fees, advocate fee, transport and accommodation costs are only some of these costs incurred. Second, if lower courts erred in interpreting or applying laws and have awarded costs mistakenly, it would be unjust for the party who has won in reversing the judgment. For this person winning may be turned to be losing in reality given the huge costs and delay of decisions in the Federal Cassation. Third, even though the loser party committed no fault at all, this does not mean that the winner party should shoulder the costs and fees alone. Fourth, if the Division is desired to provide justice, then it should render justice fully, from all perspectives. Fifth, if the Division is to correct ‘fundamental error of law’, it should incorporate laws of allocation of costs and fees. Sixth, if lower courts are required to adopt the ‘loser pays’ principle why not the Cassation Division. In one system, how can one expect different approaches, at least, theoretically? Is the spirit and letter of the law demands courts to shift the costs and fees towards the loser in bad-faith; is the Division above the law?

The author argues that this rigid approach is practically dismissing the need to have efficient and equitable allocation of costs and fees. He calls the court to discourage bad faith litigants whose acts/behaviors is defeating the prime purpose of effective and efficient resolution of disputes, through courts, by bringing petitions based on mere dissatisfaction with the courts’ conclusions and even intended to harass parties declared winners by the courts to the extent of eroding trust and confidence on the justice system.

Treating all litigants, petitioners and respondents, identically would dismiss the very nature of building efficient and equitable system of allocation of costs and fees of litigation. How can one expect courts to treat individuals found in bad faith either in the actions that led to the litigation or in the

conduct of litigation be treated identically with those who are innocent and their right is violated by those who acted in bad-faith: vexatious, wantonly or for oppressive reasons.

To decrease unfounded harassment and frivolous litigations, losers with bad faith should pay the costs and fees of civil litigation at the Cassation Division. The party who lost the case due to his/her frivolous claims must bear the costs of that to deter similar acts and conducts.

However, caution must be taken that the practice of the Cassation Division must not deter reasonable and meritorious claims for fear incongruous allocation of costs. If the Division adopted the ‘the draconian loser pays all approach’, petitioners who have no financial capability to cover the costs and fees of the whole litigation and other individuals whose real situation demands special treatment would be discouraged to bring their case to the courts.

By decreasing frivolous and unreasonable litigation, the Federal Supreme Court Cassation Division can alleviate case delay and backlog arising from an overwhelming number of meritorious and frivolous cases. The Cassation Division should deliver a strong message to bad faith and frivolous litigants to think very carefully to petition to it or be ready to pay the price of failure.

Lower courts should allocate costs and fees of litigation taking it seriously and appropriately. The Supreme Court must urgently provide research based detailed working guideline and the Cassation Division must develop by its practice clear case that can vividly lead lower courts to practice efficient and equitable allocation of costs and fees.

The legislature should reform the Civil Procedure Law to meet the up-to-date demands and developments of allocation of costs and fees regime.

## KENNINSAA FI BARREESSA MURTII DHIMMOOTA HARIIROO HAWAASAA MANNEEN MURTII OROMIYAA: SEERAA FI HOJIMAATA\*

*Tafarii Baqqalaa\*\**

*Angeessaa Itichaa\*\*\**

### ABSTRACT

*This article critically examines the way civil case judgments are being rendered and written in Oromia Regional State Courts by taking Ethiopian Civil Procedure Code of 1965 and principles of judgment writing as a framework, and analyzing data gathered through interview, questionnaire, and case review to know the practical problems and their root causes. The overall finding of the research shows the existence of legal and practical problems in rendering and writing effective civil judgments both at first instance and appellate courts of the Region. On balance, however, the problems are more prevalent at first instance courts than appellate courts. These problems are mainly attributable to inadequacy of the law, misinterpreting provisions of the law, judges' unethical behavior, lack of giving due attention to cases by judges, poor internal controlling mechanisms to ensure accountability of the judges, the existence of case load on judges, weak cooperation of courts' stakeholders, and etc. Accordingly, the article recommends the revision of Ethiopian Civil Procedure Code, continuous training for judges, strengthening internal controlling mechanisms to ensure accountability, increasing the number of judges in line with the existing case load, and enhancing cooperation of courts' stakeholders.*

**Key words:** *Civil Case Judgment Rendering, Civil Case Judgment Writing, Principles of Judgment Writing, Civil Procedure Code, Oromia Courts*

\*Barraun kun qorannoo bara 2009 Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qorannoo Seeraa Oromiyaan (ILQSO) mata-duree 'Kenninsaa fi Barreessa Murtii Manneen Murtii Oromiyaa: Xiinxala Rakkoolee Seeraa fi Hojimaataa' jedhu irratti gaggeeffamee ture keessaa gabaabbatee kan dhiyaate dha. Qorannicha gaggeessuuf odeeffannoon godinaalee Oromiyaa 8 (Shawaa Bahaa, Arsii, Arsii Lixaa, Shawaa Lixaa, Wallagga Bahaa, Harargee Bahaa, Harargee Lixaa, fi Shawaa Kaabaa), aanaalee godinaalee kanneen keessatti argaman 16 (Adaamaa, Ada'aa, Shaashamannee, Arsii Negeellee, Xiyoo, Itayyaa, Amboo, Dandii, Guutoo Giddaa, Diggaa, Baabbillee, Haromayaa, Ciroo, Odaa Bultum, Giraar Jaarsoo, fi Gabra Gurraachaa), fi Sadarkaa Naannoo (Finfinnee) irraa funaanameera. Haaluma kanaan, bar-gaaffiin 107 abbootii seeraa fi abbootii alagaan guutameera; afgaaffiin 99 hooggantootaa fi ogeessota manneen murtii, waajjiraalee haqaa, poolisii, bulchiinsa manneen amala sirreessaa, fi abukaattota wajjiin godhameera; galmeewwan bara 2001-2009 jidduutti murtaa'an 135 sadarkaa manneen murtii hunda irraa sakatta'amaniiru. Dabalataan, Heeronni, Seerri Adeemsa Falmii Hariiroo Hawaasaa, fi hogbarruuwwan rogummaa qaban sakatta'amaniiru. Bu'aan qorannichaas woorkishooppiif dhihaatee yaada hirmaattotaan gabbateera. Qorannicha gulaaluun yaadan kan gabbisan: Ob. Habtee W/Sanbat, Ob. Tuulii Baay'isaa, Ob. Warquu Magarsaa, fi Ob. Abdii Gurmeessaaf galata guddaa qabna. Dogogorri kan jiru yoo ta'e garuu, kanuma barreessitootaa ti.

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## 1. SEENSA

Hojiin mootummaa akkaataa uummataaf ifa ta'een raawwatamuu akka qabuu fi kana ta'uu dhabuun itti gaafatamummaa akka hordofsiisu Heerri Mootummaa Rippaabilika Dimokiraatawaa Federaalawaa Itoophiyaa (RDFI) fi Naannoo Oromiyaa ifatti tumaniiru.<sup>1</sup> Manneen murtiis qaamolee mootummaa hundeessan keessaa damee tokko waan ta'aniif, qajeeltoo iftoominaa fi itti gaafatamummaa kanaan ala hin ta'an. Kenninsii fi barreessi murtiis karaawwan qajeeltoon iftoominaa fi itti gaafatamummaa ittiin ibsamuu danda'an keessaa isa tokko dha.<sup>2</sup> Akka yaadrimeetti garuu, kenninsa murtii jechuun barreessa murtii jechuu miti; yeroon jalqabbii isaas yeroo abbaan murtii falmii guyyaa dhumaa dhagahuu miti.<sup>3</sup> Kenninsi murtii dhimmoota gulantaan walqabatanii jiraniif (progressive steps) barreessa murtiif barbaachisoo ta'anii fi gargaaran tokko tokko irratti murtii kennuu agarsiisa.<sup>4</sup> Fakkeenyaaf, ajajawwan adeemsa falmii keessatti kennaman keessatti, ijoo dubbii qabuu keessatti, gaaffii gareewwan kaasuu barbaadan simachuun keessummeessuu ykn diduun kufaa gochuu keessatti, sanadoota fudhachuu ykn kufaa taasisuu keessatti, guyyaa beellama kennuu ykn dhorkuu keessatti, dhimmoota xiinxaluun murtoo tokkorra gahuu keessatti, fi falmiiwwan dhagahuu keessatti dhimma calaqqisu dha.<sup>5</sup> Barreessi murtii ammoo bakka dhimmootni kenniinsa murtii keessatti murtaa'aa turan cuunfamee itti dhiyaatu dha. Waan ta'eefuu, kenninsii fi barreessi murtii hidhata guddaa kallattii ta'e waliin akka qabanii fi gochi kenninsaa gocha barreessaa kan dursu akka ta'e hubachuun ni danda'ama.

Haa ta'u malee, lamaan isaaniyyuu qajeeltoo iftoominaa fi itti gaafatamummaa mirkaneessuu keessatti gaheen qaban guddaa dha. Kunis

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<sup>1</sup>Heera Mootummaa RDFI fi Heera Mootummaa Naannoo Oromiyaa Fooyyaa'ee Bahe Lab. Lak.46/1994, Kwt. 12.

<sup>2</sup>Richard A. Posner, Judicial Opinions and Appellate Advocacy in Federal Courts- One Judge's Views (University of Chicago Law School, Chicago Unbound Journal Articles 2013 Faculty scholarship, F3).

<sup>3</sup>Devendra Kumar Upadhyaya, Skills of Judgement Writing in Brochure on Skills of Judgment Writing (Judicial Training & Research Institute,Uttar Pradesh,Vineet Khand,Gomti Nagar,Lucknow-226010), F17.

<sup>4</sup>Misker Geta'un and Tafese Yirga, Judgment Writing (Teaching Material Prepared under the Sponsorship of the Justice and Legal System Research Institute, 2009), F.1; Devendra Kumar, Akkuma 3<sup>ffaa</sup>.

<sup>5</sup> Devendra Kumar Upadhyaya, Olitti yaadannoo lak.3.



agarsiiftota adda addaan ibsama. Tokkoffaa, gareen itti murtaa’e, sababa maaliitiin akka itti murtaa’e beekuudhaan garee murtaa’eef waliin nagaan akka jiraatu taasisa.<sup>6</sup> Lammaffaa, manneen murtii ol’iyyata dhagahan murtii mana murtii jalaatiin kenname tokko ilaalee cimsuuf, fooyyeessuuf, qajeelfamaan mana murtii jalaatti deebisuuf, ykn diiguuf ibsa gahaa firii dubbii, ijoo dubbii, ragaalee dhiyaatanii, fi xiinxala manni murtii jalaa kenne akka beeku dandeessisa.<sup>7</sup> Sadaffaa, akka madda seeraatti (keessattuu, sirna seeraa kooman loo keessatti) kan gargaaru dha.<sup>8</sup> Afraffaa, murtiin sababa murtiin itti kenname tokko uummatni akka beeku gochuuf akka meeshaa walqunnamtiitti ni gargaara.<sup>9</sup>

Kana waan ta’eef, kenninsii fi barreessi murtii manneen murtii amantaa uummataa akka horatan gochuu keessatti gaheen qabu salphaa miti.<sup>10</sup> Kana akkaataa barbaadamuun milkeessuuf ammoo murtiin qajeeltoo irratti kan hundaa’e, sababaan kan deeggerame, amansiisaa fi ifa ta’uu qaba.<sup>11</sup> Waanti manni murtii jedhee fi haala kamiin akki jedhe qixuma murtee inni kennee fi barreessee faayidaa qaba kan jedhamus kanumaafi.<sup>12</sup> Kana irraa ka’uun, biyyootni hedduun dhimma kenninsaa fi barreessa murtii seeraan yoo hoogganan ni mul’ata. Haa ta’u malee, qabiyyeen seerota kanaa akkaatuma sirna seeraa biyyi tokko hordoftuu, gosa dhimmaa murtaa’uu (yakka ykn hariiroo hawaasaa ta’uu), fi tooftaa fi duudhaa biyya tokko keessatti dagaagee ture irratti hundaa’uudhaan adda addummaa ni qabaata.<sup>13</sup>

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<sup>6</sup>Brochure on Skills of Judgement Writing, F5; C. Ramana Reddy, Nandalur on Judgment Writing in General and Judicial Ethics, F1. Keessattuu, qaamni itti murtaa’e sababa maalii fi attamittiin akka mo’atame beekke mirga ol’iyyannoo qabuttis fayyadamuu waan barbaaduuf, murtiin kaayyoo kana galmaan gahuuti irraa eegama (The Khmer Institute of Democracy: How to Write A Judgment, F1).

<sup>7</sup>Brochure on Skills of Judgement Writing, Olitti yaadannoo lak.6; C. Ramana Reddy, Olitti yaadannoo lak.6, F1; B.G. Harindranath District Judge, Art of Judgment writing (Kerala Judicial Academy), F1; The Khmer Institute of Democracy, Olitti yaadannoo lak.6, F69.

<sup>8</sup> Federal Judicial Center, Judicial Writing Manual (Fourth Printing, 1991), F. Introduction.

<sup>9</sup>Misker Geta’un and Tafese Yirga, Olitti yaadannoo lak.4, F.30. Sababni isaa, murtiin tokko murtii gaarii jedhamuuf sababaa fi seeraan deeggeramuu qaba waan ta’eefi dha; (Brochure on Skills of Judgement Writing, Olitti yaadannoo lak.6, F6)

<sup>10</sup> B.G. Harindranath (District Judge), Art of Judgment writing, (Kerala Judicial Academy).

<sup>11</sup>Federal Judicial Centre, Olitti yaadannoo lak.8, Fvii

<sup>12</sup>Federal Judicial Centre, Akkuma 11<sup>ffaa</sup>

<sup>13</sup>The Hon. Justice Garry Downes, Writing Reasons for Judgment or Decision (Speech to the Administrative Courts of Thailand Thailand-Australia Mature Administrative Law Program Bangkok, 3 May 2007, F1). Fakkeenyaaf, biyyoota Sirna Seeraa Siivil Loo hordofan

Biyya keenya keessattis, kenninsii fi barreessi murtii seenaa dheeraa kan qabu ta'us, bifa hammayyummaa qabuun hojiirra kan oole erga seeronni Adeemsa Falmii Hariiroo Hawaasaa fi yakkaa amma hojiirra jiran bahanii booda.<sup>14</sup> Haaluma kanaan, murtiin dhimma hariiroo hawaasaa bu'uuraan dhimmoota gurguddoo afur: qaphxiilee murteessuuf barbaachisan (points for determination), ijoowwan dubbii qabaman irratti murtii kenname, murtii jedhame irra gahuuf sababoota dandeessisanii fi yaada dhimmichaa gabaabinaan ibsu of keessatti hammachuu akka qabu Seerri Adeemsa Falmii Hariiroo Hawaasaa tumeera.<sup>15</sup>

Haa ta'u malee, uwwisi Seera Adeemsa Falmii Hariiroo Hawaasaa (SDFHH) kun hanqina qaba. Fakkeenyaaf, barreessi murtii mormii sadarkaa duraa himatamaan dhiyeessee fi jalmurtii manni murtii irratti kenne hammachuu akka qabu seerichi hin ibsine. Qabatamaanis, manneen murtii akkaataa iftoominaa fi itti gaafatamummaa dhugoomsuu danda'uun murtiiwwan kennuu fi barreessuu ilaalchisee hanqinni kan jiru ta'uu murtiiwwan kennaman tokko tokko irraa ni hubatama. Hanqinaaleen kunniin barreessa firii dubbii, ijoo dubbii, xiinxalaa, fi kkf akkaataa ibsamuu qabutti ibsuu dhabuun kan walqabatu yoo ta'u; sadarkaa manneen murtii aangoo jalqabaa fi ol'iyataan dhimmoota dhagahan biratti calaqqisu. Kun ammoo iftoominaa fi itti gaafatamummaa gaaffii keessa galchuun amantaa hawaasni manneen murtii irratti qabu waan xiqqeessuuf rakkoo dha.

Kaayyoon barruu kanaas manneen murtii Oromiyaa keessatti kenninsaa fi barreessa murtii hariiroo hawaasaa adeemsa falmii idilee (ordinary

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keessatti qabiyyeen murtii gabaabaa yommuu ta'u, biyyoota Sirna Seeraa Kooman Loo hordofan keessatti ammoo ni dheerata. Sababni isaa, Sirna Seeraa Kooman Loo keessatti galmeen abbaa murtii tokkoon waan murtaa'uuf adeemsi dhimmichi itti ilaalame madaalawaa fi sirrii ta'uu agarsiisuuf abbaan murtii sun xiinxala gadi fageenya qabu gochuuti irraa eegama. Gama biraatiin, sirna seeraa siivil loo keessatti dhimmi kan ilaalamu abbaa murtii tokkoo oliin (panel judges) waan ta'eef, mariidhaan murtaa'uun dhimmichaa ofuma isaatinuu madaalawummaa fi sirrummaa dhimmichaa waan agarsiisuuf akka sirna seeraa Kooman Lootti gadi fageenyaan xiinxaluun hin barbaachisu jedhamee tilmaamama.

<sup>14</sup>Alamaayyoo Taganee, Barreessa Murtii (Moojuulii Leenjii Hojiirraa, Mana Kitaabaa ILQSO (Guraandhala 2001), F22.

<sup>15</sup>SDFHH, Kwt.182; murtiin yakkaas bu'uuraan cuunfaa ragaawwan dhiyaatanii, sababa ragaawwan dhiyaatan fudhatama itti argatan ykn kufaa itti ta'anii fi keewwata seeraa murtiin irratti hundaa'uun kennamee, murtiin balleessummaa kan kenname yoo ta'e ammoo keewwata tumaa seeraa ittiin kenname ifatti hammachuu akka qabu Seerri Adeemsa Falmii Yakkaa tumeera (SDFY,kwt.149 ilaalaa).

procedure) hordofuun<sup>16</sup> kennamanii fi murtaa'aniin walqabatee rakkoowwan gama seeraa fi raawwii keessatti qabatamaan mul'atan maalfaa akka ta'anii, fi maalirraa akka maddan adda baasuun akkaataa maqsuun danda'amu irratti yaada furmaataa akeekuu dha. Kana gochuuf hogbarruuwwan rogummaa qaban, SDFHH, fi dhimmoonni manneen murtiin murtaa'an sakatta'amaniiru. Dabalataan, odeeffannoon mala af-gaaffii fi bar-gaaffiin walitti qabame xiinxalameera.

Haaluma kanaan, barruun kun kutaawwan shanitti qindaa'uun dhiyaateera. Kuta seensaa kanatti aansee, kutaan lammaffaa maalummaa murtii mana murtii, fi qajeeltoowwan barreessa murtii gabaabinaan kan ibsu dha. Kutaan sadaffaa fi afraffaa walduraa duubaan kenninsaa fi barreessa murtii manneen murtii Oromiyaan walqabatee rakkoowwan qabatamatti mul'atan maalfaa akka ta'an seera jiruu fi daataa walitti qabame irratti hundaa'uun xiinxala. Dhuma irratti, kutaan shanaffaa, xiinxala waliigalaa taasifame irraa ka'uudhaan yaadota gudunfaa fi furmaataa kaa'a. Tokko tokkoon haa ilaallu.

## 2. MURTII MANA MURTII:MAALUMMAA FI QAJEELTOOWWAN BARREESSAA

### 2.1. MAALUMMAA MURTII MANA MURTII

Hogbarruuwwan, guuboo jechootaa fi seerotni rogummaa qaban tokko tokko jecha 'murtii' jedhuuf hiikkoo yoo kennan ni mul'ata. Bu'uuruma kanaan, hogbarruuwwan baay'een **murtii** jechuun ragaalee fi falmiiwwan ka'an mara xiinxaluun bu'aa seera ijoo dubbii dhimma tokko irratti raawwachiisuu jechuu akka ta'etti hiiku.<sup>17</sup> Guuboon jechootaa fi gaaleewwan seeraa hiikuun beekamu, *Black's Law Dictionary* jedhamus "*the official and authentic decision of a court of justice upon the respective rights and claims*

<sup>16</sup>Falmin hariiroo hawaasaa adeemsaalee idilee (ordinary procedure) fi addaa (fakkeenyaaf, sirna adeemsa falmii gabaabaa (summary procedure) fi si'ataa (accelerated procedure)) keessa darbuun murtaa'uu danda'a. Kenninsaa fi barreessa murtii adeemsaalee lamaanii barruu gabaabaa akkasii keessatti dhaqqabasiisuun waan hin danda'amneef, barruun kun dhimmoota adeemsa falmii idilee keessa darban qofa irratti kan xiyyeeffatu dha.

<sup>17</sup>Mohammad Rafiq, Judgment Writing and Communicating Effectively Through Judgements (10<sup>th</sup> West Zone Regional Workshop Organized by National Judicial Academy at Jaipur on 25th May, 2008), F.1; Gerald Lebovits, Judgment Writing in Kenya and the Common-Law World (Kenya Law Review, Vol. II ), 2008-2010, F1.; B.G. Harindranath, Olitti yaadannoo lak.10, F2.

*of the parties to an action or suit therein litigated and submitted to its determination*<sup>18</sup> jechuun hiikee jira. Kana gara afaan Oromootti yoo deebifnu, murtii jechuun murtii manni murtii mirgootaa fi gaaffiiwwan gareewwan walfalman dhiyeessan irratti hundaa’uun falmii barbaachisaa erga gaggeesseen booda, murtii fudhatamummaa qabuu (official) fi seera qabeessummaan isaa mirkanaa’e kennu jechuu dha.

SDFHH Itoophiyaa keessattis jecha ‘murtii’ jedhuuf kwt. 3 jalatti hiikkaan kennameera. Haa ta’u malee, waraabbii afaan Amaariffaa fi Ingiliffaa jidduutti garaagarummaan ni mul’ata. Akkaa waraabbii afaan Amaariffaatti, murtii jechuun ‘bu’uura ajajaa, decree, ykn ‘biyyin’ ta’ee jecha murtii mana murtiin kenname jechuu dha<sup>19</sup>. Waraabbiin afaan Ingiliffaa garuu, *Judgement shall mean the statement given by a court on the grounds of decree or order*<sup>20</sup> qofa waan jedhuuf, akka hiikkaa afaan Amaariffaa bu’uurri ‘biyyin’ jedhu ifatti hin mul’atu. Haa ta’u malee, jechi ‘order’ jedhu “*the formal expression of any decision of a court which is not a decree*” jedhamee seeruma adeemsa kana kwt 3 jalatti hiikamee waan jiruuf, gaaleen “*...any decision of a court*” jedhu kun ‘biyyin’ kan jedhus of keessatti hammachuu akka danda’u xiinxalaan bira gahuun ni danda’ama. Dabalataan, keewwatoota 353, 354 fi 355 jalatti jechichaaf beekamtiin kennameera.

Hiikkaawwan olitti kennaman adda addummaa akka qaban hubachuun ni danda’ama. Haa ta’u malee, murtiin mana murtiin kennamu mirgaa fi gaaffiiwwan walfalmitootaa bu’uura kan godhate ta’uu, fi seeraa fi ragaa walsimsiisuun bu’aa ykn gudunfaa dhuma irratti manni murtii bira gahu akka ta’e hubachuun ni danda’ama.

## 2.2. QAJEELTOOWWAN BARREESSA MURTII

Qabiyyee fi bifti barreessa murtii biyyaa biyyatti, gosa dhimmaa fi sadarkaa mana murtii dhimmichi ilaalamu irratti hundaa’uun garaagarummaa qabaachuu akka danda’u olitti ibsuuf yaalleerra. Haa ta’u malee, murtiin kamiyyuu salphaatti hubatamuu akka danda’utti (simplicity), gabaabbatee

18 Black’s Law Dictionary (8<sup>th</sup> edition), F2463.

<sup>19</sup>SDFHH, Kwt.3 (hiikkaa afaan Amaariffaa ilaalaa)

<sup>20</sup>SDFHH, Kwt. 3 (hiikkaa afaan Ingiliffaa).

(brevity),fi ifa ta'ee (clarity) barraa'uu qaba.<sup>21</sup> Kana gochuufis qajeeltoowwan armaan gadiin hoogganamuuti irraa eegama:

**A) Murtiin Guutummaatti Galagalcha Galmee Ta'uu Hin Qabu:**

Himannaan, deebii, fi ragaan akkuma jirutti ykn guutummaan guutuutti murtii keessatti ibsuun murticha garmalee dheeressuun jibbisiisaa fi nuffisiisaa waan taasisuuf, abbaan murtii jecha mataa isaatiin cuunfee ibsuu qaba.<sup>22</sup>

**B) Murtiin Afaan Ifaa, Salphaa, fi Lallaafaa Ta'een Barreeffamuu**

**Qaba:** Kun kan barbaachiseef murtiin tokko akka sanada uummataatti waan ilaalamuuf afaan murtiin ittiin barreeffamu kamiyyuu nama beekumsa seeraa qabuufis ta'e kan birootiif haala salphaatti hubatamuu danda'uun ifa ta'ee barreeffamuu waan qabuufi.<sup>23</sup>

**C) Murtiin Madaallii Isaa kan Eeggatee fi Gartokkotti Kan Hin Duufne**

**Ta'uu Qaba:** Qajeeltoon kun murtiin miiraa fi fedhii keessoo abbaa murtii kan calaqqisiisu ta'uu akka hin qabne kan agarsiisu dha. Abbaan murtii kan miidhameef osoo hin gaddiin, kan balleesses osoo hin abaariin; akkasumas, falmii garee tokkoo ol guddisuun kan garee biroo gadi osoo hin buusiin walqixa iddoo kennuun firii dubbii ragaa dhiyaate wajjiin ilaaluudhaan bu'uura seeraatiin murtii kennuu isaa akkaataa agarsiisuu danda'uun murticha barreessuu agarsiisa.<sup>24</sup>

**D) Qabiyyeen Murtii Guutuu Ta'uu Qaba<sup>25</sup>:**

Murtiin tokko yoo barreeffamu ijoowwan dubbii hundeeffaman hundaaf deebii kennuu danda'uu, hiikoof kan saaxilame ta'uu dhabuu fi falmii hunda kan ibsuu fi xiinxalu ta'uu qaba.

**E) Murtii fi Ibsi Mana Murtii Ragaadhaan Deeggeramuu Qaba:**

Qajeeltoon kun kan gaafatu murtii fi ibsi murtii ragaa barreeffamaa,

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<sup>21</sup> The Australian Law Journal on the Writing of Judgments, F36.

<sup>22</sup> Mohammad Rafiq, Olitti yaadannoo lak.17, F6.

<sup>23</sup> Mohammad Rafiq, Olitti yaadannoo lak.17,F7; Dubbistoonni murtii adda durummaan walfalmitoota, ogeessota seeraa,abbaa murtii dhimmicha murteessee fi abbootii murtii biroo dha (The Australian Law Journal on the Writing of Judgments,FF4-10 ilaalaa)

<sup>24</sup> Alamaayyoo Taganee, Olitti yaadannoo lak.14, F14.

<sup>25</sup> Akkuma <sup>24</sup>ffaa.

ragaa namaa, ykn ragaa qabatamaa galmeedhaan walqabateen ala ragaan kamiyyuu hanga fedhellee dhimmicha wajjiin walitti dhufeenya qabaatulle murtiif bu'uura ta'uu akka hin qabne dha.

**F) Dhimmoota Yaadamaa (Hypothetical Cases) Fayyadamuu Dhiisuu:**

Abbaan murtii, murtii yeroo barreessu dhimma qabatee jiru ibsuuf jecha dhimma yaadamaa ta'e (hypothetical cases) ykn jechama fayyadamuun hin jajjabeeffamu.<sup>26</sup> Sababni isaa, dhimma yaadamaas ta'e jechamni walduraa duubaan qabatama kan hin taanee fi iddoo dha iddootti hiikkaa adda addaa qabaachuu danda'u waan ta'eefi.<sup>27</sup>

**G) Murtii Keessatti Sanadootni, Barreeffamootni, fi Seerotni**

**Rogummaa Qaban Sirriitti Eeramuu Qabu:** Murtii kennuuf sanadootni fi barreeffamootni barbaachisoo ta'an yoo jiraatan mana hojii kamirraa akka dhiyaatan, guyyaa itti barreeffamanii, fi lakkoofsi isaanii meeqa akka ta'e sirriitti ibsamuu qaba.<sup>28</sup> Barreeffama ibsuun yoo barbaachises, maqaan barreessaa barreeffamichi ittiin maxxanfamee sirriitti ibsamuu qaba malee duuchaadhumatti, fakkeenyaaf, "ogeessi seeraa tokko akka jedhetti" jedhamee barreeffamuu hin qabu.

**H) Maqaan Walfalmitootaa Yeroo Tokko Beekamnaa Akkuma Sadarkaa Dhimmichaatti Himataa, Himatamaa, Ol'iyyataa ykn Deebii Kennaa Jedhamee Murtii Keessatti Ibsamuu Qaba**

**3. RAKKOOLEE KENNINSA MURTII HARIIROO HAWAASAA KEESSATTI MUL'ATAN**

**3.1. KENNINSA MURTII DHIMMOOTA HARIIROO HAWAASAA AANGOO SADARKAA DURAAN KENNAMANII**

SDFHH sirna dhagahaa dhimma hariiroo hawaasaa dhagahaa duraa<sup>29</sup>, fi dhagahaa guutuu<sup>30</sup> jechuun bakka lamatti kan qoode dha. Gulantaan falmii

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26Aleign Yewala, Yewusane Atsatsaf Meketel Silemigejaw Meseretawi Meriwochina Yizetoch, Yesiltana Mojul (Marsarii Wiirtuu Leenjii Federaalaa irratti kan argamu), F35.

27Akkuma 26<sup>ffaa</sup>.

28 Akkuma 27<sup>ffaa</sup>

29 SDFHH, Kwt.80-93 fi Kwt. 222 -257.

30 SDFHH, kwt 258 irraa eegalee kan jiru.

dhagaha duraa guyyaa manni murtii walfalmitootni ykn bakka bu'ootni isaanii himannaa fi deebii barreeffamaan dhiyeessan keessatti ijoowwaan amanamanii fi waakkataman ifatti adda baasuun, mormiiwwaan sadarkaa duraa ka'an yoo jiraatan jala murtii kennuu fi ijoo dubbii sadarkaa itti qabatuu fi falmii itti aanuuf qophiin itti godhamu dha.<sup>31</sup> Gulantaan dhagaha guutuu ammoo sirna ijoowwaan dubbii dhagahaa duraa keessatti qabataman furmaata itti argatan ykn murtiin itti kennamu dha. Kanaaf, sirni kun sirna dhiyeessa ragaa namaa fi sanadaa, dhagaha falmii falmitootaa fi ragaa, qajeelcha falmii, fi ragaa qorachuun murtii kennuu kan ilaallatu dha. Gulantaalee dhagaha falmii lachuu keessattiyyuu murtiin dhimmoota armaan gadii irratti ni kennama.

### 3.1.1. Himannaa fi Deebii Qopheessuu

#### A. Himannaa Qopheessuu Ilaalchisee

Kenninsi murtii kan jalqabu himannaa gareen qopheessee mana murtii aangoo qabutti dhiyeessu irraati. Akka waliigalaatti, iyyannoon tokko ulaagaawwan seeraa fi teekinikaa guutee dhiyaachuu qaba.<sup>32</sup> Iyyaannoon himannaa firii dubbii gaaffii himatichaa gabaabinaan, maqaa mana murtii himatichi itti dhihaatuu fi bakka teessuma isaa, mata duree himatichaa, maqaa himataa fi himatamaa, ibsa addaa, himatamaan jiraatuu fi teessoo waraqaan waamichaa ittiin ga'amu, himataan ykn himatamaan dandeetti seeraa kan hin qabne yoo ta'e kanuma ibsuu, himataan himata isaa kan dhiheessu abukaatoon, bakka bu'aan ykn dubbi-fixaatiin yoo ta'e aangeeffamuu isaa/ishii ibsuu, dhimmoota sababa himatichaa ta'an iddoo fi yeroo itti raawwataman, m/murtichaa dhimmicha ofitti fuudhee ilaaluuf aangoo kan qabu ta'uu isaa, sababa himatamaan himatichaaf itti gaafatamaa ta'u, tilmaama dhimma himatichaaf sababa ta'ee fi seerummaa gaafatamu kan hammate ta'uu qaba.<sup>33</sup> Dabalataan, iyyannoo faana tarree maqaa ragoolee namaa teessoo isaanii waliinii fi sababa waamamaniif ragoolee sanadaa, harka isaa jiranis iyyanichaan wal qabsiisuu qaba, harka isaatti kan hin argamne yoo ta'e bakka itti argamanii fi eenyu harka akka jiran ibsuu

<sup>31</sup> Robert Allen Sedler, *Ethiopian Civil Procedure* (Addis Ababa University), 1968, F172.

<sup>32</sup> SDFHH, Kwt. 80, 222, fi 223.

<sup>33</sup> SDFHH, Kwt. 80, 222 fi 224 walfaana yoo dubbifamu.

qaba. Ragaa bifa kamiyyuu kan hin qabne yoo ta'es kanuma caqasee ibsuu qaba.<sup>34</sup>

Qabatamatti garuu, himannaa qopheessuun walqabatee rakkooleen mul'atan hedduu dha. Kanneen keessaa, bitaa fi mirgi himataa fi himatamaa ta'anii dhiyaachuuf dandeettii seeraa qabaachuu ibsuu dhabuu, manni murtii dhimmichi dhiyaateef dhimmicha ilaaluuf aangoo qabaachuu danda'uu isaa ibsuu dhabuu, teessoo ragootaa ibsu dhabuu<sup>35</sup>, qabiyyee himannaa keessatti firii dubbii irra deddeebiin ibsuu (fakkeenyaaf, tarree qabeenyaa himannaa keessatti dhiyaate ammas deebi'ani seerummaa gaafatamu jalattis barreessuun fuula iyyannichaa bal'isuu<sup>36</sup>), gaaffilee mirgaa sababa himannoo tokko irraa maddanii fi iddoo tokkotti gaafatamuu malan adda adda kukkutanii himannaa qopheessuu (splitting claim)<sup>37</sup>, himannaa dhiyaatu keessatti seerummaa gaafatamu ifa godhanii ibsuu dhabuu<sup>38</sup>, himannaa qabeenyaa tilmaama qarshiin dhiyaachuu qabu osoo hin tilmaamsisiinii fi daangaa lafaa ifa godhanii dhiyeessuu dhabuu<sup>39</sup>, falmii jeequmsaa akka falmii qabiyyeetti dhiyeessuu<sup>40</sup>, himannaa keessatti firiilee dubbii murteessoo ta'an hammatamuu qaban fakkeenyaaf kan akka sababa himannoo hambisuu<sup>41</sup>, himannaa qaxxaamuraa dhiyeessan keessatti seerummaa gaafatamuu fi himannaa dhiyaatu ifa gochuu dhabuu,<sup>42</sup> aangoo mana murtii

<sup>34</sup> SDFHH, Kwt. 223

<sup>35</sup> Raggaasaa Siidaa (Himataa) fi Zarihuun Raggaasaa (Himatamaa), MMA Xiyoo Lak.G.35514 bara 2008 murta'e

<sup>36</sup> Saajin Hiruut faa N-2 (Himataa) fi Adaanech G/Mesqel faa N-2 (Himatamtuu), MMA Baabbilee, Lak. G.09214

<sup>37</sup> Afgaaffii Ob.Mohaammad Jimaa, Pirezidaantii MMO Godina Shawaa Bahaa, 12/5/2009 waliin gaggeeffame.

<sup>38</sup> Afgaaffiiwwan Ob. Alamaayyoo Gaaddisaa, Pirezidaantii MMO Godina Wallagga Bahaa, 22/05/2009; Ob. Miliyoon Wandaferash, A/A Godina Sh/Kaabaa, 08/06/2009; Ob. Habtamuu Ayyaaleew, Abukaatoo Dhuunfaa Godina Sh/Kaabaa, 9/06/2009 fi Ob. Shamaamee Taaddasaa, Pirezidaantii MMA Ciroo, 7/6/2009 waliin taasifame.

<sup>39</sup> Afgaaffiiwwan Ob. Fayisaa Guutaa, A/Murtii MMO Godina Arsii, 9/05/2009 fi Ob. Taarikuu Tamasgeen, Ga/Ga/ Dhi Hariiroo Hawaasaa, MMA Diggaa, 26/05/2009 waliin gaggeeffame.

<sup>40</sup> Afgaaffii Ob.Kadiir Waayyuu, Ga/Ga/Dhi Hariiroo Hawaasaa, MMO Godina Arsii Lixaa, 1/6/2009 waliin ta'e.

<sup>41</sup> Afgaaffii Ob.Geetuu Maammoo, Pirezidaantii MMA Guutoo Giddaa, 24/05/2009 waliin gaggeeffame.

<sup>42</sup> Afgaaffiiwwan Ob. Geetuu Maammoo, Pirezidaantii MMA Guutoo Giddaa, 24/05/2009; Ob. Namoo Haayiluu, Ga/Ga/Dhi/Hariiroo Hawaasaa MMA Guutoo Giddaa 25/05/2009;



osoo adda hin baasiin himannaa dhiyeessuu<sup>43</sup> fa'i.

## B) Deebii Qopheessuu

Haaluma walfakkaatuun, deebiin himatamaa maqaa m/murtii deebiin itti dhihaatuu fi bakka teessuma isaa, lakkoofsa galmee, mormii sadarkaa duraa (yoo jiraate), ijoowwan himatamaan itti gaafatamuu akka hin qabne agarsiisanii fi ittisa kamiyyuu himatamaa seeraan fayyaduu danda'an, waakkii ifatti ibsame, himannaan qaxxaamuraa yoo jiraate firii dubbii fi sababa himannoo tilmaama seerummaa gaafatamu waliin ibsuu fi akkuma himataatti bu'uura SDFHH kwt.223tiin tarree ragaa qabaachuu qaba.

Rakkoowwan qabatamatti gama kanaan mul'atan keessaa deebii dhiyaatu keessatti mormii sadarkaa duraa fi deebii ijoo walitti makanii dhiyeessuu<sup>44</sup>, deebii keessatti ijoowwan tokko tokkoon himataan dhiyeesse irratti xiyyeeffatanii ifatti waakkachuurra bifa waliigalaatiin waakkachuu<sup>45</sup>, deebii keessatti qabxiilee mormii duraa ta'uu hin dandeenye akka mormii duraatti dhiyeessuu<sup>46</sup>, tarree ibsa ragaa deebii waliin dhiyaatu keessatti ragooleen

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Ob. Kumasaa Araarsoo, Pirezadaantii MMO Godina Shawaa Lixaa, 01/06/2009 waliin gaggeeffame.

<sup>43</sup>Fakkeenyaaf, dhimmoota hojjetoota mootummaatiin ilaalaman, dhimmoota investmentii, falmii liizii gara mana murtii idileetti fiduu fi dhimmoota maatii, hojjetaa fi hojjechiisaa hanga tilmaama maallaqaa irratti hundaa'uudhaan sadarkaa MMotti dhiyeessuun himannaan yommuu dhiyaatu ni mul'ata. (Afgaaffiiwwan Ob. Namoo Haayiluu, Ga/Ga/Dhi/Hariiroo Hawaasaa, MMA Guutoo Giddaa 25/05/2009; Ob. Tasfaayee Dajanee, Pirezadaantii MMA Kuyyuu, 13/06/2009; Ob. Yirgaa Sabsibee, Pirezadaantii MMA Adaamaa, 26/5/2009; Ob. Hirphoo Irreessoo, Pirezadaantii MMA Shaashamannee, 29/5/2009; Ob. Gaashaw Katamaa, MM Hundaatti Abukaattoo fi Gorsaa Seeraa, Godina Harargee Lixaa, 8/6/ 2009 waliin gaggeeffame).

<sup>44</sup>Afgaaffiiwwan Ob. Namoo Haayiluu, Ga/Ga/Dhi/Hariiroo Hawaasaa MMA Guutoo Giddaa, 25/05/2009; Ob. Shawaragaa Isheetuu, Pirezadaantii MMA Giraar Jaarsoo, 08/06/2009; Ob. Habtamuu Ayyaaleewu, Abukaattoo dhuunfaa Godina Sh/Kaabaa, 9/06/2009; Ob. Boggaala Badhaadhaa, A/Murtii MMA Kuyyuu, 13/06/2009; Ob. Gammachuu Turaa, A/Murtii MMA Shaashamannee, 29/5/2009 waliin gaggeeffame.

<sup>45</sup>Afgaaffiiwwan Ob. Kumasaa Araarsoo, Pirezadaantii MMO Godina Shawaa Lixaa, 01/06/2009; Ob. Humnassaa Hundeessaa, Abukaattoo dhuunfaa G/Wallagga Bahaa, 26/05/2009; Ob. Tasfaayee Dajannee, Pirezadaantii MMA Kuyyuu, 13/06/2009 waliin gaggeeffame.

<sup>46</sup>Afgaaffiiwwan Ob. Tarrafaa Sarbeessaa, Abukaattoo dhuunfaa Go/Wallagga Bahaa, 25/05/2009; Ob. Aschaaloo Isheetee, A/Murtii MMA Ciroo, 7/6/2009; Ob. Asfawoo Kabbadaa, Ga/Ga/Dhi Hariiroo Hawaasaa, MMA Haromayaa, 17/6/2009.

namaa fi sanadaa ibsaman maal mirkaneessuuf akka dhiyaatan ibsu dhabuu<sup>47</sup>, ragaalee abbootiin dhimmaa ofii isaaniitiif dhiyeefachuu danda'an manni murtii akka dhiyeessuuf bu'uura SDFHH kwt.145 tiin gaafachuun<sup>48</sup> isaan ijoo dha.

### 3.1.2. Himannaa fi Deebii Fooyyeessuu

Murtiin dura yeroo kamiyyuu gaaffii falmitootaatiin ykn kaka'umsa mataa isaatiin haqni akka hin jallanne (miscarriage of justice) manni murtii himannaan ykn deebiin akka fooyya'uu eeyyamuu, ykn ajajuu ni danda'a.<sup>49</sup> Himannaa fi deebii fooyyeessuun walqabatee rakkoon guddaan mul'atu manni murtii sababa gahaa malee akka fooyyaa'uuf hayyamuu, ykn immoo tasuma sababa malee ykn sababa gahaa malee akka hin fooyyoofne dhorkuu dha. Fakkeenyaaf, dhimma falmii dhaalaa tokko irratti<sup>50</sup> himattoonni seerummaan gaafannu nu jalaa harca'eera; himanni keenya dogoggora waan qabuuf akka fooyyeeffannu nuuf haa hayyamamu jedhanii kan gaafatan ta'ullee, manni murtii *himannaan himattoonni dhiyeessan dogoggora kan hin qabne dha* jechuun kufaa gochuun alatti, sababa himannoo fooyyeeffachuu dhorkeef waanti ibse hin jiru.<sup>51</sup> Haa ta'u malee, iyyannaa dhiyaate keessatti mirgi himattoonni gaafatan adda kukkutame kan dhiyaatu yoo ta'e (splitting of claims), booda himannaa haaraa hundeessuun dhiyeeffachuu kan hin dandeenye waan ta'eef,<sup>52</sup> ajajni manni murtii kenne rakkoo qabaachu isaa kan namatti agarsiisu dha.

Maddi rakkoolee himannaa fi/ykn deebii qopheessuu fi/ykn fooyyeessuu barreessitoonni uummataa (ogeessota yunivarsiitiwwanii dabalatee) fi abukaattoonni dhuunfaa tokko tokko hanqina hubannoo fi dandeettii seeraa

<sup>47</sup>Afgaaffiiwwan Ob. Aschaaloo Isheetee, A/Murtii MMA Ciroo, 7/6/2009; Ob.Xibabuu Tashoomaa, Abukaatoo dhuunfaa Go/Shawaa Lixaa 03/06/2009; Ob. Kumasaa Araarsoo, Pirezadaantii MMO Godina Shawaa Lixaa 01/2006; Ob. Taarikuu Tamasgeen Ga/Ga/Dhi/Hariiroo Hawaasaa MMA Diggaa, 26/05/2009 waliin gaggeeffame.

<sup>48</sup>Afgaaffiiwwan Ob.Kumasaa Araarsoo, Pirezadaantii MMO Godina Shawaa Lixaa, 01/06/2009, fi Ob. Girmaa Fayyee Ga/Ga/Dhi/ Hariiroo Hawaasaa, MMO Godina Sh/Kaabaa,13/06/2009 waliin gaggeeffame.

<sup>49</sup> SDFHH, Kwt. 91 (1) fi 91 (4)

<sup>50</sup>Abdii Mohaammad faa N-3 (Himatoota) fi Aashaa Biraanuu faa N-2 (Himatamtoota), MMA Odaa Bultum, Lak. Gal. 26756.

<sup>51</sup>Abdii Mohaammad fa'a N-3 (Himatoota) fi Aashaa Biraanuu faa N-2 (Himatamtoota), MMA Odaa Bultum, Lak. Gal.26756.

<sup>52</sup>SDFHH, Kwt.216.

barbaadamu qabaachuu dhabuu, sirnaan yaada abbaa dhimmaa dhagahuun iyyata barreessuu dhabuu, hanqina naamusa ogummaa abukaattotaa fi barreessitoota uummataa, seerri ifatti baay'ina fuula himannaa fi deebii giddu galeessaan murteessuu jiraachuu dhabuu,<sup>53</sup> fi abbootiin seeraa fi ofiisaronni seeraa sirrummaa himannaa fi deebii xiyyeeffannoo kennuun ilaaluu dhabuu fa'a akka ta'e afgaaffiiwwan gaggeeffaman irraa hubachuun danda'ameera.<sup>54</sup>

### 3.1.3. Guyyaa Dhagaha Duraa ('Falmii Afaanii')

Akka waliigalaatti, tumaa SDFHH kwt.241 irraa kan hubatamu guyyaa dhagaha duraa (yeroo baay'ee 'falmii afaanii' jedhamuun beekamu) manni murtii himannaa fi deebii bitaa fi mirgi barreeffamaan dhiyeeffatan dursa qoratee itti qophaa'uun ijoowwan amanamanii fi waakkataman kan itti adda baasu, qabxiilee walfalmitoota irraa qulqullaa'uu qaban qoratee kan itti qulqulleeffatu, mormii duraa irratti jalmurtii kan itti kennuu, fi ijoo dubbii falmichaa adda baasuun kan itti qabatu dha. Addatti immoo dhimmichi falmii dhirsa fi niitii yoo ta'e, walfalmitoonni akka araaraman gorsuu, yoo dadhabame jaarsolee araaraatiin akka fixatan maanguddoo filachiisuu, jaarsummaadhaan fixachuuf waliigaluu yoo dhaban akkaataa jireenya abbaa warraa fi haadha warraa, eegumsa, iddoo jireenyaa, fi qallaba daa'immanii yeroof ta'u murteessuun yeroo itti deddeebisanii yaadan kennuun gaggeessuu qaba.<sup>55</sup>

Haa ta'u malee, qabatamatti, falmii afaaniitiin walqabatee rakkoowwan bal'aa akka jiran dhimmoota sakatta'aman irraa hubachuun ni danda'ama. Kanneen keessaa ijoo dubbii qabachuun falmii afaanii dhagahuu fi falmiin afaanii erga dhaghame boodas ijoo dubbii ragaan itti dhagahamu jechuun

<sup>53</sup>MMWO himannaanii fi deebiin fuula 3 caaluu akka hin qabne xalayaa dabarsee kan jiru ta'ullee; qorannoo irratti kan hundaa'e ta'u dhabuu fi qabatamattis iddoo baay'eetti itti hojjatamaa kan hin jirre dha. Fknf, MMA Shaashamannee Lak.Gal.57792 ta'e irratti deebii himatamaan kenne ibsa ragaa waliin fuula 11 dhiyaateera.

<sup>54</sup>Afgaaffiiwwan Ob. Alamaayyoo Gaaddisaa, Pirezidaantii MMO Godina Wallagga Bahaa, 22/05/2009; Ob. Abduraahim Mohaammad, Ga/Ga/DhiYakkaa, MMO Godina Harargee Lixaa, 8/6/2009; Adde Yahubnesh Lammeessaa, Pirezidaantii MMA Arsii Negeellee, 2/6/2009; Ob. Gaashaw Katamaa, MM Hundaatti Abukaattoo fi Gorsaa Seeraa, Godina Harargee Lixaa, 8/6/2009; Ob. Kumalaa Buusaa Ga/Ga/ Dhi Hariiroo Hawaasaa MMO Godina Sh/ Lixaa, 03/06/2009 waliin gaggeeffame.

<sup>55</sup>Seera Maatii Oromiyaa lakk.69/1995 fi 83/1996, Kwt.105.

ijoo dubbii biraa qabachuu<sup>56</sup>, abbaan seeraa durse galmee qorachuun qaphxiilee bitaa fi mirgi walamananii fi walwaakkatan; akkasumas, qabxii ifa hin taane adda baasuun qophaa’e dhiyaachuu dhabuu fi dhaddacha irratti walfalmitootaan “maal jetta?” jechuun waan walfalmitoonni dubbatan hunda (kanuma duraan gareewwan duraan akka himannaa fi deebiitti barreeffamaan dhiyeeffatan) galmeessuu<sup>57</sup>, guyyaa deebii himatamtootaa fuudhuuf beellamame irratti deebiin himatamtootaa erga fuudhamee booda kallattiidhaan beellamni osoo hin kennamiin falmii afaanii dhagahuu<sup>58</sup>, gaafa falmiin afaanii gaggeeffamu qaphxiilee falmii keessatti ka’an mormii duraa fi falmii ijoo keessatti dhimmoota qulqullaa’uu qaban hunda qulqulleessuu osoo qabanii guyyaan falmii afaanii guyyaa lama akka ta’eetti fudhachuun mormii duraa irratti qofa xiyyeeffachuun falmii afaanii gaggeessuu fi falmii haadhootiif immoo guyyaa biraatti beellamuu<sup>59</sup>, bu’uura seera maatii labsii lak.69/1995 fi 83/1996 kwt.101 fi 105 tiin gaafa falmii afaanii walfalmitoonni gaa’ela isaanii keessa akka turan taasisuuf gorsa kennuufi akka qabu yoo waliigaluu dhaban jaarsota isaan filatanitti erguu akka qabu, ammas yoo waliigaluu dhaban murtii diiggaa ga’elaa osoo hin kenniin dura yeroo yaalii kennuu akka qabu tumame kan jiru ta’ullee, manni

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<sup>56</sup>Ad.Urgee Naggaasaa faa N-2 (Himatootaa) fi Daarmaaree Naggaasaa (Himatamtuu), MMO Godina Shawaa Kaabaa, Lak.Gal.39904; Mulunash T/Maariyaam (Himatuu) fi Magarsaa Naggaasaa (Himatamaa), J/Lixaa Tashoomaa Mokonnin, MMA Kuyyuu Lak.Gal.33305; Itichaa Darsee (Himataa) fi Jaallannee Kitilaa faa N-2 (Himatamtoota), MMA Diggaa Lak. Gal.09768; Zannabach Mokonnin faa N-4 (Himatoota) fi Dammaqach Jagool (Himatamtuu), MMA Baabbilee, Lak.Gal.08198.

<sup>57</sup>Abarraa Gamachuu faa N-2 (Himatoota) fi Addama Ahimad faa N-9 (Himatamtoota), MMA Diggaa Lak.Gal. 09875; Dirribaa Fullaasaa (Himataa) fi Fullaasaa Mokonnaan faa N-2 (Himatamtoota), MMA Kuyyuu, Lak. Gal. 28280. Rakkoon kun, tarii, maqeeffama guyyaa kana irraa akka maddu yaadni ni ka’a. Fakkeenyaaf, guyyaan kun seerichaan guyyaa dhagaha dhimmaa (ክስ መስማት) jedhamee kan moggaafamee fi hojimaataan ammoo falmii afaanii jedhamuun isaa guyyaa kana walfalmitoonni guyyaa himannaa fi deebii barreeffamaan dhiyeeffatan irra deebiin afaaniin akka dhiyaatutti hubachuun ni jira. Bu’uuraan garuu, guyyaan kun guyyaa manni murtii walfamitoota itti qoratu waan ta’ee, guyyaa mana murtiiti.

<sup>58</sup>Dirribaa Fullaasaa (Himataa) fi Fullaasaa Mokonnaan faa N-2 (Himatamtoota), MMA Kuyyuu, Lak. Gal.28280.

<sup>59</sup>Yitaayish Mangashaa (Himatuu) fi Taammiruu Asaffaa faa N-2 (Himatamtoota), MMA G/Giddaa Lak. Gal. 20839; Buzuunash Taaddasaa (Himatuu) fi Nugusee Xuurii (Himatamtuu), MMO Godina Sh/Lixaa Lak.Gal.00569

murtii adeemsa kana osoo hin hordofiin gaafa falmii afaanii dhagahuuf beellamamee jiru irratti murtii diiggaa gaa'elaa kennuu dha.<sup>60</sup>

### 3.1.4. Mormii Sadarkaa Duraa Irratti Jalmurtii Kennuu

SDFHH keessatti mormiin sadarkaa duraa irratti jalmurtii kennuu jechuun manni murtii falmii guututti osoo hin seeniin dura mormii himatamaan bu'uura SDFHH kwt.244 (1) tiin dhiyeessu irratti furmaata itti kennamu dha. Manni murtii mormilee dhiyaatan irratti jalmurtii kennuun dura himataa jechaan dhaggeeffachuu, ykn deebii irratti kennisiisuu fi ragaa rogummaa qabuun qulqulleessuu akka qabu seeraan tumameera.<sup>61</sup>

Qabatamatti, rakkooleen gama kanaan mul'atan kan jiran yoo ta'an; isaan keessaa mormii sadarkaa duraa ka'an irratti jalmurtii osoo hin kenniin bira darbuu fi falmii haadhoo keessa seenuu<sup>62</sup>, mormii sadarkaa duraa himatamaan dhiyeeffate irratti himataan deebii isaa afaaniin deebisuu osoo qabuu barreeffaman akka dhiyeessu gochuu<sup>63</sup>, mormii sadarkaa duraa irratti yaada himataa fi himatamaa guyyaa adda addaa irratti fuudhuu<sup>64</sup>, mormii sadarkaa duraa ka'u irratti jalmurtii kennuuf ragaa dhagahuu kan barbaachisu yoo ta'e, ragaa dhagahuun jalmurtii kennuurra ijoo dubbii falmii haadhoo waliin qulqulleessuu fi bakka tokkootti murtii kennuu<sup>65</sup> (mormii sadarkaa duraa fi falmii ijoo walitti makanii itti deemuu), mormii duraa dhiyaate ragaa rogummaa qabuun sirriiti qulqulleessuu dhabuu kaasuun ni danda'ama.<sup>66</sup>

<sup>60</sup>Ifinash Olqabaa (Himattuu) fi Alamuu Caalii (Himatamaa), MMA Guutoo Giddaa lakk.G.16234.

<sup>61</sup>SDFHH, Kwt.245 (1).

<sup>62</sup>Haasoo Cannasaa (Himataa) fi Amaan Haasoo (Himatamaa), MMA Xiyoo L.G.35729; Raggaasaa Siidaa (Himataa) fi Zarihuun Raggaasaa (Himatamaa), MMA Xiyoo, Lak.Gal .35514; Geetuu Tulluu (Himataa) fi Askaalaa Guddataa (Himatamaa), MMA Dandii Lak.Gal. 45918; Komaander Faqqadaa Raggaasaa (Himataa) fi Rattaa Allabbaachoo (Himatamaa), MMA Bishooftuu, Lak.Gal.48225.

<sup>63</sup>Alamii Jaallataa (Himattuu) fi Asfaawu Akkumaa (Himatamaa), MMA Guutoo Giddaa Lak.G.26531; Ajjamaa Aanaa (Himataa) fi Waaballaa Magarsaa (Himatamaa), MMO Godina Sh/Lixaa, Lak.Gal .00271.

<sup>64</sup>Amaan Ida'oo faa N-2 (Himattoota) fi Isaayaas Yilmaa (Himatamaa), Abraahim Yuuyyaa fi Abdallaa Alqaadir (J/Lixxoota), MMA Adaamaa Lak.Gal.89732.

<sup>65</sup>Haliimaa Mohaammad (Himattuu) fi Saadam Abbaas (Himatamaa), MMA Ciroo, Lak Gal.30902.

<sup>66</sup>Afgaaffiiwwan Ob.Wandimuu Kabbadaa, B/B Pirezadaantii MMO Godina Arsii, 9/05/2009; Ob. Asfawu Negaraa, Pirezadaantii MMA Amboo 30/05/2009; Ob. Geetuu

Maddi rakkoolee mormii sadarkaa duraatiin walqabatanii jiran kunniin rakkoo hubannoo fi dandeetti (*yaadrimee mormii duraa sirnaan hubachuu dhabuu*)<sup>67</sup>, xiyyeeffannoo itti kennanii hojjachuu dhabuu fi falmiitti osoo hin seeniin dura galmee keessa qoratanii dhiyaachuu dhabuu<sup>68</sup>, jalmurtiin yoo kenname kallattii abbaan murtichaa barbaadutti deemuu dhiisuu waan maluuf, ta'e jedhanii jalmurtii kennuu dhiisuu<sup>69</sup> fa'i.

### 3.1.5. Ijoo dubbii

Ijoon dubbii gaaffii bu'uuraa (material proposition) garee falmitootaa keessaa isa tokkoon dhiyaatee isa biraan waakkatame jechuu dha.<sup>70</sup> Gaaffiin bu'uuraa kunis kan firii dubbii ykn kan seeraa ta'ee himataan mirga himachuu isaa agarsiisuuf gaaffii dirqama dhiyeessuu qabu ykn himatamaan ofirraa ittisuuf qaphxii dirqama deebiisaa keessatti ibsuu qabu dha.<sup>71</sup> Maddi ijoo dubbii himannoo, deebii, ragaa barreeffamaa, fi qorannoo manni murtii bu'uura SDFHH kwt. 241(1) fi (2) tiin iyyannoo (himannoo fi deebii) irratti hundaa'uun taasisu dha.<sup>72</sup> Manni murtii ijoo dubbii qabachuuf ragaan namaa ykn sanadaa falmii keessatti osoo hin dhiyaatiin hafe ykn hin jirre qorachuun barbaachisaa ta'ee yoo arge, namni sun dhiyaatee jecha isaa akka kennu ykn ragaa sanadaa qaama biraatti argamu akka dhiyeessu ajaja kennuu ni danda'a.<sup>73</sup> Ijoon dubbii qabamu falmii guutuutti osoo hin seenamiin dura yoo ta'eltee, akkuma himannaan adeemsa falmii keessatti fooyyaa'uu danda'u mara manni murtiis murtiin dura ijoo dubbii dabalataa, ijoo dubbii amma dura qabamee ture fooyyeessuu, ijoo dubbii qabamuu qabu ture garuu

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Maammoo, Pirezidaantii MMA Guutoo Giddaa, 24/05/2009; Ob.Kadiir Waayyuu, Ga/Ga/Dhi Hariiroo Hawaasaa MMO Godina Arsii Lixaa, 1/6/2009; Ob. Amsaaluu Olaanii, Gaggeessaa Adeemsa Hojii KTAS MMWO, 27/06/2009 waliin gaggeeffame.

<sup>67</sup>Afgaaffiiwwan Ob.Abdusamad Muhammad, A/A Waj/Haqaa Aanaa Xiyoo, 15/01/2009, fi Ob. Xibabuu Tashoomaa, Abukaatoo Dhuunfaa Godina Sh/ Lixaa, 03/06/2009 waliin gaggeeffame.

<sup>68</sup>Afgaaffii Ob.Kumalaa Buusaa, Ga/Ga/Dhi Hariiroo Hawaasaa MMO Godina Sh/Lixaa, 03/06/2009 waliin gaggeeffame.

<sup>69</sup>Afgaaffiiwwan Ob. Mohaammad Jimaa, Pirezidaantii MMO Godina Sh/Bahaa, 12/5/2009; Ob. Alamaayyoo Fayisaa, A/Murtii MMO Godina Sh/Bahaa, 12/5/09; Ob.Mulugeetaa Fiqaaduu, Pirezidaantii MMO Godina Harargee Bahaa, 13/6/2009; Obbo Bukaar Kadiiroo, Ga/G/Dhi Hariiroo Hawaasaa MMO Godina Harargee Bahaa, 13/6/2009; Ob. Eferem Hayilee, Pirezidaantii, MMO Godina Harargee Lixaa, 7/6/2009 waliin gaggeeffame.

<sup>70</sup> SDFHH, Kwt. 247 (1).

<sup>71</sup>SDFHH, Kwt.247 (1) fi 247(2) walfaana yoo dubbifamu.

<sup>72</sup> SDFHH kwt.248.

<sup>73</sup>SDFHH, Kwt.249.

immoo osoo hin qabamiin hafe qabachuu, fi ijoo dubbii rogummaa hin qabne haquu ni danda'a.<sup>74</sup> Ijoon dubbii yoo qabamus dirqamni dursa hubachiisuu (burden of proof) garee isa kam irratti akka kufu bifa agarsiisuu danda'uun ta'uuti irra jiraata. Qabatamatti, ijoo dubbiin walqabatee murtiin kennamu rakkoolee armaan gadii kan qabu dha.

#### **A) Ijoo Dubbii Qabamuu Malu Qabachuu Dhabuu**

Falmii qabeenyaa dhirsaa fi niitii tokko irratti<sup>75</sup> himatamaan qabeenya falmiif ka'umsa ta'e himattuu osoo hin fuudhiin dura horatee qabaachu isaa falmuu isaatiin manni murtii ijoo dubbii "qabeenya falmii keessa jiru kan eenyu akka ta'e ragaan haa dhiyaatu" jechuun qabateera. Rakkoon dhimma kana keessatti mul'ate Seerri Maatii Naannoo Oromiyaa, Labsii Lak.69/1995 fi 83/1996 kwt 78 fi 113 falmii qabeenyaa jaarsaa fi jaartiin walqabatee qabeenya dhirsaa fi niitii kan waliinii akka ta'eetti kan tilmaamamu fi gareen qabeenya kiyya jedhu ragaa isaa dhiyeeffate hubachiisuu akka qabu tumee kan jiru yoo ta'ellee, faallaa kanaatiin fayyadamummaa tilmaama seeraa himattuun qabdu haala miidhuun ijoon dubbii qabamuu isaati.

#### **B) Ijoowwan Dubbii Falmicha Keessatti Seerummaa Gaafatameef Deebii Kennuu Danda'an Hunda Duguuganii Qabachuu Dhabuu**

Falmii waliigaltee bittaa fi gurgurtaa tokko irratti<sup>76</sup> himataan himannaa isaa keessatti waliigalteen bittaa fi gurgurtaa manaa dirqisiifame akka raawwatamuu (forced performance) fi qarshii kiraa manaa himatamoonni akka kaffalaniif kan gaafate ta'ullee, manni murtii wa'ee waliigaltee qofa irratti ijoo qabachuun murtii kan kenne yoo ta'u, waa'ee qarshii kiraa manaa ilaalchiisee himataan himannaa isaa waliin dhiyeesse kun waliigaltee biraa waan ta'eef himata biraa akka dhiyeeffatu mirgi eegamaa dha jechuun bira darbeera.

Kaayyoon seera adeemsa falmii baasii xiqqaan yeroo gabaabaa keessatti dhimmootaaf furmaata kennuu dha. Dhimma kana irrattis himataan

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<sup>74</sup>SDFHH, Kwt.251 (1) (2).

<sup>75</sup>Ilfinash Ol'qabaa (Iyyattuu) fi Alamuu Caalii (Himatamaa), MMA Guutoo Giddaa, Lak.Gal. 16234.

<sup>76</sup>Nabiil Abdallaa (Himataa) fi Waaballaa Buserii (Himatamaa), MMO Godina Arsii, Lak. Gal.70483.

waliigalteen kiraa manaa jiraachuu himannaa isaa keessatti ragaa waliin kan dhiyeessee fi himatamtoonnis deebii isaanii keessatti waliigalteen kiraa manaa isaanii fi himataa jidduu akka hin jirre falmanii bakka jiranitti manni mutii ijoo qabatee furmaata itti kennuu osoo qabuu sababa waliigaltee biraati jedhuun bira darbuun isaa kaayyoo seera adeemsa falmii wajjiin kan hin deemne dha.

### **C) Ijoo Dubbii Ifa Hin Taanee Fi Seerummaa Gaafatameef Deebii Kennuu Hin Dandeenye Qabachuu**

Dhimma falmii qabeenyaa tokko irratti<sup>77</sup> gaafa falmii afaaniif beellamame manni murtii mormii duraa ka'e qofa irratti bitaa fi mirga falmisiisee ijoo haadhoo irratti osoo hin falmisiisin galmee qorannoof eerga bulche booda, beellama itti aanutti immoo galmee qorachuun ijoo dubbii mormii duraa fi falmii haadhoo bakka tokkootti qabachuun mormii duraa qofa irratti ragaa dhagahuun kufaa erga taasiseen booda, ammas duubatti deebi'uun falmii haadhoo irratti falmii afaanii dhagahuuf beellama qabachuun falmii dhagaheera. Ammas beellama itti aanuutti amma dura ijoo muraasa irratti falmiin gaggeeffame kan xumurame ta'uu ibsuun waa'ee qabeenya biroo osoo hin qulqullaa'in hafe irratti ragaan bitaa fi mirgaa haa dhiyaatuu jedhe ajajeera. Rakkoon dhimma kana irratti mul'ate gama tokkon ijoo isa kam irratti ragaan akka dhagahamu ifaa miti ykn hin ibsamne. Gama biraatiin, falmii amma duraa taasifameen dhimmi furmaata argate mormii duraa malee waa'ee qabeenyaa galmee kana keessatti falmiin gaggeeffamee fi murtiin kenname hin jiru.

### **D) Ajajoota Mana Murtii Raawwatamuu Fi Raawwatamu Dhabuu Irratti Falmiin Iddoo Ka'etti Ijoon Dubbii Itti Qabamee Ragaan Qulqulleessuu Dhabuu**

Falmii hojii MMA Adaamaatti himatamaan bakka hin jirretti murtaa'e tokko irratti<sup>78</sup> himatamaan xalayaan waamicha naa hin geenye jechuun falmeera.

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<sup>77</sup>Buzuunash Taaddasaa (Himattuu) fi Nugusee Xuurii (Himatamaa), MMO Godina Sh/Lixaa, Lak. Gal.00569.

<sup>78</sup>Teewudroos Zarihuun (Himataa) fi Waldaa Bu'uuraa Hojjettoota Warshaa Sukkaaraa Wanjii Kutaa Biqiltuu (Himatamaa), MMA Adaamaa, Lak. Gal.99178.



Manni murtii waamichi gahuu fi gahuu dhabuu isaa ijoo qabachuun qulqulleessuun murtii kennuu osoo qabuu callisee bira darbeera.

Walumaagalatti, odeeffannoon afgaaffiin sassaabames rakkoowwan olitti tarreeffaman kunniin kan jiran ta'uu agarsiisu. Maddi isaanis darbe darbee hanqinni dandeetti jiraachuu, muxannoo ijoo dubbii adda baasanii qabachuu dhabuu, xiyyeeffannoo itti kennanii hojjachuu dhabuu (narraa haa baatu), fi sirni to'annoo fi hordofii galmeelee laafaa ta'uu fa'i.<sup>79</sup>

### 3.1.6. Dhiyeessa Ragaa

Ragaa yoo jennu ragaa namaa, ragaa barreeffamaa, fi ragaa ibsaa (physical evidence) jiraachuu fi jiraachuu dhabuu firii dubbii wayii mirkanneessuuf dhiyaatu dha.<sup>80</sup> Biyyi keenya seera ragaa hanga ammaa bahe qabaachuu baattus sirnii fi adeemsi dhiyeessa ragaalee kanaa seerota adeemsa falmii hariiroo hawaasaa fi yakkaa keessatti ifaan kaa'amee jira.

#### A) Dhiyeessa Ragaa Namaa

Ragaaleen namaa mana murtiitti dhiyaatanii jecha ragummaa kennan ragaalee tarree ibsa ragaa keessatti maqaan isaani, teessoon isaanii, fi dhimmi ragaa irratti bahan caqafamee akka ta'e ni hubatama.<sup>81</sup> Qabatamatti, rakkoon gama dhiyeessa ragaa namaatiin walqabatee mul'atu bu'uura tumaa SDFHH kwt.223tiin himannaa fi deebii dhiyaatan keessatti walfalmitoonni tarree ibsa ragaalee namaa, teessoo isaanii waliinii, fi dhimma maal irratti ragaa akka bahan adda baasanii dhiyeessuu dhabuu dha.<sup>82</sup>

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<sup>79</sup>Afgaaffiiwwan Ob.Naasir Faaris, A/Murtii MMWO, 28/02/2009; Ob.Alamaayyoo Gaaddisaa, Pirezadaantii MMO Godina Wallagga Bahaa, 22/05/2009; Ob. Alamuu Guutaa, Ga/Ga/Dhi Hariiroo Hawaasaa MMO Godina Wallagga Bahaa, 24/05/2009 waliin taasifame.

<sup>80</sup>Wixinee Seera Ragaa Bara 1967 Bahe, kwt.1 (3) fi Wixinee Seera Adeemsa Falmii Yakkaa, Kwt.2 (18).

<sup>81</sup>SDFHH, Kwt.223 (1) fi 234 (1).

<sup>82</sup>Saadaa Sh/Ahimad (Himattuu) fi Jibriil Ahimad (Himatamaa), MMA Heexosaa Lak.Gal.21333; Taammiruu Damee fi Dastaa Oljirraa faa N-3, MMO Godina Wallagga Bahaa Lak.Gal.08238.

## B) Dhiyeessa Ragaa Sanadaa (Barreeffamaa)

Bu'uuraan, ragaalee sanadaa (barreeffamaa) bitaa fi mirgi falmii isaaniitiif nu fayyada jedhan himannaa fi deebii isaaniin walqabsiisanii tarree ibsa ragaa keessatti dhiyeessuu kan qabanii fi ragaan isaan akka dhiyaatuuf barbaadan yoo jiraates eenyu biraa fi eessa akka jiru ibsuun dhiyeessuu qabu.<sup>83</sup> Ragaan barreeffamaa kamiyyuu hanga guyyaa dhagaha duraatti dhiyaachuu qaba.<sup>84</sup> Ragaan sanadaa gaafa dhagahaa duraa kan hin dhiyaanne sababa badii walfalmitootni raawwataniin yoo ta'e, manni murtii ragaa dhiyaateen murtii kan kennuu yommuu ta'u, sababa gahaa ta'een kan hin dhiyaanne yoo ta'e garuu akka dhiyaatu ajajuu danda'a.<sup>85</sup>

Dabalataan, manni murtii galmeen ykn ragaan sanadaa mana murtii biroo irraa akka dhiyaatu ajajuu<sup>86</sup>, ijoo dubbii baasuuf ragaa namaa ykn sanadaa dhiyeessisee qorachuu<sup>87</sup>, murtii kennuuf jecha sadarkaa falmii kamirrattuu ragaa gaaffii gaafachuu<sup>88</sup>, ragaa himatamaa gaaffii qaxxaamuraa gaafachuuf ykn yaadachiisuuf sanada dhiyeessisuu<sup>89</sup>, murtii haqaa kennuuf ragaa dabalataa haala al-loogummaa isaa hin tuqneen dhiyeessisuu<sup>90</sup>, barbaachisaa ta'ee yoo argame iyyannoo walfalmitootaa ykn ragaalee irratti hundaa'uun jecha ragaa atattamaan fuudhuu<sup>91</sup>, murtii haqa qabeessa ta'e kennuuf jecha ragaa amma dura dhagahamee ture irra deebiin yaamee qorachuu<sup>92</sup>, iddoo qabeenyi falmii kaase jiru ykn wanti biraa jiru dhaquun ilaalu<sup>93</sup>, bakka bu'aa abbaa seeraa muuduun ragaa sassaabuu ykn qorachuu<sup>94</sup> ni danda'a.

Qabatamatti, rakkooleen gama kanaan mul'atan ni jiru. Ragaan bu'uura SDFHH kwt. 145tiin gaafatamu osoo hin dhiyeessisiin himatamaan deebii

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<sup>83</sup> SDFHH, Kwt.222, 223, fi 234.

<sup>84</sup> SDFHH, Kwt.137 (1).

<sup>85</sup> SDFHH, Kwt.256.

<sup>86</sup> SDFHH, Kwt.145.

<sup>87</sup> SDFHH, Kwt.249.

<sup>88</sup> SDFHH, Kwt.261(4)

<sup>89</sup> SDFHH, Kwt. 137(4)

<sup>90</sup> SDFHH, Kwt.264.

<sup>91</sup> SDFHH, Kwt.265.

<sup>92</sup> SDFHH, Kwt.266.

<sup>93</sup> SDFHH, Kwt.272.

<sup>94</sup> SDFHH, Kwt.122-135.

isaa qabatee akka dhiyaatu waamichaa fi gara galcha himannaa erguu,<sup>95</sup> ragaalee qaamolee adda addaa irraa dhiyaachuu qaban bakka tokkotti duguuganii ajajuu dhabuu fi dhimmicha lafa irra harkisuu,<sup>96</sup> qaamoleen ragaa akka dhiyeessan ajajaman ijoo akka qulqullaa'u ajajameen ala bahuun qulqulleessanii gabaasuu<sup>97</sup>, bakka barbaachisuutti ragaalee dabalataa qaamolee aangoo qaban kanneen akka mana yaalaa, Bulchiinsa Magaalaa, Gandaa, Waajjira Lafaa fi Eegumsa Naannoo, fi Waajjira Qorannoo fi Misooma Gabaa irraa dhiyeessisuun qulqulleessu dhabuu<sup>98</sup> fi kkf kaasuun ni danda'ama.

### C) Ragaa Qorachuu

Gareen falmicha jalqabuuf mirga qabu addaan ba'ee erga beekamee booda, ragaa isaa dhageessifachuun dura haasaa baniinsaa gochuu qaba.<sup>99</sup> Haasaan baniinsaa gabaabinaan seenaa dhimmichaa fi wanta irratti xiyyeeffatamuu qabu kan agarsiisu dha. Sirni itti aanu, ragoota qorachuu dha. Ragootaaf adda dureedhaan gaaffii gaafachuu kan qabu falmitoota ta'anis abbootiin seeraa gaaffii gaafachuu hin danda'an jechuu miti. Garuu, abbootiin seeraa adda dureedhaan gosa gaaffilee fi akkaataa gaaffiin itti dhiyaatu seeraan ta'uu isaa hordofuun falmitoota daangeessuu fi mormiin yoo dhiyaate, ajaja barbaachiisaa ta'e kennuu qabu.

Gosaa fi akkaataa jechi ragummaa itti kennamuu qabu tumaa SDFHH kwt.261 jalatti bu'uura ibsamee jiruun gaaffilee gosoota sadan: gaaffii duraa, gaaffii qaxxaamuraa, fi gaaffii keessa deebiitiin qajeeltoowwan akka waliigalaatti seericha keessa taa'an hordofuun gaaffilee ijoo dubbiitiif

<sup>95</sup>Raggaasaa Siidaa (Himataa) fi Zarihuun Raggaasaa (Himatamaa), MMA Xiyoo Lak.Gal.35514; Nabiil Abdallaa (Himataa) fi Waaballaa Buserii (Himatamtuu), MMO Godina Arsii Lakk.Gal. 70483.

<sup>96</sup>Daanyee Badhaanee faa (N-2) fi Araddaa Badhaanee, MMO Godina Sh/Kaabaa, Lak.Gal.50654.

<sup>97</sup>Fakkeenyaaf, dhimma M/Murtii Aanaa Odaa Bultumitti ilaalame tokko keessatt bulchiinsi Gandaa 08 manni falmiif ka'umsa ta'e garee walfalmitootaa keessaa maqaa eenyuun galmaa'ee akka turee fi akka jiru qulqulleessee mana murtichaaf akka gabaasu ajajeera. Bulchiinsi gandaa garuu ijoo manni murtii barbaaduun ala waan gabaaseef manni murtii ajaja biraa kennuuf dirqameera (Nugusee Daadhii faa N-4 (Himatoota) fi Tsadaalaa Taaddasaa (Himatamtoota)).

<sup>98</sup>Afgaaffii Ob.Tasfaayee Dajanee, Pirezadaantii MMA Kuyyuu, 13/06/2009 waliin gaggeeffame.

<sup>99</sup>SDFHH, Kwt.259 (1).

rogummaa qaban qofa irratti xiyyeeffachuun ragoota qorachuun barbaachisaa dha. Manni murtiis kana keessatti dhimmicha irratti murtii haqa qabeessaa fi bu'aa qabeessa ta'e kennuu kan danda'u ijoowwan dubbii qulqullaa'uu qaban sirnaan adda baafachuun ragaa yoo dhagahee fi galmeesse<sup>100</sup>; akkasumas, bakka barbaachisaa dha jedhee amanetti ragaa dabalataa dhiyeessisee qorachuu yoo danda'e dha.<sup>101</sup>

Haa ta'u malee, ragaa qorachuu ilaalchisee qabatamatti rakkooleen mul'atan ni jiru. Fakkeenyaaf, falmii qabeenyaa dhirsaa fi niitii irratti faallaa tilmaama qabeenyaa waliinii<sup>102</sup> gareen tokko ragaa akka dhiyeeffatu ajajuu<sup>103</sup>, qaphxiilee qulqullaa'uu qaban gadi fageenyaan sirriitti qulqulleessuu dhabuu<sup>104</sup>, rogummaa fi fudhatamummaa ragaalee irratti jalmurtii kennuu dhabuu<sup>105</sup>, jecha ragummaa ragootaa sirnaan galmeessuu dhabuu fi bal'isanii fuudhuu dhabuu<sup>106</sup>, ijoo falmii osoo sirriitti adda hin baafatiin ragaa dhagahuu, ijoowwan falmii irratti xiyyeeffatanii duguuganii ragaa dhagahuu dhabuu<sup>107</sup>, ragaa dhagahuu wajjiin walqabatee nuffiin jiraachuu fi ijoo

<sup>100</sup> SDFHH, Kwt.269 (1).

<sup>101</sup> SDFHH, Kwt. 264.

<sup>102</sup> Seera Maatii Naannoo Oromiyaa, Labsii Lak.69/1995 fi 83/1996, kwt 78 fi 113.

<sup>103</sup> Ilfinash Olqabaa (Himattuu) fi Alamuu Caalii (Himatamaa), MMA Guutoo Giddaa, Lak.Gal.16234.

<sup>104</sup> Fakkeenyaaf, uummanni keenya harki caalaa hubannoo seeraa qabaachuu dhabuu irraan kan ka'e ragaa qorachuu irratti waan rakkataniif, haqa yoo dhaban ni mul'ata. Abbootiin seeraa tokko tokkos sababa baay'ina hojii fi nuffiin ragaalee sirriitti waan hin qoranneef, namoonni hedduun sababa ragaa sobaatiin haqa yeroon itti dhaban ni jira (Afgaaffiiwwan Ob. Wandimuu Kabbadaa, B/B Pirezidaantii MMO Godina Arsii, 9/05/2009; Ob. Taarikuu Tamasgeen, Ga/Ga/Dhi Hariiroo Hawaasaa, MMA Diggaa, 26/05/2009, fi Ob. Tarrafaa Sarbeessaa, Abukaatoo Dhuunfaa, Godina Wallagga Bahaa, 25/05/2009 waliin gaggeeffame).

<sup>105</sup> Afgaaffiiwwan Ob. Tasfaayee Dajanee, Pirezadaantii MMA Kuyyuu, 13/06/2009; Tashitaa Nuuriyyee, Dubbi Fixaa Waajjira Lafaa fi Eegumsa Naannoo Aanaa Shaallaa, 1/6/2009 waliin ta'e.

<sup>106</sup> Kun ammoo deebi'ee mana murtii ol'iyyannoodhaan dhimmicha ilaaluuf odeeffannoo gahaa akka hin arganne kan taasisuu fi haqa irratti dhiibbaa kan geessisu dha (Afgaaffiiwwan Ob. Habtamuu Ayyaleewu, Abukaatoo dhuunfaa Godina Sh/Kaabaa, 9/06/2009; Ob. Geetuu Maammoo, Pirezadaantii MMA Guutoo Giddaa, 24/05/2009; Ob. Darajjee Abbabaa, A/Alangaa Waj/Haqaa Godina Wallagga Bahaa, 25/05/2009; Ob. Namoomsaa Yaadataa, A/Alangaa, Wa/Haqaa Aanaa Guutoo Giddaa, 24/05/2009, Ob. Boggaala Badhaadhaa, A/Murtii MMA Kuyyuu, 13/06/2009; Ob. Aschaaloo Isheetee, A/Murtii, MMA Ciroo, 7/6/2009)

<sup>107</sup> Afgaaffiiwwan Ob. Shawaragaa Isheetuu, Pirezadaantii MMA Giraar Jaarsoo, 08/06/2009; Ob. Habtamuu Ayyaleewu, Abukaatoo Dhuunfaa Godina Sh/Kaabaa, 9/06/2009; Ob. Tasfaayee Dajannee, Pirezadaantii MMA Kuyyuu, 13/06/2009 fi Ob.

qabameen ala ragaa fuudhuun jiraachuu fi eenyummaa ragaa sirriitti qulqulleessuu dhabuu fa'i.<sup>108</sup>

#### **4. RAKKOOLEE BARREESSA MURTII HARIIROO HAWAASAA KEESSATTI MUL'ATAN**

##### **4.1. BARREESSA MURTII HARIIROO HAWAASAA AANGOO SADARKAA DURAATIIN MURTAA'AN**

Barreessi murtii hariiroo hawaasaa aangoo sadarkaa duraa keessatti hanqinaaleen gama barreessa firii dubbii, ijoo dubbii, ragaa, itti fayyadama seeraa, fi xiinxala firii dubbii, ijoo dubbii, ragaa, fi seeraatiin ibsaman qaba. Tokko tokkoon haa ilaallu.

##### **4.1.1. Ibsa Firii Dubbii**

##### **A) Firiwwan Dubbii Rogummaa Qaban Kanneen Rogummaa Hin Qabne Irraa Adda Baasuun Cuunfanii Kaa'uu Dhabuu**

Abbaan murtii firiwwan dubbii murteessoo ta'anii fi faayidaa qaban qofa filee murtii keessatti gabaabinaan galmeessuuti irraa eegama.<sup>109</sup> Kan galmeessus qabiyyee isaanii osoo hin jijjiiriin haaluma himata/iyyata/deebii/falmii falmitootaa bifa seenessuutiin ta'uu qaba.<sup>110</sup> SDFHH biyya keenyaas haaluma olitti ibsameen murtiin firii dubbii hammachuu akka qabuu fi firiin dubbii inni hammatuus cuunfamee galmaa'uu akka qabu yoo ibsu, *“provided that a judgement given in first instance shall.....contain a*

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Dajanee Abdiisaa, MM Hundaatti Abukaattoo fi Gorsaa Seeraa, Godina Harargee Lixaa, 8/6/2009.

<sup>108</sup> Afgaaffii Ob. Amsaaluu Olaanii, Gaggeessaa Adeemsa Hojii KTAS, MMWO, 27/06/2009 waliin taasifame.

<sup>109</sup> Alamaayyoo Taganee, Olitti yaadannoo lak.14, F35.

<sup>110</sup> Alamaayyoo Taganee, Olitti yaadannoo lak.14, F36. Gaaffiin asitti ka'uu malu firiwwan dubbii murteessoo ta'an kanneen murteessoo hin taane irraa maaliin adda bahu kan jedhu dha. Gaaffii kana deebisuuf gaaffii biraa, *firiin dubbii jedhame sun osoo hin raawwanne ta'ee, ykn bifa biraatiin osoo raawwateera ta'ee, murtiin mana murtii ni jijjiirama turee?* jedhu gaafachuun barbaachisaa ta'a. Deebiin gaaffii kanaa 'eyyee' yoo ta'e, firiin dubbii sun murteessaa ta'a jechuu dha (Richard K. Neumann, Legal Reasoning and Legal Writing (Structure, Strategy, and Style) (Sixth edition, Aspen Publishers, 2009, F31).

*concise statement of the case*”<sup>111</sup> jedha. “*Concise statement of the case*” yaadni jedhu hangamitti kan jedhu ilaalchisee iftoominni kan hanqatu ta’us, akka waliigalaatti waanti hubachuun danda’amu firiin dubbii gareewwan walfalmaniin dhiyaatu tokko akkuma jirutti osoo hin galagalafamiin ykn garmalee gabaabbachuun firii dubbii murteessaa ta’ee fi rogummaa qabu osoo hin hambisiin galmaa’uu kan qabu ta’uu dha.

Qabatamaan garuu, firiiwwan dubbii barreessa murtii keessatti yoo ibsaman hanqina qabu. Fakkeenyaaf, dhimma ijoon himannaa isaa himatamoonni lafa waldaa keenyaa seeraan ala qabachuun waldaa isaanii itti ijaarratan waan ta’eef baasii mataa isaaniitiin diiganii kisaaraa keenya akka nuuf uwwisan jedhu tokko irratti<sup>112</sup> firiin dubbii himannaa hima tokkoon mallattoo tuqaa malee sarara 21n; firiin dubbii deebii ammoo sarara 25n ibsameera. Rakkoon akkasii kun bal’ina kan qabu ta’uu galmeewwan sakatta’aman biroo irraa hubachuun danda’ameera.<sup>113</sup>

### **B) Firii Dubbii Barbaachisu (Material Fact), Keessattuu Mana Murtii Ol’iyyata Dhagahuuf Baay’ee Barbaachisu Barreessa Murtii Keessaa Hambisuu**

Fakkeenyaaf, hanga qallabaa murteessuuf galiin nama qallaba muruuf diqamuu hangam akka ta’e beekuun barbaachisaa dha. Kana osoo hin beekiin manni murtii ol’iyyata dhagahu hangi qallabaa murtaa’e gahaadhamoo gahaa miti ijoo jedhu madaaluuf ni rakkata. Falmii dhirsaa fi niitii tokko irratti<sup>114</sup> manni murtii qallaba daa’imman lamaa ji’aan qarshii 800.00 kan murteesse galiin himatamaa qarshii 1,955.50 ta’uu Waajjira Misoomaa fi Maallaqa Dinagdee Aanaa irraa qulqulleeffatee akka ta’e, kenniinsa murtii keessatti ibsameera. Haa ta’u malee, barreessa murtii keessatti hin ibsamne. Kanaaf, murtii kenname irratti ol’iyyanni osoo

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111SDFHH, Kwt.182 (1).

112Waldaa Amantaa Malaaka Uuqaabii Itoophiyaa Damee Adaamaa (himataa; B/b 1<sup>ffaa</sup>, Ob. Laggasaa Nagawoo; 2<sup>ffaa</sup>, Ob. Birhaanuu Saafawoo) fi 1<sup>ffaa</sup>-Waldaa Makaana Yasuus Ganda Kolbee Kootichaa (himatamtoota; B/Bu’aan Ob. Lammii Guchii) 2<sup>ffaa</sup>- Ob. Funjii Gammachuu M/M Aanaa Liiban Cuqqaalaa, Lak.Gal.14261.

<sup>113</sup> Fakkeenyaaf, dhimmootni Nabiil Abdallaa (Himataa) fi Waaballaa Buserii (Himatamaa), MMO Godina Arsii, Lak.Gal.70483, fi Ragaassaa Siidaa (Himataa) fi Zarihuun Ragaasaa (Himatamaa), MMA Xiyoo, Lak.Gal. 35514 hanqina akkasii qabu.

114Iftuu Usmaa’il (Himattuu) fi Xayyib Abdii (Himatamaa), MMA Baabbilee, Lak.Gal.07831.

gaafatamee manni murtii ol'iiyata dhagahu galmee guutuu yoo fichisiiseen, ykn ajaja biraan yoo qulqulleeffateen ala haalli itti hubatu hin jiru jechuu dha.

### **C) Seerummaa Gaafatame Murtii Keessatti Duguuganii Ibsuu Dhabuu**

Falmii w jijjoo (iqubii) tokko irratti<sup>115</sup> himanni dhiyaate, himatamaan 1<sup>ffaa</sup> iqubii carraa guutuu buusiin torbanii qr.2, 020.00 (kuma lamaa fi digdama) ta'e carraa guutuu isa gaheen qr.50,000.00 (kuma shantama)fudhachuudhaan torban 16 qofa erga buusee booda, torban 9 buusii isarraa eegamu qr.18, 180 (kuma kudha-saddeetii fi dhibba tokkoo fi saddeettama) kaffaluu waan dideef, kaffaltii abbaa seerummaa, baasii sababa kanaaf baase dabalatee akka naaf kaffalu haa murtaa'u jechuun gaafateera. Himannaa dhiyaate keessatti seerummaan gaafatame waantota sadii dha: 1) Qr.18, 180.00 akka kaffalu 2) kaffaltii abbaa seerummaa akka uwwisuu, fi 3) baasii sababa himannaatiin bahe akka deebisuufidha. Haa ta'u malee, murtii keessatti seerummaan kenname himatamtoonni Qr.18, 180.00 kan abbaa seerummaa dabalatee akka kaffalan kan jedhu qofa. Baasii sababa himannaatiin bahe jedhamee gaafatame irratti manni murtii callisuun bira darbeera. Kan abbaa seerummaas qarshii meeqa akka ta'e barreessa murtii keessatti hin ibsamne.<sup>116</sup>

Rakkoowwan firii dubbiin walqabatanii olitti ibsaman kunniin kan jiran ta'uu afgaaffii gaggeeffame irraas hubachuun danda'ameera. Innumaayyuu, ijoo dubbii rogummaa qabu duguuganii qabachuun seerummaa sirrii ta'e kennuu irratti dhiibbaa geessisaa kan jiran ta'uu fi manni murtii ol'iiyata dhagahus odeeffannoo barbaadu hubachuu dhabuun guutummaan galmee mana murtii jalaatii akka ergamuuf kan gaafatu ta'uu fi kunumti ammoo deebi'ee harkifannaa dhimmootaaf sababa ta'aa akka jiru afgaaffiin gaggeeffame ni agarsiisa.<sup>117</sup> Bargaaffiin guutames yaaduma kana kan cimsu

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115Diirroo Dagafaa (himataa) fi Barakat Naggaa faa (N2), MMA Arsii Negeellee, Lak. Gal. 31804.

116 Galmee fuula mirgaa keessatti garuu kaffaltiin abbaa seerummaa kun qarshii 707 akka ta'e ibsameera.

117Ob. Amsaaluu Olaanii, Gaggeessaa Adeemsa Hojii Kenna Tajaajila Abbaa Seerummaa, Mana Murtii Waliigala Oromiyaa, 27/06/2009; Ob. Mohaammad Jimaa, Pirezidaantii MMO Godina Shawaa Bahaa, 12/5/2009; Ob. Bukaar Kadiiroo, Ga/Ga/ Dhi Hariiroo Hawaasaa,

ta'uu gaaffiin, rakkoon himannaa, deebii, fi jecha ragaa gareewwanii akkuma jirutti murtii keessatti ibsuu ni mul'ataa? jedhu abbootii seeraa fi abbootii alangaa 95 ta'an gaafatamanii; 81(85.25%) eyyee darbee darbee, 11(11.58%) eyyee yeroo hedduu, fi 3 (3.16%) lakki tasumaa jechuun deebisaniiru. Kana irraa waanti hubatamu, rakkoon kun darbee darbees haa ta'u yeroo hedduu kan mul'atu ta'uu dha.

Sadarkaa mana murtii fi gosa dhimmaa rakkichi caalaatti itti hammaatu beekuuf gaaffileen, “*Rakkichi sadarkaa mana murtii kamittii caalaatti hammaata? Gosa dhimmaa kamirratti caalaatti hammaata?*” jedhan abbootii seeraa fi abbootii alangaa 94 ta'aniif dhiyaatanii akka armaan gadiitti deebi'eera:

<b>Gaaffii</b>	<b>Deebii</b>			
<i>Rakkichi sadarkaa mana murtii kamittii caalaatti hammaata?</i>	<i>MMWO</i>	<i>MMO</i>	<i>MMA</i>	<i>Sadarkaa hunda biratti</i>
	3 (% 3.19)	15 (%15.96)	74 (%78.72)	2 (% 2.13)
	<b><i>Gosa dhimmaa</i></b>			
<i>Gosa dhimmaa kamitti caalaatti hammaata?</i>	<i>H/Hawaasaa</i>	<i>Yakka</i>	<i>H/Hawaasaa fi yakka</i>	
	30 (%31.91)	17 (%18.09)	47 (% 50)	

Gabatee olii kanarraa hubachuun kan danda'amu rakkoon himannaa, deebii, fi jecha ragaa gareewwanii akkuma jirutti murtii keessatti ibsuu manneen murtii sadarkaa hunda biratti kan mul'atu akka ta'e dha. Yoo sadarkeessinu garuu, rakkichi, walduraa duubaan MMA, MMO, fi MMWO keessatti akka mul'atu ni hubatama. Gosa dhimmaan yoo ilaalles, barreessa murtii Hariiroo Hawaasaa fi yakkaa irratti kan mul'atu dha. Walbira qabamee yoo ilaalamu garuu, barreessa murtii hariiroo hawaasaa keessatti caalaatti kan calaqqisu ta'uu dha.

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MMO Godina Harargee Bahaa,13/6/2009; Ob. Gaashaw Katamaa, MM Hundaatti Abukaattoo fi Gorsaa Seeraa, Godina Harargee Lixaa, 8/6/2009.



#### 4.1.2. Ijoo Dubbii

Ijoo dubbii jechuun gaaffii firii dubbii, ykn seeraa, ykn firii dubbii fi seeraa gareewwan irratti walii hin galle dha.<sup>118</sup> Bifa gaaffiitiin ykn himaan akkaataa waanti tokko ta'uu isaa/ta'uu dhabuu, jiraachuu/jiraachuu dhabuu, fi kkf agarsiisuun ibsamuu danda'a. Ijoon dubbii qooqa ifa ta'e, salphaatti hubatamu danda'uu fi iddoo, yeroo, namaa, fi waantota rogummaa qaban akkaataa adda baasuu danda'uun barreeffamuu qaba.<sup>119</sup> Gaaffileen himataan dhiyeessu baay'ina yoo qabaatanii fi himatamaan tokkoo tokkoo isaanii kan waakkate yoo ta'e, manni murtii akkuma ulfinaa fi bal'ina dhimmichaatiin ijoowwan dubbii sadarkaa sadarkaadhaan tarreessuudhaan hundeessuun xiinxala keessatti deebii itti kennaa adeemuu qaba.<sup>120</sup> SDFHH kwt.182 (1) jalatti, *“the judgement shall contain the points for determination.....”* jechuun kan ibses kanuma agarsiisa. Qabatamatti, barreessi ijoo dubbii manneen murtii Oromiyaa rakkoolee itti aananii jiran qaba.

#### A) Ijoo Dubbii Kenninsa Murtii Keessa Hin Jirre Barreessa Murtii Keessatti Ibsuu

Falmii jeequmsa lafa baadiyaa tokko irratti<sup>121</sup> yeroo falmiin gaggeeffamaa turetti ijoon dubbii akka qulqullaa'uuf barbaadame galmicha keessatti qabamee hin jiru. Haa ta'u malee, barreessa murtii keessatti ijoon dubbii “himatamaan lafa falmiidhaaf ka'umsa ta'e himataa jalaa humnaan qabate jira moo miti?” kan jedhu qabameera.

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118 SDFHH, Kwt.247 (1) (4).

119 Federal Judicial Center, Judicial Writing Manual, Olitti yaadannoo lak.8, FF14-15.

120 SDFHH, Kwt. 182(3); Haa ta'u malee, deebiin ijoo dubbii tokko irratti kennamu ijoowwan dubbii hafan biroof deebii kennuu kan danda'u yoo ta'e, tokkoo tokkoo ijoowwan dubbii hundaa'aniif deebii itti kennuun barbaachisaa akka hin taane keewwatuma 182(3) irraa hubachuun ni danda'ama.

121 Haasoo Cannasaa (Himataa) fi Amaan Haasoo (Himatamaa), MMA Xiyoo, Lak.G.35729

## **B) Ijoowwan Dubbii Kenninsa Murtii Keessatti Qabamanii Turan Barreessa Murtii Keessatti Hin Ibsiin Hafuu**

Manni Murtii Aanaa Xiyoo dhimma tokko irratti<sup>122</sup> bitaa fi mirgi himannaa fi deebii isaaniitiin falmii dhiyeessan erga barreeffame booda akkas jedhee itti fufa: “...*falmiin afaaniitis gaggeeffame gareen lachuu kanuma ufii cimsuudhaan kan falman yoo ta’u, manni murtiis ragaan bitaa fi mirgaa akka dhiyaatu ajajeera jechuun jecha ragootaa itti fufeera.*” Silaa ta’uu kan qabu, falmiin bitaa fi mirgaa erga xumurame booda, ijoo dubbii ragaadhaan qulqullaa’uu qaba jedhamee qabame ture sun barreessa murtii keessatti ibsamuu qaba ture.

## **C) Ijoo Dubbii Malee Murtii Barreessuu**

Falmii hojii tokko irratti<sup>123</sup> himatamaan waan hafeef galmeen bakka inni hin jirretti ilaalamee murtaa’eera. Kana booda, himatamaan sababa itti gaafatamaan waldichaa balaa konkolaataatiin miidhamee Hospitaala tureef falmicha osoo hin beekiin murtiin nurratti kenname ka’ee akka falmii keessa gallu jechuun bu’uura SDHH kwt.78tiin mana murtii gaafateera. Manni murtiis barreessa murtii keessatti ijoo dubbii osoo hin qabatiin murteesseera. Silaa ta’uu kan qabu, sababni himatamaan dhiyeesse galme haqamee ture irra deebi’amee akka banamuuf gahaa moo miti? Ijoo jedhu qabatee qulqulleessuu danda’uu qaba ture.

Falmii manaa tokko irrattis<sup>124</sup> ijoon himannaa ture, himataan mana gandaa lakkoofsi isaa 117 B ta’e gandarraa kireeffatee keessa kan jiraatu ta’uu ibsuun himatamaan galiin isaa xiqqaa ta’uurraan kan ka’e kireeffatee jiraachuu waan hin dandeenyeef yeroof akka keessa jiraatu hayyameefii booda gadi naaf lakkisi yeroon jedhu gadi naaf lakkisuu didee jeequmsa waan natti kaaseef, dirqamee akka gadi naaf lakkisu kan jedhu dha. Himatamaan ammoo manni ani keessa jiraadhu kan himataa osoo hin taane kan adde Burtukaan Xilaahuun waan ta’eef, jeequmsi ani himataa irratti

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<sup>122</sup>Raggaasaa Siidaa (Himataa) fi Zarihuun Raggaasaa (Himatamaa), MMA Xiyoo, Lak.Gal.35514.

<sup>123</sup>Ob. Teewudroos Zarihuun (Himataa) fi Waldaa Bu’uuraa Hojjetoota Warshaa Sukkaaraa Wanjii Kutaa Biqiltuu (Himatamaa), MMA Adaamaa, Lak.Gal.99178

<sup>124</sup>Saajin Olaanaa Geetaachoo Kabbadaa (Himataa) fi Baggashawu Tasammaa (Himatamaa), MMA Bishooftuu, Lak.Gal.52441.

kaaseefi manni ani isaaf gadi lakkisus hin jiru jechuun deebii kenneera. Jiddu lixxuun Adde Burtukaan Xilaahunis achii dhufi mana falmii kaasee bara1968tti ishee fi abbaan warraa ishee Dr.Hayiluu Baqqalaa Adde Kabbadach Hundee irraa bitatanii keessa jiraachaa osoo jiranii mootummaan dargii labsiidhaan kan dhaale ta'uu; sana booda ganda irraa maqaa isheetiin kireeffattee ji'a ji'aan qar.634.40 itti kaffalaa kan jirtu ta'uu fi walitti dhufeenyaa gaarii ishee fi himataa jidduu jiruu fi galiin himatamaas xiqqaa ta'uurrnaan kan ka'e yeroof akka jiraatu qofa kan hayyamteef ta'uu ibsuun himanni himataan akka waan ofiif kireeffateetti dhiyeesse sirrii waan hin taaneef, kufaa akka ta'uuf gaafateetti.

Firiiwwan dubbii olitti ibsaman kana irraa manni murtii ijoowwan dubbii manni gandaa falmiif ka'umsa ta'e kun maqaa eenyuun kireeffamee jiraa? Kan himataamoo kan himatamaamoo ykn kan jidduu lixxuutinidha? Maqaa isa tokkoon kireeffamee qabatamaan keessa jiraachaa kan jiru nama biraa yoo ta'e, attamitti akkas ta'uu danda'e? jedhan qabatee qulqulleessuu danda'a ture. Haa ta'u malee, ijoowwan kanniin osoo hin qabatiin murtii barreesseera. Rakkoon akkasii galmeewwan sakatta'aman biroo keessattis ni mul'atu.

Murtiin haala kanaan kennamu haqa dabsuuf humna qaba. Sababni isaa, ijoo dubbii adda osoo hin baafatiin murtii kennuu fi barreessuun haa hafuutii ijoo dubbii sirrii hin taane qabachuun murtii barreessuuniyyuu dirqama gara seerummaa hin gaafatamneef deebii kennuutti nama geessa waan ta'eefi. Yaadni afgaaffiin walitti qabames hanqina olitti ibsame kana kan cimsu dha.<sup>125</sup>

#### **D) Ijoo Dubbii Sirrii Hin Taane Qabachuun Seerummaa Hin Gaafatamne Murteessuu**

Dhimma tokko irratti<sup>126</sup> himannaan himattootaa kan jedhu, himatamaa dabalatee qabeenya lafa dhaalaa abbaa fi haadha isaanii waliigalteedhaan erga qooddatanii booda, himatamaan qabiyyee isaanii irratti akka hin

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<sup>125</sup>Afgaaffiiwwan Ob. Mulugeetaa Fiqaaduu, Pirezidaantii MMO Godina Harargee Bahaa, 13/6/2009; Ob. Bukaar Kadiiroo, Ga/Ga/Dhi Hariiroo Hawaasaa, MMO Godina Harargee Bahaa, 13/6/2009.

<sup>126</sup>Tshaay Badhaadhii faa N-3(Himatootaa) fi Sisaay Badhaadhii (Himatamaa), MMA Amboo, Lak.Gal.37789.

fayyadamne isaan dhorkuu fi jalaa qabachuu falmaa osoo jiranii; tarree ragoootaa isaanii keessattis himatamaan lafa jalaa qabachuu fi itti fayyadama dhorkuu akka beekaniif addatti ibsanii osoo jiranii manni murtii falmii dhiyaate kanaan ijoo dubbii rogummaa qabu qabachuun qulqulleessuu osoo qabuu ragaa himattootaa bira darbuun himatamaan qabiyyee dhuunfaa isaa qabachuu murteessuun himata kufaa taasiseera. Silaa ta'u kan qabu, himatamaan lafa dhaalaan himatamoonni abbaa fi haadha isaanii irraa argatanii jiran akka itti hin fayyadamne jalaa qabatee dhorkee jira moo miti? ijoo jedhu irratti ragaa dhagahuun qulqulleessee murtii kennuu qaba ture. Himattoonni durumaanuu dhaalaan abbaa qabiyyee ta'anii waan jiraniif, falmichi falmii qabiyyee ta'uun isaa gaaffii kan kaasuu miti. Haa ta'u malee, manni murtii ijoo falmii jeequmsaa dhiisuun ijoo falmii qabiyyee qabachuun qulqulleessuun murtii kenne. Akkas gochuun isaas dogoggora.

Hanqinoonni dhimmoota olitti agarsiifaman kunniin akkuma tarreeffaman kanatti manneen murtii sadarkaan jiran keessatti kan calaqqisan ta'uu afgaaffii gaggeeffame irraas ni hubatama.<sup>127</sup> Dabalataan, cuunfaa bargaaftii abbootii murtiin guutame irrattis ibsameera.

#### **4.1.3. Ragaa Barreeffamaa Murtii Keessatti Ibsuu Ilaalchisee**

SDFHH barreessi murtii dhimma madaallii ragaa hammachuu akka qabu ilaalchisee calliseera. Waan ta'eefuu, gareewwan walfalmanis ta'e qaamoleen murtii dubbisan sababa ragaan tokko fudhatama itti argatee ykn kufaa itti ta'e beekuuf ni rakkatu. Qabatamaanis, rakkoowwan armaan gadii ni mul'atu:

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<sup>127</sup>Afgaaffiiwwan Ob. Naasir Faariis, A/Murtii, MMWO, 28/02/2009; Ob. Mulgeetaa Fiqaaduu, Pirezidaantii, MMO Godina Harargee Bahaa, 13/6/2009; Ob. Kadiir Waayyuu, Ga/ Ga/ Dhi Hariiroo Hawaasaa, MMO Godina Arsii Lixaa, 1/6/2009; Ob. Gaashaw Katamaa, MM Hundaatti Abukaattoo fi Gorsaa Seeraa, Godina Harargee Lixaa, 8/6/2009; Ob. Alamuu Guutaa, Ga/Ga/Dhi Hariiroo Hawaasaa MMO Godina Wallagga Bahaa, 24/05/2009 waliin gaggeeffame.

### **A) Ragaa Barreeffamaa Gareewwaniin Dhiyaatu Tokko Irratti Osoo Waa Hin Jedhiin Callisanii Bira Darbuu**

Falmii qabiyyee lafa baadiyyaa tokko irratti<sup>128</sup> lafti falmiif ka'umsa ta'e kan isaa ta'uu mana murtii hubachiisuuf himatamaan waraqaa ragaa abbaa qabiyyummaa dhiyeeffateera. Waajjirri Lafaa fi Eegumsa Naannoos waraqaa ragaa abbaa qabiyyummaa kana attamitti himatamaaf akka kenne gaafatamee mana murtiif gabaasee ture. Gabaasni dhiyaate kan ibsu, qabiyyeen lafaa falmiif sababa ta'e yeroo durii irraa eegalee abbummaan isaa kan himataa ta'uu fi maqaa himataatiin kan beekamu akka ta'e; booda garuu, himataan ilma isaa himatamaaf kennaadhaan bakka maanguddoon jirtuutti kan kenne ta'uu fi Waajjirri Lafaa fi Eegumsi Naannoos sana irra dhaabbate waraqaa ragaa abbaa qabiyyummaa himatamaaf kan kenne ta'uu dha. Haa ta'u malee, manni murtii, murtii yoo barreessu ragaa abbaa qabiyyummaa himatamaa kanaa fudhachuu ykn kufaa gochuu isaa osoo hin ibsiin callisee bira darbeera.

### **B) Faallaa Ragaa Murtii Keessatti Barreessuu**

Falmii lafa baadiyyaa Ragaassaa Siidaa (Himataa) fi Zarihuun Raggaasaa (Himatamaa) jidduutti ta'e irratti Waajjirri Lafaa fi Eegumsi Naannoo lafti falmiif ka'umsa ta'e kan himatamaa akka ta'e mana murtiif gabaaseera. Haa ta'u malee, manni murtii, barreessa murtii isaa keessatti gabaasni Waajjira Lafaa fi Eegumsa Naannoo irraa dhiyaate kan himataa akka ta'etti ibseera.

### **C) Ragaa Barreeffamaa Dhiyaate Murtii Keessatti Sirriitti Ibsuu Dhabuu**

Falmii lafa magaalaa tokko irratti<sup>129</sup> kenniinsa murtii keessatti qaamni ragaa qulqulleessee dhiyeessuu qabu Ejeensii Misoomaa fi Manaajimantii Lafa Magaalaa Adaamaa fi kan Ganda 01 ta'uu ibsameera. Murtiin yoo barreeffamu garuu, ragaan qaama kamirraa qulqullaa'ee akka dhiyaate hin

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128 Raggaasaa Siidaa (Himataa) fi Zarihuun Raggaasaa (Himatamaa), MMA Xiyoo, Lak. Gal. 35514.

129 Amaan Ida'oo faa (N2) (Himattoota) fi Isaayaas Yilmaa (Himatamaa), G/Lixaa (Abraahim Yuuyyaa fi Abdallaa Alqaadir), MMA Adaamaa, Lak. Gal. 89732, 19/4/2008.

ibsamne. Akkuma waliigalaatti, “.... *Haala falmii taasifameenis manni murtii ajaja kan dabarsee jiru yoo ta’u kanaan qaphxiwwan adda bahanii dhiyaachuu malanis oolmaa dhaddachaa gaafa 24/02/2008 kan dabarsee jiru yommuu ta’u kana keessattis kaartaaleen himattoonni akka ragaatti dhiheessan kun qabiyyee tokkorratti kan kennaman ta’uu fi dhabuu? Yoo bakka tokkorratti kennameera ta’ee jiraate bu’aa hordofsiisu; akkasumas, saayitii pilaaniin iddoo ykn kaartaawwan kanaaf kennaman yoo jiraatanis adda baasuudhaan qulqulleessanii akka gabaasan taasifamee jira.” Bu’uura ajaja kennameenis bu’aan gaafa 21/03/2008 ta’eeru dhiyaatee galmeedhan walqabatee kan jiru dha... jedha. Haa ta’u malee, akka gabaasan kan godhame waajjira kam akka ta’e adda bahee hin ibsamne; galmeedhaan walqabatee kan jirus eessarraa fi eenyurraa akka dhiyaate barreessa murtii keessatti hin ibsamne. Dhimmootni biroo hanqina walfakkaataa agarsiisanis ni jiru.<sup>130</sup>*

Rakkoowwan sanadoota murtii keessatti eeruun walqabatanii olitti ibsaman kunniin manneen murtii sadarkaa hunda keessa jiru. Sadarkaan cimina isaanii garuu garaa garummaa qaba. Kana beekuuf gaaffiin, *Sanadoota ykn barreeffamoota ykn seerota murtii keessatti sirriitti eeruun walqabatee rakkoon jiru sadarkaa mana murtii kamirratti caalaa hammaata?* jedhu abbootii seeraa fi abbootii alangaa 75 ta’aniif dhiyaatee akka armaan gadiitti deebi’eera:

<i>Gaaffii</i>	<i>Deebii</i>			
<i>Sanadoota ykn barreeffamoota ykn seerota murtii keessatti sirriitti eeruun walqabatee rakkoon jiru sadarkaa m/m kamirratti caalaa hammaata?</i>	<i>MMWO</i>	<i>MMO</i>	<i>MMA</i>	<i>Sadarkaa hundatti</i>
	2 (% 2.67)	15 (% 20)	56 (% 74.67)	2 (% 2.67)

Gabatee olii kanarraa waanti hubatamu, rakkoon sanadoota ykn barreeffamoota ykn seerota murtii keessatti ibsuun walqabatee jiru adaduma

<sup>130</sup>Fakkeenyaaf, Muhaammad Umaree fi Adam Alii faa (N2), MMA Baabbilee, Lak. Gal. 07987 fi Itaabazuu Taaffasaa fi Illeen Nugusee faa (N-2), MMA Xiyoo, Lak. Gal. 36068 ta’e irratti yommuu kenniinsa murtii ragaan barreeffamaa dhiyaatee kan ture ta’us, barreessa murtii keessatti osoo hin ibsamiin hafeera.

sadarkaan mana murtii asii ol dabalaa adeemuun xiqqaachaa kan adeemu ta'uu dha. Kana jechuun, sadarkaa manneen murtii aanaatti rakkichi yoo bal'atu, sadarkaa MMWOtti ammoo fooyyee qaba jechuu dha.

#### **4.1.4. Seera Rogummaa Qabu Fayyadamuu**

Galmeeewwan sakatta'aman keessaa murtiiwwan tumaa seera rogummaa qabu malee barreeffaman ni jiru. Fakkeenyaaf, barreessa murtii galmeeewwan MMO Godina Arsii Lak.G.70483, MMA Diggaa Lak.G.10308, fi MMO Godina Sh/Kaabaa Lak.G 505532 keessatti seerri hin fayyadamne. Rakkoon gama kanaan jiru, seera fayyadamuu dhabuu qofa osoo hin taane seera haqame fayyadamuun murtii barreessuus kan dabalatu dha.<sup>131</sup> Kanaaf ammoo sababni ijoon seeronni Caffee fi Mana Maree Bulchiinsa Mootummaa Naannoo Oromiyaan bahan qaamolee seerota kanniin hojiirra oolchan/hiikan kanneen akka manneen murtii akkaataa barbaadamuun hanga caasaa sadarkaa jalaatti dafanii dhaqqabsiisuu dhabuu, fi qaamoleen seera hojiirra oolchan/hiikan kunniin seera haaraa bahu kana dammaqinaan hordofanii fudhachuun itti hojjechuu irratti hanqina qabaachuu dha.<sup>132</sup>

Seera rogummaa qabu osoo hin fayyadamiin murtii barreessuun hanqina guddaa dha. Sababni isaa, jalqabumayyuu gaheen hojii mana murtiif Heeraa fi seeraan kenname seera hiikuu dha. Kana ta'ee hanga jirutti, manni murtii seera rogummaa qabu bu'uureffatee murtii kan hin barreessine yoo ta'e, murtichi yaada dhuunfaa (opinion) ibsuu bira darbee murtii ta'uu hin danda'u. Qajeeltoon ol'aantummaa seeraa jedhus kan calaqqisu manni murtii, murtii barreessu keessatti keewwata seeraa rogummaa qabu bu'uureffatee xiinxala barbaachisu yoo taasise dha.

#### **4.1.5. Xiinxala Firii Dubbii, Ijoo Dubbii, Ragaa, fi Seeraa**

Gudunfaan manni murtii, murtiin irra gahe sababaa fi loojikii irratti hundaa'uun sirrummaan isaa dubbistoota amansiisuu danda'uuf humna

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<sup>131</sup>Afgaaffiiwwan Ob. Amsaaluu Olaanii, Gaggeessaa Adeemsa Hojii Kenna Tajaajila Abbaa Seerummaa, MMWO, 27/06/2009; Ob. Mul'isaa Abdiisaa, A/A/H /Qo/Y /M/H/ Kennisiisaa, BHO, 22/6/2009; Ob. Mulugeetaa Fiqaaduu, Pirezidaantii MMO Godina Harargee Bahaa, 13/6/2009; Ob. Bukaar Kadiiroo, Ga/Ga/Dhi Hariiroo Hawaasaa, MMO Godina Harargee Bahaa, 13/6/2009.

<sup>132</sup>Ob. Mul'isaa Abdiisaa, A/A/H/Qo/Y/M/H/Kennisiisaa, BHO, 22/6/2009; fi Ob. Mulugeetaa Fiqaaduu, Pirezidaantii MMO Godina Harargee Bahaa, 13/6/2009.

qabaachuu fi dhabuun isaa kan madaalamu xiinxala taasifamuuni dha.<sup>133</sup> Xiinxala keessatti himatni, deebiin, falmiin, ragaan gareewwanii maaliif fudhatama akka argate ykn akka dhabe ykn caalee akka argame tartiiba ijoo dubbiiitiin ibsama.<sup>134</sup> Waan ta'eefuu, manni murtii ejjennoowwan bitaa fi mirgaan ka'aniif xiyyeeffannoo kan kenne ta'uu xiinxalaan agarsiisuu qaba. Dabalataan, xiinxalli raawwatamummaa tumaalee seeraa dhimmichaaf rogummaa qaban akkuma jirutti guutummaatti barreessuu osoo hin barbaachisiin bakka murtii kennuuf dandeessisu qofa fudhachuun hiikkoo itti kennuu kan mul'isu dha.<sup>135</sup> Walumaagalatti, iftoominnii, fi itti gaafatamummaan mana murtii xiinxala taasifamu irratti rarra'a.

SDFHH Itoophiyaas murtiin sababa itti kennameef hammachuu akka qabu *"The judgement shall contain....the decision thereon and the reasons for such decisions"* jechuun ifatti tumeera.<sup>136</sup> Kun ammoo kallattiin xiinxalaan kan walqabatu waan ta'eef, seerri adeemsa falmii dhimmichaaf uwwisa kan kenne ta'uun ni hubatama. Qabatamaan akka waliigalaatti kan jiru, xiinxalli manni murtii barreessa murtii keessatti taasisu baay'ee gabaabaa dha. Yeroo fi iddoon bal'aan kan kennamu xiinxala osoo hin ta'iin firiiwwan dubbii kanneen akka himata, ol'iyyata, deebii, falmii afaanii, fi jecha ragootaafidha. Firii dubbii, ijoo dubbii, jechi ragootaa, fi seerotaa wal nyaachisuun akkaataa inni tokko isa biraa ibsaa adeemuu danda'utti gadifageenyaan xiinxaluu irratti hanqinni kan jiru ta'uu galmeewwan sakatta'aman irraa ni hubatama.

Akka fakkeenyaatti dhimma hojjetaa fi hojjechiisaa tokko kaasuun ni dada'ama.<sup>137</sup> Dhimma kana irratti murtiin komputeraan barreeffame fuula afur yommuu ta'u, kana keessaa xiinxalli taasifame keeyyata (paragraph) tokko qofa. Kan hafe himata, deebii, falmii afaanii, fi jecha ragootaa dha. Hanqinni gama kanaan jiru bifti biraa ittiin calaqqisu, gosti ragoota lama (ragaa barreeffamaa fi ragaa namaa) walfaana yeroo dhiyaatanitti isa tokko

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<sup>133</sup> S. I. Strong Follow, Writing Reasoned Decisions and Opinions: A Guide for Novice, Experienced, and Foreign Judges, Journal of Dispute Resolution, Volume 2015, Issue 1, Article 7, F124; Federal Judicial Center, Judicial Writing Manual, Olitti yaadannoo lak.8, F16.

<sup>134</sup> The Khmer Institute of Democracy, Olitti yaadannoo lak.6, F76.

<sup>135</sup> Akkuma 134<sup>ffaa</sup>.

<sup>136</sup> SDFHH, Kwt.182 (1).

<sup>137</sup> Ob. Teewudroos Zarihuun (Himataa) fi Waldaa Bu'uuraa Hojjettoota Warshaa Sukkaaraa Wanjii Kutaa Biqiltuu (Himatamaa), MMA Adaamaa, Lak.Gal.99178.



dhiisuun isa biraa attamitti akka fudhate ykn lachuu attamittiin akka waldeeggeran ibsuun hojii xiinxala gaafatu ta'us, manni murtii akkas gochuu yeroo dhabu qabatamaan ni mul'ata. Fakkeenyaaf, falmii lafa baadiyyaa tokko irratti<sup>138</sup> ragaan barreeffamaa Waajjira Lafaa fi Eegumsa Naannoo irraa bifa qaboo yaa'iitiin qindaa'ee dhiyaateera. Jechi ragaa namaas akkasuma fuudhameera. Haa ta'u malee, manni murtii, murtii yoo barreessu walitti dhufeenyi ragaa barreeffamaa Waajjira Lafaa fi Eegumsa Naannoo irraa dhiyaatee fi jecha ragaa namaa osoo hin xiinxaliin ragaa barreeffamaa qofa irratti hundaa'eera.

Rakkoon xiinxala firii dubbii, ijoo dubbii, ragaa, fi seeraa barreessa murtii kun sadarkaan isaa wal haa caalu malee manneen murtii hunda keessatti ni mul'ata. Kana beekuuf gaaffiin *rakkoon xiinxala barreessaa murtii sadarkaa mana murtii kamirratti caalaatti hammaata?* jedhu abbootii seeraa fi abbootii alangaa sadarkaa hunda irra jiran **85f** kan dhiyaate yoo ta'u, bu'aan isaas kan itti aanu fakkaata:

<i>Gaaffii</i>	<i>Deebii</i>			
<i>Rakkoon xiinxala barreessa murtii sadarkaa m/murtii kamitti caalaatti hammaata?</i>	<i>MMWO</i>	<i>MMO</i>	<i>MMA</i>	<i>Hunda irratti</i>
	3 (%3.53)	21 (%24.71)	55 (%64.71)	6 (%7.06)

Gabateen olii kun rakkoon xiinxalaa barreessa murtii manneen murtii sadarkaa hunda bira jiraachuu agarsiisa. Haa ta'u malee, ciminni rakkichaa walduraa duubaan sadarkaa MMA, MMO, fi MMWO irratti mul'ata. Maddi rakkoo kanaas durumaan himannaa fi deebiin yommuu dhiyaatu firiiwwan rogummaa qaban qofa irratti hundaa'uun dhiyeessuu dhabuu, muuxannoo fi gahumsi firii dubbii cuunfuu abbootii seeraa tokko tokko laafaa ta'uu, baay'achuu dhimmootaa, xiyyeeffannoon malu gama abbootii seeraatiin kennuu dhabuu fa'i.<sup>139</sup>

<sup>138</sup> Diribaa Fullaasa (Himataa) fi Fullaasaa Mokonnaan faa (N-2) (Himatamtoota), MMA Kuyyuu, Lak. Gal.28280.

<sup>139</sup> Cuunfaa odeeffannoo bargaaftii abbootii murtiin guutame irraa walitti qabame.

#### 4.1.6. Qaama Murtii Raawwatamu (Decree)

Murtiin manni murtii kenne tokko ofuma isaatiin hojiirra ooluu hin danda'u.<sup>140</sup> Manni murtii, murtii kenname keessaa kutaa hojiirra oolu qabu, furmaata kenname akkaataa hojiirra ooluu danda'utti adda baasee gabaabsee barreessuuti irraa eegama.<sup>141</sup> Dhimmootni kutaan kun qabachuu qabus lakkoofsa galmee, maqaa fi ibsa gareewwanii, dhimmichi dhimma sadarkaa duraan ilaalamu yoo ta'e, gaaffii himataan gaafate, ajaja ifaa waa gochuu ykn gochuu dhabuu agarsiisu, ykn kaffaltii murtaa'e kaffaluu, ykn akkuma haala isaatti qabeenyaa hin sochoone tokko akka geessuu, ykn gadhiisuu, ykn bakka buusuu agarsiisu, dhimma falmiin irratti ka'e ilaalchisee hanga baasii ba'ee, fi eenyuun ykn qabeenyaa isa kam irraa uwwifamuu akka qabu dha.<sup>142</sup>

Gabaabumatti, kaayyoon kutaa murtii kanaa haala salphaa ta'een murtii raawwachiisuu yommuu ta'u, kanaafis SDFHH dhimmoota adda addaa ilaalchisuun keewwattoota 185-191 jalatti kallattii agarsiiseera. Fakkeenyaaf, murtiin kenname qabeenyaan socho'u abbaa mirgaa haa dhaqqabu kan jedhu yoo ta'ee fi kana raawwachuun yoo dadhabame, akka filannootti hanga qarshii qabeenyichi baasu kaffaluu akka danda'utti barreessuun ni danda'ama.<sup>143</sup>

Gama bifaatti (form) yoo deebinu, murtiin mana murtii barreeffamaan ta'ee abbaa murtii ykn abbootii murtii dhimmicha murteesseen ykn murteessaniin mallattaa'uu qaba.<sup>144</sup> Dhimmi tokko abbootii murtii tokkoo oliin kan ilaalame yoo ta'ee fi sagalee caalmaan kan murtaa'e yoo ta'e, murtiin barreeffamuu fi mallattaa'u kan seeraa sagalee caalmaa qabani dha.<sup>145</sup> Abbaan murtii yaada addaa qabus (a dissenting judge) sababa isaa barreeffamaan ibsuu qaba.<sup>146</sup> Erga barreeffamee mallattaa'ee booda, abbaa murtii tokkoon ykn abbaa murtii walitti qabaa ta'een dubbifamuu

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<sup>140</sup> Robert Allen Sedler, Olitti yaadannoo lak.31, F209.

<sup>141</sup> Akkuma 140<sup>ffaa</sup>.

<sup>142</sup> SDFHH, Kwt.183.

<sup>143</sup> SDFHH, Kwt.185.

<sup>144</sup> SDFHH, Kwt.181 (1).

<sup>145</sup> SDFHH, Kwt.181 (2).

<sup>146</sup> SDFHH, Kwt.181 (2).

qaba.<sup>147</sup> Abbaa murtii dhimmicha mallatteesseen ala abbaa murtii biraanis dubbifamuu danda'a.<sup>148</sup>

Qaamni murtii raawwatamus (decree) mallattaa'ee guyyaa murtichi itti kennames agarsiifamuu qaba.<sup>149</sup> Kan mallatteessus abbaa murtii ykn abbaa murtii tokkoo oliin yoo ta'e, abbaa murtii yaada addaa qabuun ala hunda isaaniitiini dha.<sup>150</sup> Abbaan murtii, murtii kenne sababa du'aan, jijjiirraan ykn soorama ba'uun mallatteessuu kan hin dandeenye yoo ta'e garuu, abbaa seeraa biroo mana murtii murticha kenneenidha.<sup>151</sup> Manni murtii murticha kenne tasuma yoo haqame ammoo abbaa murtii kamiyyuu caasaa mana murtii sadarkaa tokkoon gararraa jiruun mallattaa'uu danda'a.<sup>152</sup>

Qabatamaan, barreessa kutaa murtii raawwatamuun walqabatee rakkoowwan mul'atan ni jiru. Tokko tokkoon haa ilaallu:

#### **A) Seerummaa Ifa Ta'ee fi Akka Salphaatti Hubatamee Raawwatamuu Danda'u Barreessuu Dhabuu**

Falmii dhaalaa tokko irratti<sup>153</sup> himattoonni qabeenyaa du'aa abbaa keenyaa obbo Girmaa Alii himatamtoonni guutummaan guutuutti qabatanii waan jiraniif, dhaaltota ta'uun keenya beekamee qooda keenya akka nuuf qoodaniif akka nuuf murtaa'u; baasii fi kisaaraa baafnes akka nuuf kaffalan jechuun gaafataniiru. Himannicha keessatti tarreen qabeenyaa firii dubbii himannaa ta'ee dhiyaate a) manneen daldalaa kutaa 2 b) manneen jireenyaa kutaa 9 c) Baajajii gosa TVs Lak.Gab.Koodii 1-26001 OR ta'e d) makiinaa huccuu ittiin hodhan 2 (gosa seenjarii tilmaamni isaa qar.1000 fi No rar luuk tilmaamni isaa qar 7000 ta'e) dha. Manni murtii bu'uura seerummaa gaafatameen himatamtoonni himattootaaf qabeenyaa dhaalaa akka qoodan yoo murteessu: ....iddoo lamatti erga qoodamee booda, iddoo 10tti qoodamee 2/10 (harka 10 keessaa harki lama) himattootaaf yaa kennamu jennee bu'uura SHH kwt.842 fi 996tiin murteessinee jirra jedheera.

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<sup>147</sup>SDFHH, Kwt.181(1).

<sup>148</sup>SDFHH, Kwt.181 (3).

<sup>149</sup>SDFHH, Kwt.183 (2).

<sup>150</sup> SDFHH, Kwt.183 (2).

<sup>151</sup> SDFHH, Kwt.183 (2).

<sup>152</sup> SDFHH, Kwt.183 (2).

<sup>153</sup>Saajin Hiruut faa (N2) (Himattoota) fi Adaanech G/Mesqel faa (N2) (Himatamtoota), MMA Baabbilee, Lak. Gal. 09214.

Haa ta’u malee, galmee keessatti himattoonni ibsaman namoota lama qofa (Saajin Hiruu tii fi Aschaaloo Girmaa). Kanaaf, qabeenyichi erga iddoo lamatti qoodamee booda deebi’ee iddoo 10tti haalli inni itti qoodamuu danda’e murtii keessaa hin hubatamu. Iddoo lamatti qoodamuun isaa himatamtoonnis akkuma himattootaa dhaaltota waan ta’aniif sirrii fi ifas. Deebi’ee iddoo 10tti qooduun maaliif akka barbaachise garuu namaaf hin galu. Dhaaltonni biroo jiru jedhamee kan yaadamu yoo ta’es, osoo isaan seerummaa hin gaafatiin murteessuufiin haalli itti danda’amu hin jiraatu.

### **B) Seerummaa Iddoo Tokkotti Duguugamee Ibsamuu Danda’u Adda Adda Baasuun Ibsuu**

Falmii hojii himataa obbo Teewudroos Zarihuunii fi himatamaa Waldaa Bu’uuraa Hojjetoota Warshaa Sukkaaraa Wanjii Kutaa Biqiltuu jidduutti ta’e irratti<sup>154</sup> himataan dhaabbata himatamaa keessatti gita hojii qabaa maallaqaa ta’ee mindaa ji’aa qarshii 1,255.04 tiin waggoota 26f tajaajilaa kan ture ta’us kaka’umsa mataa isaatiin waliigaltee hojii addaan kutuun kaffaltii seeraan hayyamameef deddeebi’ee gaafatus himatamaan raawwachuufii waan dideef jechuun:

- Bu’uura labsii 377/96, kwt.40(1-2)tiin qar.1255.04 + (418.54x 25)  
= 11719.14
- Boqonnaa waggaa bu’uura kwt.70(5)tiin qar.41.84x60=2510.4
- Bu’uura kwt.38tiin kaffaltii turtii qar.1255.64x3  
=3765.12; walumaagalatti, qar.**17,996.46 fi durgoo abukaattoo %10** himatamaan akka kaffaluu, fi
- Bu’uura kwt. 12(7)tiin muuxannoon hojii akka kennamuuf gaafateera.

Manni murtii seerummaa himataan gaafate kana kan murteesse iddoo adda addaa lamatti qoodeeti. Tokkoffaa, qar.**17,996.46** murtoo ykn murtii jedhee osoo hin taane, ....gaaffiin himataa kun deeggersa seeraa waan qabuuf himataan tajaajila waggaa 20 fi mindaa ji’aa qar.1255.64 waan argataniif jedhamee qaamuma xiinxalaa keessatti tarraa’eeti. Lammeffaa, himatamaan

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<sup>154</sup>Ob. Teewudroos Zarihuun (Himataa) fi Waldaa Bu’uuraa Hojjetoota Warshaa Sukkaaraa Wanjii Kutaa Biqiltuu (Himatamaa), MMA Adaamaa, Lak. Gal.99178.

durgoo abukaattoo %10 akka kaffaluu fi muuxannoon hojii himataaf akka kennamu kan murteesse ammoo mata-duree ajaja jedhu jalatti dha. Haa ta'u malee, manni murtii seerummaa hundayyuu qaamuma murtii keessatti ykn ammoo ajaja jalatti iddoo tokkotti ykn iddoo lachuutti duguugee ibsuu danda'a ture. Dabalataan, qarshiin himataan himatamaan akka kaffaluuf gaafate akkaataa (shallaggii) kamiin akka irra gahame nama labsii hojjetaa fi hojjechiisaa irratti hubannoo qabu yoo ta'een ala nama biraaf hubatamuu hin danda'u. Kun ammo kaayyoowwan murtii keessaa tokko kan ta'e, barsiisuu of duubatti kan dhiise akka ta'e tilmaamuun ni danda'ama.

### **c) Dhorka Yeroo Kenninsa Murtii Kennamee Ture Barreessa Murtii Keessatti Osoo Hin Kaasiin Callisanii Bira Darbuu**

Falmii dhirsaa fi niitii Salaam Tasfaayee (Himattuu) fi Buttaa Bojaa (Himatamaa), MMA Arsii Neegellee, Lak. gal.31709 ta'e irratti yommuu dhimmichi falmiirra ture irratti qabeenyaa lama: 1<sup>ffaa</sup>-mana jireenyaa magaalaa Arsii Negeellee maqaa himatamaatiin turee fi 2<sup>ffaa</sup>-konkolaataa fe'insaa isuuzuu Lak.Gabatee 3-72979 irratti dhorkiin kennamee ture. Gaafa galmeen murtaa'ee cufamuun gara mana galmeetti deebi'utti dhorkiin kun ajajaan waan hin kaaneef himatamaan akka haaraatti mana murtiitti iyyachuun dhorkicha kaasifateera.

### **4.1.7. Rakkoowwan Bifaa (Form) Barreessa Murtii Hariiroo Hawaasaa Ilaalchisee**

#### **A) Murtii Keeyyata Keeyyataan Adda Adda Baasanii Ibsuu Dhabuu**

Seerluuga afaanii keessatti barreeffamni tokko keeyyatoota irraa ijaarama. Murtiin mana murtiin kennamus barreeffama dha. Kanaaf, keeyyatoota adda addaa qaban irraa gurmaa'a jedhamee eegama. Haa ta'u malee, qabatamatti, manneen murtii kana dagachuun jalqabaa hanga dhumaatti keeyyata (paragraph) tokkoon murtii yoo barreessan ni mul'ata. Fakkeenyaaf, galmeewwan MMA Bishooftuu, Lak. Gal.52441 irratti murtiin kompuuteraan fuulli lama (2) fi ½, MMO God. Arsii Lixaa, Lak.Gal.16173 ta'e irratti murtiin fuulli saddeet (8), MMA Ciroo, Lak Gal.28479 ta'e irratti murtiin fuulli 3 fi sararri 2 keeyyata (paragraph) tokkoon kan barraa'anidha.

Murtiin mana murtii tokko amaluma isaatiinuu ijoowwan adda addaa irraa ijaarama. Himatni, deebiin, ragaan hundi ijoowwan adda addaa dha. Akka seera afaaniitti keeyyatni tokko yaada bu’uura tokko qofa qaba. Murtii mana murtii keeyyata tokkoon ibsuu jechuun yaadota bu’uuraa adda addaa ta’an keeyyata tokko keessatti ibsuu jechuu ta’a waan ta’eef, sirrii hin ta’u.

**B) Qubee dogoggoruu (sagaloota laafoo fi jaboo, dheeroo fi gabaaboo), hanga gurguddina qubee (font size), haqaa fi laaqaa qabaachuu, osoo of hin qopheessiin barreessuu, fuulaa fi guyyaa dhabuu,... kkf harcaatiiwwan biroo dha.**<sup>155</sup>

**C) Bakkaa fi Jecha Qaamni Murtii Raawwatamuu Danda’u Itti Ibsamu Ilaalchisee**

Barreessa murtii keessatti akkaataa manni murtii seerummaa kenne itti ibsu (decree part) ilaalchisee adda addummaan ni jira. Adda addummaan kunis bakka itti ibsamuu fi jecha ittiin ibsamuun kan calaqqisu dha.

#### ➤ **Bakka Itti Ibsamu**

Bakka seerummaan kenname itti barreeffamu ilaalchisee bifti adda addaa sadii akka jiru galmeewwan sakatta’aman irraa ni hubatama. Tokkoffaa, xiinxalaan booda qaamuma murtii keessatti ibsuu dha. Fakkeenyaaf, Falmii hojii tokko irratti<sup>156</sup> manni murtii himatamaan qar.34, 769.24 himataaf haa kaffalu jechuun kan murteesse kutaa xiinxala keessatti,.....*waliigala qr.34,769.24 himatamaan himataaf haa kaffalu jennee murteessineerra* jechuun ‘Ajaja’ jalatti ammoo mirgi ol’iyyannoo kan eegame ta’uu fi galmeen cufamuu ibseera.

Lammaffaa, iddoo lamatti, jechuunis qaamuma murtii keessaattii, fi ajaja ykn murtii jalatti ibsuu dha. Fakkeenyaaf, falmii lafa mana jireenyaa magaalaa

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<sup>155</sup>Galmeewwan sakatta’aman irraa kan hubatame dha. Dabalataan, Ob. Amsaaluu Olaanii, Gaggessaa Adeemsa Hojii Keenninsa Tajaajila Abbaa Seerummaa, MMWO, 27/06/2009.

<sup>156</sup>Sintaayyahu Gazzaahaany (Himataa) fi Dhaabbata Industirii Dhugaatii Lallaafaa Mohaa (Himatamaa), MMA Ciroo, Lak. Gal.30191; Dabalataan,dhimma falmii beenyaa Suufiyaan Abraahim (Himataa) fi Abdii Mohammad (Himatamaa), MMA Ciroo, Lak Gal.28479 irrattis bifuma walfakkaatuun barreeffameera.

tokko irratti<sup>157</sup> seerummaa manni murtii Aanaa Bishooftuu kenne himanni dhiyaate kufaa ta'uu yommuu ta'u, kunumti iddoo lamatti: xiinxala keessaa fi ajaja jalatti ibsamee jira.

Sadaffaa, xiinxala keessaa baasuun mata-duree 'ajaja' jedhu jalatti kan ibsamu dha. Falmii hojii himattoota Iskadaar Yittaayyeew faa (N23) fi himatamtoota Warshaa Habaaboo Evergriin (Dh/Dh/I/G/M) fi Baankii Misooma Itoophiyaa Damee Muummichaa<sup>158</sup> irratti Manni Murtii Aanaa Bishooftuu seerummaa kennee ajajoota biroo wajjiin kan ibse mata-duree murtoo, murtii (decree), ykn dikirii jedhu jalatti osoo hin taane, mata-duree 'Ajaja' jedhu jalatti dha.

SDFHHs garaagarummaan akkasii akka jiraatuuf sababa tokko dha. Keewwattoota seerichaa<sup>182-191</sup> jidduu jiran yeroo ilaallu, murtiin tokko murtoo (decree) qabaachuu akka qabu, qabiyyeen murtoo kanaas maal ta'uu akka qabuu fi attamitti qophaa'uu akka qabuti ibsame malee eessatti barreeffamuu akka qabu ifatti hin tumamne. Kanaafuu, inni asitti ibsame sirrii dha; inni achitti ibsame ammoo dogoggora jechuuf bu'uura seeraa hin qabnu. Haa ta'u malee, 'decree'n tokko eessatti yoo ibsame raawwachiisuuf caalaatti haalli mijata kan jedhu irraa kaanee ilaalu dandeenya. Xiinxalaan booda, qaama murtii keessatti ibsuun nama murticha dubbisuuf yaa'insa yaadaa guutummaa murtichaa eeguuf gahee ni qabaata. Qaamoleen murticha raawwachiisan guutummaa murtichaa osoo hin dubbisiin maal akka raawwachiisan salphaatti beekuuf; akkasumas, ofisaronni seeraa ajaja qopheessanis akkuma salphaatti ajaja raawwii qopheessuuf ammoo dabalataan addatti baasanii ibsuun gaarii akka ta'e hubachuun ni danda'ama. Kanaafuu, bakki 'decree' itti ibsamu yaa'insa yaadaa murtichaa fi salphaatti raawwatamuu danda'uu bifa tilmaama keessa galcheen ta'uu qaba. Kun ammoo iddoo lamatti: qaama murtii keessattii fi dabalataan addatti baasanii ibsuun filannoo gaarii dha jennee amanna.

<sup>157</sup>Komaander Faqqadaa Raggaasaa (Himataa) fi Rattaa Allabbaachoo (Himatamaa), MMA Bishooftuu, Lak.Gal. 48225.

<sup>158</sup>Iskadaar Yittaayyeew faa (N23) (Himataa) fi Warshaa Habaaboo Evergriin (Dh/Dh/I/G/M) fi Baankii Misooma Itoophiyaa Damee Muummichaa (Himatamtoota), MMA Bishooftuu, Lak. Gal.54482.

## ➤ Jecha Ittiin Ibsamu

Manneen murtii qaama murtii raawwatamu ibsuuf, afaan Ingiliffaatiin jecha ‘decree’ jedhu agarsiisuuf jechoota adda adda yoo fayyadaman mul’ata. Murtoo, murtoo (decree), dikirii, fi ajaja jechoota manneen murtii Oromiyaa fayyadamaa jiran akka ta’e galmeewwan murtaa’an irraa hubachuun danda’ameera. Kanneen armaan gadii fakkeenyaaf kaasuun ni danda’ama.

Tokkoffaa, falmii ol’iyyannoo dhaalaa tokko irratti<sup>159</sup> Manni Murtii Ol’aanaa Godina Harargee Bahaa murtiin mana murtii jalaa diigamuu fi manni murtii jalaa irra deebi’ee namoota qabeenya fi qabiyyeen lafa baadiyaa harka jira jedhame adda baafachuun namootni kun akka himatamtootaatti falmii keessa akka galan gochuun akka haaraatti falmisiisee murtii haqa qabeessa ta’e akka itti kennu jechuun bu’uura SDFHH kwt.341(1)tiin gadi kan deebise mata-duree **murtoo** jedhu jalatti dha. **Ajaja** jechuun ammoo waraabbiin murtii mana murtii jalaa galmeen walqabatee ture akka deebi’u, baasii fi kisaaraa gareen akka of danda’anii, ol’iyyannoon mirga ta’uu, fi galmeen cufamuu ibsameera.

Lammeffaa, dhimma Manni Murtii Aanaa Ciroo falmii lafa baadiyaa ta’e tokko irratti<sup>160</sup> ammoo himatamaan lafa himattuu akka gadi dhiisu, lafti jiddu lixxuun gaafattu falmii keessa kan hin jirre waan ta’eef iyyanni ishii kufaa akka ta’uu, fi baasii fi kisaaraa bitaa fi mirgi akka of danda’an jechuun kan murteesse mata-duree **Murtoo (Dikirii)** jedhu jalatti yommuu ta’u, ajaja jalatti ammoo ol’iyyannoon mirga ta’uu fi galmeen cufamu kaa’era.

Sadaffaa, falmii lafa baadiyyaa Xaajjii Dheeressaa (Himattuu) fi Buulloo Jaarsoo (Himatamaa), Mana Murtii Aanaa Hammayyaa, Lak.Gal.14876 ta’erratti manni murtii seerummaa gaafatameef furmaata yoo kennu mata-duree **Dikirii** jedhu fayyadameeti.

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<sup>159</sup>Guysaa Mohaammad (Ol’iyyataa) fi Fooziyaa Mohaammad faa (N4) (D/ Kennitoota), MMO God. Harargee Bahaa, Lak. Gal.60314; Dabalataan falmii qabeenyaa Waaj. Bul. Mag. K/Miillee (Ol’iyyataa) fi Faantuu Siiyyum faa (N2) (D/Kennitoota), MMO God. Harargee Bahaa, Lak.Gal. 60906 fi Ob. Nugusee Daadhii faa (N4) (himattoota) fi Tsadaalaa Taaddasaa (himatamtuu), MMA Adaamaa, Lak. Gal.92267 ilaaluun ni danda’ama.

<sup>160</sup>Haliimaa Mohaammad (Himattuu) fi Saadam Abbaas (Himatamaa), MMA Ciroo, Lak. Gal.30902



Afraffaa, falmii hojii Iskadaar Yittaayyeew faa (N23), fi Warshaa Habaaboo Evergriin faa (N2), MMA Bishooftuu, Lak.Gal.54482 ta'e irratti kutaan murtii raawwatamu kan ibsame mata-duree **Ajaja** jedhu jalatti dha.

Adda addummaa kanaaf sababa kan ta'e jecha afaan Ingiliffaa 'decree' jedhu afaan Oromootiin maal akka jedhamu irratti waanti waalta'e tokko waan hin jirreefidha. Qaphxiin xiinxala barbaadu jecha isa kamti yaada jedhame kana ibsuu danda'a kan jedhu dha. 'Ajaja' kan jedhu yoo fudhanne yaadicha guutummaatti ibsuu hin danda'u. Sababni isaa, ajaji osoo dhimmichi furmaata 'dhumaa' hin argatiin, jechuunis osoo dhimmichi adeemsa falmii irra jiruus jidduutti kennamuu danda'a. Fakkeenyaaf, ragaan qaama biraa irraa akka dhiyaatuuf manni murtii jecha 'ajaja' jedhu fayyadamuun kan ajaju dha. Dikiriin yaada jedhamaa jiru kana guutummaatti ni agarsiisa garuu ammoo afaan Oromoo miti. 'Murtoo' kan jedhu ammatti galmeewwan hedduu irratti itti fayyadamaa kan jirru yoo ta'ellee, maqeessuu irratti guutummaa 'murtii' (judgment) irraa adda addummaa baay'ee hin qabu. Dabalataan, afaan Oromoo keessattis, jechoota 'murtii' fi 'murtoo' jedhaman kana waanuma tokko ibsuuf waljala fuudhuun yeroo itti fayyadamnuti jira. Murtoo (dikirii) kan jedhu jechi murtoo jedhu qofaasaatti yaadicha ibsuu dhiisuu danda'a sodaa jedhuun walbiratti kan fayyadamaa jiramu fakkaata. Qajeeltoon barreessa murtiis haala kanaan murtii barreessuu baay'ee hin jajjabeessu.

Kana ilaalchisee hayyoota Afaan Oromoo irratti barreessanii fi qoratan tokko tokko haasofsiisuuf yaalleerra. Fakkeenyaaf, hayyuun Afaan Oromoo barreessuu fi barsiisuun beekamu, obbo Wasanee Bashaa 'lallaba' yoo jedhame gaarii ta'a yaada jedhu qabu. Yunivarsiitii Arsiiitti barsiisaa Afaan Oromoo kan ta'anii fi yeroo ammaa kana Yunivarsiitii Finfinneetti kaadhimamaa digirii dooktiretii (PhD) kan ta'an Maammoo Mangashaas yaaduma hayyuu Wasanee Bashaa kana qooddatu. Bu'uurraan lallabni Sirna Gadaa keessatti seera tumame tokko uummatatti beeksisuu kan agarsiisu waan ta'eef, yaadicha kallattiidhaan ibsuu danda'a jechuuf nama rakkisa. Haa ta'u malee, murtii kennamee jiru beeksisuu akkuma seera tumamee jiru beeksisuutti bal'isanii ilaaluun ni danda'ama amantaa jedhu

qabna. Kanaafuu, manneen murtii Oromiyaa jechuma ‘lallaba’ jedhu kana fudhatanii yoo itti fayyadaman gaarii ta’a.<sup>161</sup>

#### **4.2. BARREESSA MURTII DHIMMOOTA HARIIROO HAWAASAA AANGOO OL’IYYANNOON MURTAA’AN**

Hojiin ijoo manneen murtii ol’iyyata dhagahanii dhimmi tokko ol’iyyannoon yommuu dhiyaatuuf garagalcha murtii (galmee) mana murtii jalaa qorachuudhaan manni murtii jalaa seera bu’uuraa sirriitti hiikuu, seera adeemsa falmiilee hordofuu, fi ragaa qixa sirrii ta’een madaaluu fi dhiisuu isaa sakatta’uun gudunfaa malu irra gahuu dha.<sup>162</sup> Haaluma kanaan, gudunfaan murtii irra gahamu bu’uura SDFHH kwt.348 (1)tiin murtii jalaa akka cimse, ykn akka fooyyesse, ykn akka diige ykn bu’uura kwt.341 fi 343tiin ijoo dubbii qabee gadi akka deebise kan ibsu dha. Sababa gudunfaa akkasii irra itti gahees agarsiisuu qaba.<sup>163</sup> Manni murtii ol’iyyata dhagahu murtii jalaa kan fooyyesse ykn kan diige yoo ta’e, ol’iyyataaf maalti akka malu (relief) adda baasee agarsiisuu qaba.<sup>164</sup> *Decree* manni murtii ol’iyyata dhagahu kennu baasiin falmii dhimmichaan walqabatee bahe (kan mana murtii jalaa fi kan mana murtii ol’iyyata dhagahuu) attamittii fi eenyuun uwwiffamuu akka qabu dabalachuu danda’a.<sup>165</sup> Raawwii ilaalchisees manni murtii ol’iyyata dhagahu ofumaaf akkamitti akka raawwatu, ykn manni murtii jalaa akka raawwachiisu kallattii barbaachisaa ta’e kennuu danda’a.<sup>166</sup> Dhaddachi ijibbaataas murtiin jalaa dogoggora seeraa bu’uuraa kan qabu ta’uu isaa yoo hubate, murtii jalaa ni diiga ykn ni fooyyeessa. Dogoggora seeraa bu’uuraa kan hin qabne yoo ta’e ammoo ni cimsa. Manneen murtii ol’iyyannoo dhagahan ykn dhaddachi ijibbaataa aangoo seeraan kennameef kanneen hojiirra yoo oolchan qabiyyeen murtii akkuma murtii sadarkaa

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<sup>161</sup>Yaadni kun yaada qorattootaa ammati dhiyaate dha. Jechi afaan Oromoo yaadicha sirriitti ibsuu danda’u gara fuula duraatti argamuu danda’a. Fakkeenyaaf, Biirron Aadaa fi Turizimii jecha afaan Oromoo dhiyeessuu danda’a. Kan amma qorattootaan dhiyaates ta’e kan gara fuulduraatti dhiyaatu garuu waalta’uun manneen murtii Oromiyaa keessatti bifa walfakkaataa ta’een itti fayyadamuun barbaachisaa dha jenna.

<sup>162</sup> Alamaayyoo Taganee, Olitti yaadannoo lak.14, F47.

<sup>163</sup> Robert Allen Sedler, Olitti yaadannoo lak.31, F253.

<sup>164</sup> SDFHH, Kwt.182 (1).

<sup>165</sup> SDFHH, Kwt.183 (1) (e).

<sup>166</sup> SDFHH, Kwt.183 (1) (f).

duraa ijoo dubbii fi firii dubbii ol'iyata dhiyaate irratti hundaa'e, xiinxalaa, gudunfaa fi *decree* of keessatti kan hammate dha.<sup>167</sup>

Haa ta'u malee, dhimmoota tokko tokko irratti SDFHH waan calliseef, murtii ol'iyataa guutuu ta'e barreessuu irratti qaawwa uumuu akka danda'u tilmaamuun ni danda'ama. Tokkoffaa, murtii ol'iyataa ilaalchisee furmaata ol'iyataan argachuu qabu murtii keessatti ibsamuu akka qabu tumaa kwt.182 irraa hubachuun ni danda'ama. Kun kan agarsiisu, murtiin ol'iyannoo giddu galeessa kan godhatu gaaffii/lee ol'iyataan ka'e/ka'an osoo hin taane, furmaata manni murtii kenneefi dha. Murtiin ol'iyataa bifa kanaan kan barreeffamu yoo ta'e, manni murtii ijoowwan dubbii dhiyaatan/gaaffiiwwan gaafataman hundaaf furmaata kennuu fi dhiisuu isaa madaaluuf rakkisaa dha.

Lammaffaa, murtiin ol'iyataa cuunfaa dhimmaa fi murtii mana murtii jalaatti kenname akkaataa ibsuu danda'uun barreeffamuu akka qabu seerichi hin ibsine. Yaadni kun murtii ol'iyataa keessatti akka hammatamu gochuun dubbistoonni dhimma ilaalamaa jiru bifa guutuu ta'een akka hubatan gochuuf faayidaa guddaa qaba ture.

Akka waliigalaatti, barreessi murtii manneen murtii ol'iyata dhagahanii hanqinaalee armaan gadii ni qaba. Akka itti aanutti haa ilaallu.

#### **4.2.1. Seenaa Dhimmichaa Garmalee Dheeressuun Ibsu Ykn Tasuma Osoo Hin Ibsiin Hafuu**

Manni murtii ol'iyata dhagahu achi as dhufa dhimmichaa gabaabinaan murtii keessatti ibsuun irraa eegama. Kana jechuun garuu, murtii manni murtii jalaa kenne guutummaan garagalcha jechuu miti. Haa ta'u malee, qabatamatti manneen murtii ol'iyata dhagahan seenaa dhimmichaa bal'isanii yeroo ibsan ni mul'ata. Fakkeenyaaf, falmii ol'iyannoo mana kiraa gandaa tokko irratti<sup>168</sup> manni murtii ol'aanaa seenaa dhimmichaa qofa fuula sadii ol barreessuun guutummaa murtichaa gar malee akka bal'atu

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<sup>167</sup> Robert Allen Sedler, Olitti yaadannoo lak.31, F253. Sababni isaa, SDFHH kwt.32 daangaa raawwattiinsa tumaalee SDFHH falmiilee sadarkaa ijjibaattatti gaggeefaman illee kan ilaallatu dha.

<sup>168</sup> Mana Qopheessaa Magaalaa Asallaa (Ol'iyataa) fi Addee Saabaa Alamuu (D/Kennituu), MMO Godina Arsii, Lak.Gal.71181.

taasisseera. Falmii qabeenya dhaalaa tokko irratti<sup>169</sup> ammoo manni murtii ol'iiyata dhagahu seenaa dhimmichaa tasuma osoo hin ibsiin murticha barreesseera.

#### **4.2.2. Murtiin Mana Murtii Jalaa Sababa Itti Cime, Fooyyaa'e, Diigame Ykn Qajeelfamaan Gadi Deebi'e Ibsuun Walqabtee**

Falmii qabeenya dhaalaa tokko irratti Manni Murtii Aanaa Heexosaa murtii kennee ture. Murtii kenname kana komachuun komiin ol'iiyannoo MMO Godina Arsiitti dhiyaateera. Manni Murtii Ol'aanaa “*waliigalteen kiraa lafa baadiyyaa qaama mootummaa aangoo qabu biratti galmaa'ee jira moo miti?*” ijoo jedhu qoratee qulqulleessuuf jecha komiin ni dhiyeessisa jechuun bitaa fi mirga erga falmisiisee booda, galmee qorachuuf bulchee galmee qoratee murtii kenneen “*.....dhimma kana seera rogummaa qabu waliin wal maddii qabe akka qoratetti sababiin gahaa murtiin mana murtii itti haqamu waan hin jirreef, bu'uura s/d/f/h/h kwt.348 murtii mana murtii jalaa kenne cimsineera*”<sup>170</sup> jechuun galmee cufeera. Murtii kana irraa murtiin jalaa cimuu malee maaliif akka cime waanti hubannu hin jiru. Silaa ta'uu kan qabu, Manni Murtii Ol'iiyata dhagahu murtii jalaa bu'uura kwt.348 tiin yoo cimsu ijoo dubbii ni dhiyeessisa jedhee qabatee jiru sana murtii keessatti seeraa fi ragaa walbira qabee madaalee gudunfaa sana irra akka gahe bifa agarsiisuu danda'uun xiinxaluu qaba ture. Amma sababii murtiin mana murtii jalaa itti cime galmee keessatti osoo hin ibsamiin duuchaamatti kan murtaa'e dha.

#### **4.2.3. Akkaataa Murtiin Abbootii Seeraa Sadii fi Sanaa Oliin Kennamu Itti Barreeffamu**

Dhimmoonni abbootii seeraa sadiin murtaa'an aangoo sadarkaa duraatiin ykn aangoo ol'iiyannootiin ykn aangoo ijibbaataatiin ilaalamuu danda'u. Akkaataa murtiin dhimmoota akkanaa itti barreeffamu rakkoo qabaachuu isaa obbo Naasir akka itti aanutti ibsu:

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<sup>169</sup>Ob. Dabalee Baqalaa faa (N-2) (Ol' iyyattoota) fi Warqituu Bayyanaa faa (N-2) ( D/ kennitoota), MMO Godina Arsii, Lak.Gal. 68312.

<sup>170</sup>Ob. Dabalee Baqqalaa faa (N-2) (Ol'iiyataa) fi Warqituu Bayyanaa faa (N-2) (D/Kennitoota), MMO God.Arsii, Lak.Gal. 68312.

*Qabatama amma jiruun, abbaan murtii tokko dhimmicha abbootii murtii biroof ni dhiyeessa; innumti dhiyeesse kun barreessa murtiis ni wixineessa. Namni dhiyeessee wixineessu kun ammoo firiwwan dubbii jajjaboo ta'an hambisuu ykn itti dabaluu danda'a. Rakkoon akkasii akka hin uumamneef tooftaan ittiin to'atan hin jiru. Waljala fuudhanii haalli itti ilaalan baay'ee kan baratame miti. Fakkeenyaaf, yeroo dhimmichi dhiyaatu yaadannoo qabachuun wixinee dhimmichaa ilaalaa adeemuun ykn ammoo wixinicha kooppii godhanii walitti laachuun hin baratamne; yoo baratames, iddoowwan muraasa qofatti dha. Kun ammoo qulqullina barreessa murtii irrati dhiibbaa badaa ni qabaata.<sup>171</sup>*

#### **4.2.4. Mallattoo Abbootii Seeraa Moggaafaman Hunda Qabaachuu Dhabuu**

Falmii Waajjira Misoomaa fi Manaajimantii Lafa Magaalaa Bishaan Gurraachaa fi Biyyaa Buttaa faa (N-11), MMWO, Dhaddacha Ijibbaataa, Lak. Gal.254851 irratti iyyattoonni iyyannoo gaafa 12/5/2009 barreessanii kakuudhaan waraqaa ajajaa raawwiif dirqamuu isaanii ibsu waliin dhiyeessanii beellama dura galmeen qoratamee ajajni dhorkaa raawwii akka kennamuuf gaafataniiru. Bu'uuruma kanaan ajajni raawwii dhorku kan kenname yoo ta'u, dhimmicha ilaaluuf abbootiin murtii dhaddacha irratti moggaafaman sadii ta'anis murtii irratti kan mallatteesse garuu, abbaa seeraa tokko qofa dha.

### **5. YAADOTA GUDUNFAA FI FURMAATAA**

#### **5.1. YAADOTA GUDUNFAA**

Barruun kun kenniinsii fi barreessi murtii dhimmoota hariiroo hawaasaa manneen murtii Oromiyaa aangoo sadarkaa duraa fi ol'iiyataan murtaa'an maal akka fakkaatu xiinxalee jira. Xiinxalli gaggeeffame kan agarsiisu kenninsa irrattis ta'e, barreessa murtii irratti rakkoowwan adda addaa qabiyyee (content) fi bifaan (form) calaqqisuu danda'an kan jiran ta'uu dha. Rakkoowwan kunniin sadarkaa manneen murtii hundatti kan calaqqisani dha. Kan maddanis sababoota adda addaa irraati: qaawwa seeraa, hanqina

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<sup>171</sup> Ob. Naasir Faaris, A/Murtii, MMWO, 27/6/2009.

hubannoo, hanqina naamusaa, xiyyeeffannoo kennuu dhabuu, baay'achuu dhimmootaa, deeggersi abbootii hirtaa (stakeholders) kanneen akka abukaattota dhuunfaa fi barreessitoota dhimma seeraa laafaa ta'uu, fi kkf warreen ijoo ta'ani dha. Seerotni kenniinsaa fi barreessa murtii dhimmoota hariiroo hawaasaa manneen murtii Oromiyaa hoogganan seera adeemsa falmii hariiroo hawaasaa keessatti faffaca'anii argamu. Keessattuu, seerotni kenninsa murtii seerota adeemsaa kana keessa asii fi achi faffaca'anii jiru malee toora galanii salphaatti akkaataa hubachuun dandaa'amuun qindaa'anii hin jiran. Seerota akka kanatti fayyadamuun ammoo gahumsa dhuunfaa namootni qaban irratti waan hundaa'uuf salphaa miti. Kanarraa ka'amee yoo ilaalamu, maddi rakkoowwan olitti tarreeffaman kanaa, hundaa ol, murtii qulqullina qabu kennuu fi barreessuuf seera gahumsa qabu dhabuu dha jedhanii gudunfuun ni danda'ama.

## 5.2. YAADOTA FURMAATAA

1) **SDFHH Fooyyeessuu:** Heera Mootummaa RDFI kwt.52 (1) bu'uura godhachuudhaan Caffeen Mootummaan Naannoo Oromiyaa SDFHH fooyyeessuu qaba. Seerri adeemsaa fooyyaa'u kun:

- a) Dhimmoota kenniinsa murtii keessatti murtii argachuun barreessa murtii keessattis dirqama ibsamuun irra jiraatu (fakkeenyaaf jalmurtii mormii sadarkaa duraa irratti kenname) adda adda baasee osoo agarsiisee;
- b) Qabiyyeen kenninsaa fi barreessa murtii dhimmoota hariiroo hawaasaa aangoo sadarkaa duraan ilaalaman maal ta'uu akka qabu seera amma itti hojjetamaa jiru caalaa diddiriirsee agarsiisuu danda'uu qaba. Fakkeenyaaf, firiin dubbii, ijoon dubbii, jecha ragootaa fuudhamu, xiinxalli, seerummaan kenname (decree) bifa attamittiin ibsamuu akka qabu, qaphxiwwan seeraan ifatti hin teenye garuu ammoo qabatamaan itti hojjetamaa jiran kanneen akka guyyaa fi lakkoofsa galmee, maqaa gareewwan walfalmanii ibsuu fa'iif uwwisa osoo kennee;
- c) Qajeeltoowwan barreessa murtii jedhamanii ogbarruwwan adda addaan beekamtii argataniis osoo hammatee;
- d) Qabiyyeen kenninsaa fi barreessa murtii dhimmoota hariiroo hawaasaa aangoo ol'iyyannootiin ilaalaman maal ta'uu akka qabu

seera adeemsaa amma itti hojjetamaa jiru caalaa diddiriirsee agarsiisuu danda'uu qaba. Barreessa murtii ol'iyyataa ilaalchisee achii dhufa dhimmichaa agarsiisaa adeemuun akkaataa danda'amu fi murtiin jalaa sababa maaliif akka cime, fooyyaa'e, diigame, ykn gadi deebi'e bifa agarsiisuu danda'uun osoo qophaa'ee;

- e) Akkaataa murtiin abbootii seeraa sadii fi sanaa oliin kennamu itti wixineeffamu, gulaalamuu, fi mallattaa'u ifatti osoo hammatee fi
- f) Baay'ina fuula himannaa, deebii barreeffamaa, fi komii ol'iyannoo (komputaraan kan barraa'u yoo ta'ee gurguddinna qubee (font size) meeqaa, fi gosa sirna barreessa koompuuteraa (font style) kamiin ta'uu akka qabu) giddu galeessaan osoo daangesse gaarii ta'a.

**2) Hojii Hubannoo Uumuu:** Qaawwa sababa hanqina hubannootiin jiru duuchuuf SDFHH irratti hojiin hubannoo uumuu Abbootii Seeraa, qaamolee ragaa adda addaa kennanii, fi hawaasaa bal'aaf ni barbaachisa. ILQSONis SDFHH yeroo gahaa ta'e fudhatee ogeessa gahumsa qabu ramaduun yoo leenjise gaarii dha. Kun, keessattuu rakkoowwan kenninsaa fi barreessa murtii sadarkaa aanaatti bal'ina qabu kana dhiphisuuf gahee ol'aanaa taphachuu danda'a. Dabalataan, qaamoleen ragaa kennan, keessattuu kanneen akka waajjira lafaa fi eegumsa naannoo, dhaabbilee tajaajila fayyaa, bulchiinsota magaalaa, waajjiraalee galmeessa ragaalee, fi kkf kenniinsaa fi barreessa murtii gahumsa qabu dhugoomsuu keessatti gahee guddaa qabu. Kanaaf, manneen murtii akkaataa qaamoleen kun ragaa dhugaa kennuun haqa deeggeruu itti danda'an irratti yeroo yeroon mariisisuun gaarii dha.

Akkasumas, abbootiin dhimmaa harki caalaan hubannoo seeraa hin qaban. Kana irraan kan ka'e firii dubbii himannaa, deebii, fi komii ol'iyannoo keessatti dabalammu ykn irraa hir'ifamuu qabu adda osoo hin baasiin waanuma barreessitooni dhimma seeraa/abukaattoonni qopheessaniif qofa fudhatanii gara mana murtiitti dhufu. Dhaddacha irrattis falmiin taasisan madaalawaa yeroo hin taane qaba. Kanaaf, hubannoo seeraa hawaasaa irratti hojjechuuf qaamni seeraan aangeffame (Biiroo Haqaa Oromiyaa) akkuma jirutti ta'ee, manneen

murtii sadarkaa sadarkaan jiranis adeemsa falmii mana murtii ilaalchisee hojii hubannoo uumuu hojjechuu jalqaban cimsanii itti fufuun gaarii dha.

- 3) **Baay'ina Abbootii Murtii Dabalu:** Rakkooleen qabatamaan falmii afaanii, mormii sadarkaa duraa, ijoo dubbii, fi dhagahaa ragaatiin walqabatanii galmee keessatti mul'ataniif akka madda rakkootti kan ka'an keessaa tokko baay'inni hojii fi humni namaa jiru walgituu dhabuu dha. Kana irraan kan ka'e abbootiin seeraa galmeelee hundaaf yeroo gahaa itti kennanii qoratani falmiitti akka hin seenne kan isaan taasisaa jiru ta'u kan hubatame waan ta'eef, human namaa (abbootii seeraa) baay'ina hojii jiru waliin walgituu dabalu fi ramaduun murteessaa dha.
- 4) **Sirna Hordoffii, To'annoo, fi Itti gaafatamummaa Abbootii Murtii Mirkaneessuu:** Rakkoolee kenninsaa fi barreessa murtii manneen murtii Oromiyaaf dhimmoota sababa ta'an keessaa tokko dhimmootaaf xiyyeeffannoo barbaachisaa ta'e kennuun hojjechuu dhabuu dha. Kanaafis sababni hojiin hordoffii, to'annoo, fi itti gaafatamummaa mirkaneessuun laafaa ta'uu dha. Kanaaf, MMWO sirna odiitii murtii galmeen boodaa (post audit judgment) cimsuun itti gaafatamummaa mirkaneessuu danda'uu qaba.
- 5) **Murtiilee Qajeeltoo Barreessa Murtii Hordofuun Fakkeenyummaa Qaban Filachuun Maxxansuu fi Raabsuu:** Murtiilee sadarkaa manneen murtii hunda irratti qajeeltoo barreessa murtii eeguun barreeffamanii fi fakkeenyummaa qabu jedhaman (model judgements) sadarkaa manneen murtii hunda irraa sakatta'uun karaa MMWOtiin maxxansuun manneen murtii gara gadii jiran hubannoo akka irraa argataniif raabsuun barbaachisaa dha.
- 6) **Maqeeffamoota Barmaatiin Seera Irraa Maqan Gara Afuura Seerichaatti Fiduu fi Jechoota Afaan Oromoo Jechi Kennameefii Itti Hojjetamaa Hin Jirre Gara Afaan Oromootti Fiduu Yaaluu:** Maqeeffamoonni hafuura seeraa irraa maqan tokko tokko hojimaata ta'anii yommuu itti hojjetaman ni jira. Fakkeenyaaf, guyyaa falmii afaaniin walqabatee maqeeffamni barmaatiin kennameef hafuura



seerichaa irraa maqeera. Guyyaan kun seerichaan guyyaa dhagaha dhimmaa (ክስ መስማት) jedhamee kan moggaafamee fi hojimaataan ammoo ‘falmii afaanii’ jedhamuun isaa guyyaa kana walfalmitoonni guyyaa himannaa fi deebii barreeffamaan dhiyeeffatan irra deebiin afaaniin akka dhiyeeffatanitti hubachuun ni jira. Bu’uuraan garuu, guyyaan kun guyyaa manni murtii walfalmitoota itti qoratu waan ta’eef, guyyaa mana murtiiti. Kanaaf, jechi baratamaan falmii afaanii jedhu kun kallattiimaan seericha irraa yommuu hiikamu ‘guyyaa dhagaha dhimmaa’ ykn ‘guyyaa walfamitoonni itti qorataman’ osoo jedhamee itti hojjetamee gaarii dha. Qaamni seerummaa raawwatamus (decree) ‘lallaba’ jedhamuun osoo itti hojjetamee gaarii dha.

- 7) **Abukaattota Dhuunfaa fi Barreessitoota Dhimma Seeraa, Seeraan Hoogganuu:**Abukaattota dhuunfaa, fi barreessitoota dhimma seeraa himannaa fi deebii gahumsa qabu dhiyeessuun; akkasumas, falmii sirrii ta’e gaggeessuun murtii qulqullina qabu kennuu fi barreessuuf gaheen qaban salphaa miti. Kanaaf, qaamoleen haqaa hojii qaamoleen kunniin hojjetan hordofuu, fi to’achuu, fi itti gaafatamummaa mirkaneessuu qabu. Kana gochuuf Koree Sagantaa Fooyyaa’insa Sirna Haqaa akka carraatti fayyadamuun ni danda’ama. Yaadota fooyyaa’insaa Koree kanaan dhiyaatan ammoo Biiron Haqaa Oromiyaa bu’uura Labsii Kenninsa, Hayyamaa, fi Bulchiinsa Abukaattotaa fi Barreessitoota Dhimma Seeraa Naannoo Oromiyaa Lak.182/2005 fi Dambii Lak.177/2008 tti fayyadamuun raawwachiisuu qaba.
- 8) **Seerota Haaraa Bahan Qaamota Dhimmi Ilaallatuuf Dafanii Dhaqqabamaa Taasisuu:**Seeronni Caffee fi Mana Maree Bulchiinsa Mootummaa Naannoo Oromiyaan bahan qaamolee seerota kanniin hojiirra oolchan/hiikan kanneen akka manneen murtii akkaataa barbaadamuun hanga caasaa sadarkaa gadiitti dafanii dhaqqabaa hin jiran. Kanaaf, qaamni abbummaan seera baasuuf Heeraan aangeffame, Caffeen dhaqqabamummaa seerotaa irratti ammallee hojjechuun barbaachisaa dha.

## THE SHARE OF WOMEN DURING SUCCESSION UNDER STATE LAWS AND SHARIA LAW: COMPARATIVE STUDY

Mohammed Ibrahim\*

### ABSTRACT

*The Federal Democratic Republic of Ethiopian Constitution recognizes equality of gender and prohibits all forms of discrimination against women. Equality of share on inheritance is one of the mechanisms through which the equality of two genders is recognized under the Constitution. At the same time, the Constitution recognizes the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. However, Sharia Courts which are established pursuant to this recognition and apply substantive Sharia laws (succession laws) allow women to inherit half of men which is totally distinctive from equality clause recognized under the Constitution. Since legal pluralism that is recognized in this manner presupposes the acceptance of overlapping rule or potential difference between multiplicities of legal orders, according to the author, decisions rendered by Sharia courts (that apply Islamic succession law) should not be expected to meet standards of the Constitution as long as the procedural requirements to institute a case before Sharia courts (which require the consent of the litigating parties to be adjudicated in a Sharia court) are fulfilled. It is also better if the share given to women under Islamic succession law is considered from the perspectives of the reason that justifies it and not from the perspectives of constitutional order.*

**Key words:** *Sharia Law, State Law, Sharia Court, State Succession Law, Sharia Succession Law*

### 1. INTRODUCTION

The Federal Democratic Republic of Ethiopia's Constitution<sup>1</sup> (here in after cited as the FDRE Constitution) provides the framework for the independent

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validity of non-state or unofficial laws such as customary and religious laws in some fields of social activity.<sup>2</sup> It provides that: "*This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious and customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.*"<sup>3</sup> The same constitution also stipulates that: "*pursuant to sub-article 5 of Article 34 the House of Peoples' Representative and State Councils can establish or give official recognition to religious and customary courts. Religious and customary courts that had state recognition and functioned prior to the adoption of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution.*"<sup>4</sup>

It is based on this constitutional framework that Sharia Courts that deal with some personal disputes have been established. To date, Sharia Courts that apply Islamic law are the only religious courts that have been officially established both at the federal and state levels. Sharia Courts apply only Islamic law.

In Ethiopia, the jurisdiction of Sharia courts is drawn from the Constitution and Federal Courts of Sharia Consolidation Proclamation<sup>5</sup> that was promulgated pursuant to the above Articles of the FDRE Constitution. The FDRE Constitution does not directly determine the specific jurisdiction granted to Sharia courts, but rather recognizes the possibility of settlement of personal disputes by customary and religious systems. It does not define the personal matters amenable to the jurisdiction of such systems. However, the Constitution provides the general areas of competence (i.e., personal matters) and the condition attached (i.e., consent of parties) to the exercise of jurisdiction by Sharia courts. The specific types of cases falling within the competence of Sharia courts are defined under the Federal Courts of Sharia Consolidation Proclamation.<sup>6</sup>

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<sup>1</sup>Constitution of the Federal Democratic Republic of Ethiopia, Proc. No. 1/1995, *Federal Negarit Gazeta*, 1<sup>st</sup> Year No.1, Addis Ababa - 21<sup>st</sup> August, 1995.

<sup>2</sup>FDRE Constitution, Art.34.

<sup>3</sup>FDRE Constitution, Art.34 (5).

<sup>4</sup>FDRE Constitution, Art.78 (5).

<sup>5</sup>Federal Courts of Sharia Consolidation Proc. No.188/1999, *Negarit Gazeta*, 6<sup>th</sup> Year No. 10, Addis Ababa – 7<sup>th</sup> December, 1999.

<sup>6</sup>*Ibid.*

The proclamation provides that the court has the jurisdiction on *any question regarding Wakf, gift/Hiba/, succession of wills; provided that the endower or donor is a Muslim or the deceased was a Muslim at the time of his death.*<sup>7</sup> Following, the proclamation stipulates that *the courts shall have jurisdiction over the aforementioned matters only where, pursuant to the provisions of Article 34 sub-article (5) of the Constitution, the parties thereof have expressly consented to be adjudicated under Islamic law.*<sup>8</sup> According to this provision, Sharia courts can entertain issues related to succession by applying Islamic law provided that parties are interested to litigate their cases before these courts.

In Ethiopia, historically the settlement of personal and family matters has been based on each community's religions and customary norms. Personal and family affairs are intrinsically tied to the preservation of one's culture and identity. That is why the government moves to recognize the Sharia courts to adjudicate in this area. Adjudicating personal and family matters by religious and customary norms involves sensitivity and for this reason it is taken as an indicator to the right to be governed by one's own religious law and enjoyment to the freedom of religion. This is the case, especially in area where family and personal matters are entertained through religious and customary rules since the time immemorial. Hence, the establishment of Sharia courts in Ethiopia has enormous significance particularly in areas where Islam has a stronghold and the communities are religious or cultural. Its establishment is also very important in terms of the population size of Muslim community it serves throughout the country and the court congestion it reduces in regular court.

As it is known, state laws have recognized absolute equality of share on succession between men and women.<sup>9</sup> Contrary to this, women in Islamic law are allowed to inherit a half of the men's share most of the time. This makes many people in Ethiopia to think Sharia succession law as unjust to women. They believe that succession law of Sharia does not recognize

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<sup>7</sup> Federal Courts of Sharia Consolidation Proc. No.188/1999, Art. 4(1)(b).

<sup>8</sup> Federal Courts of Sharia Consolidation Proc. No.188/1999,Art.4(2).

<sup>9</sup> FDRE Constitution, Art.35(7) and Civil Code of the Empire of Ethiopia, Proc. No.165/1960, Arts. 836,837 and 842.

gender equality. This leads not only the followers of other religion but also the followers of this religion into confusion and results in disobedience among the followers. According to the author, that is why most of Ethiopian Muslims, specially the females may prefer to litigate through state regular court seeking absolute equality of share with men. For the author such kind of attitude towards Islamic law is without merit. It emanates from lack of knowledge on what legal pluralism presupposes and true sense of Islamic laws. In order to avoid such kind of attitude, the role of state, media, school of laws, and scholars are very vital.

This article comparatively tries to examine the share of women during succession under Islamic and state laws. The discussion is based only on the analysis of the relevant legal provisions related to the share of women during inheritance under Islamic and State laws with a view to draw a conclusion. It does not concern with actual problem that can be seen on the ground. Structurally, the article is divided into six parts. Following this introductory part, part two tries to discuss the equality of men and women in general under international and state laws. Part three tries to describe the share of women during inheritance both under Sharia and state laws. Part four describes about the concept of pluralism under the FDRE constitution. It also measures the constitutionality of women's share on succession under Islamic law in line with the principle enshrined under the FDRE constitution, that is, equality of women's share on succession. Part five tries to describe the reason why women are made to inherit half of men's share under Sharia law in conjunction with State laws. Finally, part six provides conclusions and recommendations.

## **2. EQUALITY OF MEN AND WOMEN UNDER INTERNATIONAL INSTRUMENTS AND NATIONAL LAWS**

The equality of men and women is an issue that was debatable for a long period of time. Now, internationally ratified treaties recognize absolute equality between men and women. Some of these treaties are International Covenant on Civil and Political Right, The International Covenant on Economic, Social and Cultural Right, The Convention of Elimination of All Forms of Discrimination against Women, and Convention of Right of Children's. Ethiopia is the signatory of these treaties. The treaties recognize

the equality of men and women in all matters and prohibit any form of discrimination between the two sex.<sup>10</sup>

For example, International Covenant on Elimination of All Form of Discrimination against Women (UN, CEDAW, 1979) defines discrimination which made against women based on sex as:

*“.....any discrimination, exclusion or restriction made on the bases of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on bases of equality of men and women, of human right and ....in economic, social, cultural, civil or any other field.”<sup>11</sup>*

International Convention on Civil and Political Rights (ICCPR, 1966) also defines discrimination against women based on sex as:

*“Any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all right and freedom.”<sup>12</sup>*

Equality that is conferred in this manner is based on the assertion that all human beings are born free and equal in dignity and right.<sup>13</sup> This again presupposes the right and responsibility of men and women as equal and same.

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<sup>10</sup>Anglophone Africa, Women of the World: Law and Policies Affecting their Reproductivities (1997), Pp.16-17.

<sup>11</sup>International Covenant on Elimination of All Forms of Discrimination against Women, Adopted by General Assembly (CEDAW), 16 December 1979, Art.1.

<sup>12</sup>International Convention on Civil and Political Rights (ICCPR,Commentary,1966), Art.26.

<sup>13</sup> Universal Declaration of Human Right (UDHR), (1948),Art.1.

According to the FDRE Constitution, all international agreements ratified by Ethiopia have the status of national law.<sup>14</sup> Furthermore, the Constitution obliges the interpretation of fundamental rights and freedoms stated under chapter three in a manner conforming to universal declaration of human right, international human right covenant and other relevant international instrument which Ethiopia has ratified.<sup>15</sup> For this reason, the equality of men and women without any discrimination based on sex is made fundamental right and freedom under chapter three of the FDRE Constitution.

The Constitution guarantees equality before the law and equal protection of the law. Accordingly, it states that all persons are equal before the law and are entitled without discrimination to equal protection of the law.<sup>16</sup> The provision stipulates that *“the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.”*<sup>17</sup> To ensure that other laws are compatible with the constitutional provisions on equality, some laws, including the 1960 Civil Code provisions on family law and the 1957 Penal Code were revised in 2000 and 2004 respectively.

Under the FDRE Constitution, one article is totally devoted to list the specific rights of women and titled as *‘Rights of Women’*.<sup>18</sup> This article reiterates the right to equality of men and women in the enjoyment of rights and the protection provided for by the Constitution.<sup>19</sup> The provision also states the equal rights of women and men in marriage, employment, and property ownership and administration.<sup>20</sup> Moreover, the provision prohibits laws, customs, practices that oppress or cause harm to women and it champions affirmative action for women to rectify the inequality between men and women in the political, social and economic realms.<sup>21</sup> Under its Art.91(1), the Constitution also promised to support the growth and

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<sup>14</sup> The FDRE Constitution, Art.9 (4).

<sup>15</sup> The FDRE Constitution, Art.13 (2).

<sup>16</sup> The FDRE Constitution, Art.25.

<sup>17</sup> The FDRE Constitution, Art.25.

<sup>18</sup> The FDRE Constitution, Art.35

<sup>19</sup> The FDRE Constitution, Art.35(1)

<sup>20</sup> The FDRE Constitution, Art.35.2 cum. 35.8

<sup>21</sup> The FDRE Constitution, Art.35 (3).

enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals, and the provisions of the Constitution. The Constitution thus provides a strong protection to the rights of women and forbids discrimination against them.

### 3. THE SHARE OF WOMEN DURING SUCCESSION UNDER STATE AND ISLAMIC LAWS

As per the above discussion, one of the mechanisms by which the equality of men and women is recognized is through the enjoyment of equal share during succession. As it is commonly known, in most of the customs in Ethiopia as it was elsewhere in the past, male children are favored to succeed their parents. As it is also commonly known, in some nationalities, female children are totally precluded from succeeding their parents. That is why the FDRE Constitution recognizes the property right of women and their equal enjoyment of inheritance with men during succession. It provides this fact as follows:

*“Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property”.*<sup>22</sup>

Since the Constitution is the cornerstone of all laws, in no ways men and women inherit unequal share in Ethiopia because of this constitutional provision. The idea under the constitution is further corroborated by proclamation no.165 of 1960 which reads as: *“Each of them shall receive an equal portion of the succession.”*<sup>23</sup> Hence, according to the Ethiopian succession law children or other descendants are number one candidates to succeed a person<sup>24</sup> and all children of the person who died have equal rights in the succession irrespective of their age, sex, etc. differences. Also, Ethiopian law of succession makes no distinction based on the status of a child whether such child is born in marriage, outside a wedlock marriage or

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<sup>22</sup> The FDRE Constitution, Art.35 (7).

<sup>23</sup> Civil Code of the Empire of Ethiopia, Proc. No.165/1960, Art.842 (2).

<sup>24</sup> Civil Code of the Empire of Ethiopia, Proc. No.165/1960, Art.842(1).



he/she is an adopted child. An adopted child, for all intents and purposes, is assimilated to a natural child. Therefore, the state law does not make any distinction among children of the deceased based on the fact that they are legitimate or otherwise.<sup>25</sup>

There is also other similar provision that ensures the equality of share between men and women during inheritance under Civil Code of 1960. It is provided as follow: “*The sex, age, and nationality of the heir shall not affect in any way the ascertainment of his rights to succession.*”<sup>26</sup> This is to mean that no distinctions are made on any ground such as sex, age, nationality, etc. to succeed the deceased among heirs and all inherit equal portion of share irrespective of their differences.

However, Islamic law has a different approach. Under Islamic law, women are not allowed to inherit equal to men. They are entitled to inherit half of men although this is not without exception. Sometimes, women in Islam are allowed to inherit equal or above men. Except in these circumstances, in principle, women in Islam are allowed to inherit only half of men. The three types of women who inherit equal, above, and half of men are categorized here in under, respectively.

The women who are entitled to inherit equal to men are uterine sisters and mothers of the deceased. In the presence of children, the mother and the father of the deceased each allowed to inherit one sixth (1/6) of the estate of the deceased.<sup>27</sup> Also, the female uterine sisters inherit equally with her uterine brothers.<sup>28</sup>

In a situation where the deceased is a female and she has died without leaving behind any children, sister and brother, the women are entitled to inherit more than men. But, the only surviving heirs (husband/and both parent) inherits half after payment of any debts and bequest. Then, the

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<sup>25</sup> Civil Code of the Empire of Ethiopia, Proc. No.165/1960,Art.836.

<sup>26</sup> Civil Code of the Empire of Ethiopia, Proc. No.165/1960,Art.837.

<sup>27</sup> The Holly Qur`an English Translation and Commentary, Abulqasim Publishing House, Chapter 4, verses 12.

<sup>28</sup> Hammudah AbdalAti, The Family Structure in Islam (1977), P.267.

mother is given 1/3 of the estate, but the father inherits 1/6. Here, the mother is inheriting double of the father.<sup>29</sup>

Except in the above situations, the remaining all types of women in Islam are permitted to inherit only half of men's share. Here are the instances of the case:<sup>30</sup>

- The daughter inherits half of what the son/her brother inherits;
- The wife inherits 1/8 of her husband property if he died while the husband inherit 1/4 his wife property if she died( this is in a situation where they are survived by a children);
- The wife inherits 1/4 of her husband property if he died while the husband inherits 1/2 of his wife property if she died (this is in a situation where they have not survived by a children);
- If the deceased is not survived by any children and parents, the sister of the deceased inherits half of what the brothers of the deceased inherit.

In pre-Islamic Arab society, women were not allowed to inherit. It was discriminatory system that confined only to patrilineal line (hereditary from male to male).<sup>31</sup> Such kinds of inheritance that follow the paternal line only were true to all ancient civilized state.<sup>32</sup> It was after the coming of Islam that women are allowed to inherit in Muslim Community.

The first verse of Qur'an that recognize the right to inherit for women reads as, *"There is share for men and share for women from what is left by parents and those nearest related, whether (the property be) small or large- a legal*

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<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup>In pre-Islam Arab society, women were not entitled to inherit from their parents, husbands, or other relatives because they believe that inheritance should only be granted to those who could ride a horse, fight, gain war booties and help, protect the tribe and territory (See Abdul Rahman Alsheha, *Women in the Shade of Islam* (3rd ed., 2000), P.17.

<sup>32</sup>For example, Women's in ancient civilized Hindu had no financial nor civil right and were oppressed and humiliated through their lives. They were never allowed to inherit a property in a ways. Women under ancient civilized Rome suffer the same thing. They suffered oppression and rejection in all aspects of social, civil, political, financial life. They were deprived the right of inheritance. *Id.*P.23

*share*.”<sup>33</sup> This verse of the Qur’an recognizes the right of inheritance for the women. No one can deprive this right from them. Since the Qur’an is the cornerstone of all laws under Islamic law, in no ways women are deprived the right of inheritance whether the amount of share is small or large. Under Islamic law, the first degree heir that is called to succession at one time is twelve.<sup>34</sup> Out of these primary heirs, the female inheritors are eight in numbers. Except in a situation that is mentioned here in above, most of them inherit half of men. In the above verse of Qur’an, the sex and age of the heir shall not affect in any way the ascertainment of his/her rights to succession. This is to mean that no distinctions are made on any ground such as sex and age to succeed the deceased among heirs even if there is variation on the amount to be inherited.

Islamic law of succession also makes distinction based on the status of a child. Under Islamic law, no legal paternity exists between a father and his illegitimate child, and illegitimacy precludes the existence of any legal bond between the blood relatives of the father on the one hand, and illegitimate child and its issue on the other<sup>35</sup>. Hence, since there is no legal tie between a father and his illegitimate child, or between their respective ‘legal’ relatives, the root cause of inheritance does not exist.<sup>36</sup>

#### **4. FDRE CONSTITUTIONAL MATTER, LEGAL PLURALISM, AND WOMEN INHERITANCE UNDER ISLAMIC LAW**

Legal pluralism is the incorporation or recognition of customary law norms or institutions within state law, or the independent coexistence of indigenous norms and institutions alongside state law.<sup>37</sup> It is based on this idea that the FDRE Constitution provides the framework for laws such as customary and religious laws in some fields of social activity. It provides that:

*This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance*

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<sup>33</sup>The Holly Qur`an, *supra* note 27, Chapter 4, verse 7.

<sup>34</sup>Dr.A. Hussein, Islamic Law of Succession (2005),P.63.

<sup>35</sup>Prof.N.j.coulson, Succession in Muslim Family (1997),P.22.

<sup>36</sup>*Id*,p.172.

<sup>37</sup> Brian Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, Sydney Law Review (2007), Vol. 30,P.390.

*with religious and customary law, with the consent of the parties to the dispute. Particulars shall be determined by law*<sup>38</sup>.

It also stipulates that:

*Pursuant to sub-article 5 of Article 34, the House of Peoples' Representatives and State Councils can establish or give official recognition to religious and customary courts that had state recognition and functioned prior to the adoption of the constitution shall be organized on the basis of recognition accorded to them by this constitution.*<sup>39</sup>

In order to execute this constitutional provisions dealing with legal pluralism, the House of Peoples' Representatives has issued the Federal Courts of Sharia Consolidation Proclamation.<sup>40</sup> Article 4(1) of this Proclamation stipulates that:

*Federal Courts of Sharia shall have common jurisdiction over the following matters:*

- a) any question regarding marriage, divorce, maintenance, guardianship of minors and family relationships; provided that the marriage to which the question relates was concluded or the parties have consented to be adjudicated in accordance with Islamic law;*
- b) any question regarding Wakf, gift/Hiba/, succession of wills, provided that the endower or donor is a Muslim or the deceased was a Muslim at the time of his death;*
- c) any question regarding payment of costs incurred in any suit relating to the aforementioned matters.*

Sub-article 2 of the same proclamation reiterates the principle of parties consent as the basis for the adjudicatory similar to the provision of article 34(5) of the FDRE Constitution. From this, we can understand that Sharia

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<sup>38</sup>FDRE Constitution, Art. 34 (5).

<sup>39</sup>FDRE Constitution, Art. 78 (5).

<sup>40</sup>Federal Courts of Sharia Consolidation Proc. No.188 /1999, *supra* note 5.

Courts can assume jurisdiction only where the parties have expressly consented to be adjudicated under Islamic law. As it is understood from article 4(1) (a) and (2) of the same proclamation, Sharia Courts have a jurisdiction in two ways. Namely, when the marriage is concluded according to Islamic law, and when the parties have expressly consented to be adjudicated under Islamic law. The FDRE Constitution and the Sharia Court Consolidation Proclamation attached, to the exercise of the jurisdiction, the demonstration of express consent by the parties as a condition. In this regard, the same proclamation provides under art. 5(1) & (2) how consent of the parties is expressly demonstrated.

Accordingly, parties who file a case as a plaintiff can be presumed to have shown his/her consent to the jurisdiction of the court. As to the establishment of defendant's consent, the proclamation provides that along with the notice to be served on the defendant, a form shall be attached in which the defendant declares that he/she expressly consents to the hearing of the case by Sharia Courts. It is also possible that the defendant may not fill in the declaration but appear during the opening of the hearing of a suit and raise his/her preliminary objection orally against the exercise of jurisdiction by a Sharia Court. Tacit consent is also recognized under this article as instance that shows the expression of party's consents. It is a situation where the parties that are duly summoned failed to appear. In such situation, the Sharia Court proceeds to hear a case, *ex parte*.

Once the declaration of consents are shown by parties to the adjudication of court, under no circumstance a case brought before a court of Sharia be transferred to a regular court; nor a case before a regular court be transferred to a Court of Sharia as it is mentioned under sub- article 4 of the same Article. Hence, according to the author, it is the waiver of the right of party (to be adjudicated by regular court) who consent to the jurisdiction of Sharia Court.

Legal pluralism makes it inevitable that there are multiplicities of legal orders where there are interactions and overlapping between the multiple

systems.<sup>41</sup> Thus, legal pluralism opens room for the potential difference between customary and religious laws and state laws. A case in point relates to matters that are to be resolved by Islamic law, which has normative and conceptual differences with state laws regarding the rights of women during inheritance.

Sharia courts apply substantive sharia law (succession law) that follows different approaches from state laws regarding issues related with women succession. Under Islamic law of succession, women are allowed to inherit half of men, and this is totally different from the FDRE Constitution and internationally ratified treaties standard that provide absolute equality of share for men and women.<sup>42</sup> This difference raises a question that needs an answer. How can this be reconciled with the issue of supremacy clause under article 9 of the FDRE Constitution? This article states that the Constitution is the supreme law of the land. It also states that “any law, customary practice, and act of an agency of government or official act that contravenes the Constitution is invalid”. In this article, the phrase “any law” is used to cover all laws, which are now in force both at the federal and regional levels. Islamic law that is applied in Sharia Court becomes one aspect of state law because of the recognition it is endowed with by the Constitution. This factor makes it to fall under the phrase “any law” that covers all laws, which are now in force including Islamic law in Sharia Court.

The answer to the above question can be answered in two ways. The first one is - based on pro-supremacy clause of the Constitution and human rights treaties ratified by the country. The support for this line of answer is found in the provisions of the Constitution itself. The Constitution contains a supremacy clause that provides that any law, decision of state organ or official and customary practices that are contrary to the spirit of the Constitution shall be of no effect.<sup>43</sup> Hence, if decisions of Islamic Succession laws are in contradiction with constitutional provisions, they shall be of no

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<sup>41</sup>Elias N. Stebek and Muradu Abdo, Law and Development, and Legal Pluralism in Ethiopia ( Justice and Legal System Research Institute, Addis Ababa, 2013),P.145.

<sup>42</sup>For example, Art. 35(7) of the FDRE Constitution stipulates: “*Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.*”

<sup>43</sup>FDRE Constitution, Art.9 (1).

effect. This means that any decision by Islamic succession law through application of this law by Sharia court should be compatible with the supremacy clause of the Constitution and other provisions of the Constitution relating to fundamental rights, including the rights of women during succession.<sup>44</sup>

The second one is –based on the assertion that the decisions of Sharia Courts should rather be treated as an exception to the supremacy clause and treaties ratified by the country. The Constitution recognizes the settlement of disputes related to personal matters by customary and religious bodies so long as parties refer a matter to such institution through their own consent. This implies that the Constitution acknowledges the difference between state law and customary and religious laws; and also tolerates their decision in matters affecting personal status of individuals. This is to mean recognition for the application of customary and religious law in area of personal matter when the parties are voluntarily consented to such organ under the principle of legal pluralism presupposes the willingness to admit decision in conflict with the constitutional standard that is rendered by such institutions. Hence, it can be argued that the supremacy clause of the Constitution does not apply to decisions of Islamic Succession Law that is applied by Sharia courts even if the substantive decisions made by this law are in conflict with the standard under the Constitution.<sup>45</sup>

The author prefers the second line of argument, because subjecting the decision of Islamic Succession Law to the supremacy clause of the Constitution goes against the very essence of legal pluralism acknowledged by the Constitution itself provided that parties to a dispute voluntarily consent to take their case to a Sharia Court. This is to mean the first line of argument may, in the final analysis, bring about denial of recognition to religious and customary laws that contradicts with the Constitution, which is against the principle of legal pluralism. At the end of the day, it may bring about the substitution of religious and customary laws by the state laws.

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<sup>44</sup> Mohammed Abdo, *Legal Pluralism, Sharia Courts, and Constitutional Issues in Ethiopia*, Mizan Law Review (2011), Vol. 5, No.1,P.94.

<sup>45</sup>*Ibid.*

## **5. THE REASON WHY WOMEN INHERIT HALF OF MEN'S SHARE UNDER ISLAMIC LAW**

Regarding the question why men are getting double share of women, there are many reasons or justifications that are provided by Muslim scholars. This section deals with some of these reasons.

### **5.1. FINANCIAL RESPONSIBILITY/BURDEN BORN BY MEN**

In Islam, it is the husband who marries the women and undertakes to maintain her and their children; he bears the responsibility of the whole structure of the family.<sup>46</sup> It is also his duty to contribute financially to all good causes in his society.<sup>47</sup> All financial burdens are born by him alone.<sup>48</sup>

The reason why a man is made responsible for his household is due to financial and moral responsibility of the household which requires a strong personality, precision, and decisiveness in decision-making. For this reason, the responsibility of managing, directing, and running the household affair is imposed on men, not on women. This is for the fact that physical and mental makeup of men qualifies them to take charge of this responsibility.<sup>49</sup> This responsibility does not show supremacy or preference of the husband in any way, rather it is the imposition of duty or obligation that results from his physical strength and sturdy. In other words, women are free from carrying household financial responsibility. In Islam, they are not legally required to provide for any person, including themselves. If they have no independent resource, they are fully maintained by their able male relatives. Even the wealthy wife is maintained by the husband, the needy sister by her brother, the mother by the son, and the daughter by the father.<sup>50</sup>

The reason why women are exempted from carrying household financial responsibility is due to their inability to carryout such responsibility in the same manner with men. However, this does not mean that women are unable

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<sup>46</sup>Sayyid Qutb, *Social Justice in Islam* (2000),P.73.

<sup>47</sup>Hammudah Abdal Ati, *Islam in Focus*, P.188.

<sup>48</sup> *Ibid.*

<sup>49</sup> Abdul Rahman Alsheha, *supra* note 31,P.85.

<sup>50</sup>Hammudah Abdal Ati, *supra* note 28,P.184.



to carryout every duty as a whole. Due to many things that happen to them physically and take place in their life such as bearing children, delivery, nursing, child care and custody, etc, they are not qualified as men to take charge of this responsibility.<sup>51</sup> For example, during pregnancy, they are more fatigue and a slight effort will negatively affect them; they are more concerned with the fetus than themselves; they worry about their delivery whether it is going to be normal or not; and they concern much with the welfare of the child whether it will be normal, healthy or otherwise.<sup>52</sup> Women require confinement period for rest after delivery for a period that varies from women to women. All these facts affect the mentality of women, and are reflected in their life, attitude, and behavior which make them unqualified to hold financial responsibility. Moreover, the muscles of men are naturally more powerful than women. This fact enables them to perform tedious, tiring, laborious, and manual jobs than women. Thus, they are naturally equipped to take financial responsibility of their household.<sup>53</sup>

Unlike Islamic law, state laws oblige women to contribute to the household expenses in proportion to their earning.<sup>54</sup> As it can be inferred from this provision, women under state laws are expected to bear similar responsibility with men. That is why they are entitled to inherit equal to men when the issue of succession arises.

Indeed, when women get less than a man does, she is not actually deprived of anything that she has worked for. It is something coming to her from another source as additional or extra. It is something that neither a man nor a woman struggled for. It is a sort of aid, and any aid has to be distributed according to the urgent needs and responsibility they have.<sup>55</sup> As it is mentioned here in above, women under Islam are not bound to contribute to their household expense including any expense on themselves since it is covered by men relatives. Thus, according to the author, from the legal point of view, it would have been injustice if a woman who has not bound to

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<sup>51</sup> *Id*, P.86.

<sup>52</sup> አቡልአሽላክአልመውዱዲ , አልሂጃብ, P.142.

<sup>53</sup> Abdul Rahman Alsheha, *supra* note 31, P.87.

<sup>54</sup> Revised Family Code of Ethiopia, Proc. No.213/ 2000, Art.72 stipulates that “the spouses shall contribute to the household expenses in proportion to their respective means.”

<sup>55</sup> Hammudah AbdalAti, *supra* note 28.

contribute anything in the way of earning toward the family got an equal share with men.

## **5.2. NON-EXISTENCE OF COMMUNALITY OF PROPERTY BETWEEN HUSBAND AND WIFE**

In Islam, whatever property a woman acquired and produced or generated before, during, and after marriage remains her own private property. She has no obligation to spend on her family, including on herself since all her needs is covered by her husband. If she divorced, she has the right to retake back all what she has already acquired or possessed as personal property with all income she has generated from this personal property together with the alimony she has entitled from her ex-husband.<sup>56</sup> In contrast to this, women under state law are not allowed to retake back all of income she has generated by her personal effort and from her personal property after marriage for it is considered as common property of the two.<sup>57</sup>

Indeed in Islam, women are given the right to work and be employed. She has permitted to directly conduct her business contact and financial transaction. She has the right to keep this wealth and spend as she wants. She is also not obliged to expend from this wealth even on herself to satisfy some of her need since it is covered by her able male relatives as it is said earlier.<sup>58</sup> She is not forbidden from seeking employment and there is no ban on benefiting from women talent in any field. Whatever she earns from employment becomes her independent income that no one has a share from it<sup>59</sup>. Unlike Islamic, under state laws, the income women's earn/generated from employment or personal effort after marriage is considered as common property of the two, and it is not her independent income.<sup>60</sup>

Furthermore, in spite of non-existence of communal property between husband and wife, the women in Islam are allowed to dispose their husband

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<sup>56</sup> World Assembly of Muslim Youth, Women and Family life in Islam, (Jeddah,1998),P.32.

<sup>57</sup>Revised Family Code of Ethiopia, Proc. No. 213/2000, Art.62. Sub-article one of this provision states that "All income derived by personal efforts of the spouses and from their common or personal property shall be common property."

<sup>58</sup>Abdul RahmanAlsheha, *supra* note 31,P.96.

<sup>59</sup> World Assembly of Muslim Youth, *supra* note 56,P.31.

<sup>60</sup> Revised Family Code of Ethiopia, Proc. No. 213/ 2000,Art.62 (1).

property without his permission and knowledge during the life time of their marriage.<sup>61</sup> However, this is not possible under state law since they are not allowed to dispose without the consent of their husband even their common property. Under state law, the women are allowed to dispose freely only their personal property.<sup>62</sup>

### 5.3. THE LEGAL LIABILITY/OBLIGATION MEN DO CARRY

Under Islam, women are made free from paying any financial penalties/compensation for the wrong they have committed for it is the obligation of their male relative to pay on their behalf.<sup>63</sup> However, under state laws, everybody is obliged to make good the wrong he/she has committed by himself/herself except where he/she is a minor, an insane, etc. in which case the able relatives are liable on his/her behalf.<sup>64</sup> From this, we can understand that women under state laws are obliged to make good the wrong they have committed by their own unless they are exempted like under vicarious liability.<sup>65</sup>

According to state laws, if any of the spouses committed a wrong, the compensation is paid out of personal property of such spouses. It is only recovered from common property in the absence of such personal property. This means, in the absence of common property, s/he alone is obliged to pay the said compensation. Also, in case of an unmarried daughter, her family is obliged to pay in her behalf as long as she does not reach the age of majority

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<sup>61</sup> Fatima Umar Nasef, Women in Islam (1999), P.173.

<sup>62</sup> Revised Family Code of Ethiopia, Arts.59 and 68. *Under article 59, it is stipulated as- (1) Each spouse shall administer his respective personal property and receive the income thereof. (2) Each spouse may freely dispose of his personal property. Under article 68, it is stipulated as- unless provided otherwise by other laws, the agreement of both spouses shall be required to; (a) sale, exchange, rent out, pledge, or mortgage or alienate in any other way a common immovable property to confer a right to third parties on such property; (b) sale, exchange, pledge or mortgage, or alienate in any other way, a common movable property or securities registered in the name of both spouses: the value of which exceeds five hundred Ethiopian birr. (c) transfer by donation of a common property the value of which exceeds one hundred Ethiopian birr, or money which exceeds such amount; (d) borrow or lend money exceeding five hundred Ethiopian birr or to stand surety for a debt of such amount to another person.*

<sup>63</sup> Fatima Umar Nasef, *supra* note 61, P.180.

<sup>64</sup> Civil Code of the Empire of Ethiopia, Proc. No.165/1960, Arts. 2124 and 2125.

<sup>65</sup> Civil Code of the Empire of Ethiopia, Proc. No.165/1960, Arts. 2124-2132.

(i.e.18 years). However, under Islamic law, unmarried woman male relatives are obliged to pay on her behalf until she married irrespective of whether she has reached the age of majority.

Another point is, as we have said, women and men are treated differently under Islam. The father if he existed or any other male relatives of women is responsible for her maintenance and any other need until her marriage. This is to mean that her male relatives are responsible to her until she gets married, and if she does not get married until she died whether or not she reached the age of majority.<sup>66</sup> However, under state law, any one- either the parent, or tutor/guardian who entrusted to the proper care of the children are responsible for them only until they have reached the age of majority. On their attainment of this age, they have no legal obligation rather than moral obligation.<sup>67</sup>

#### **5.4. PECUNIARY SUPPLY MADE BY MEN DURING THE MARRIAGE**

A woman under Islam is given dowry by her husband during her marriage. It is made a condition for a marriage contract to be valid. Dowry is exclusive right of women. It is a legal financial right that nobody can violate.<sup>68</sup> This dowry continues to be her personal property after marriage. Under state law, we cannot find the idea of dowry which can be given to women by husband as a condition for the validity of marriage.

#### **5.5. THE FAVOUR MADE TO WOMEN DURING SUCCESSION ON THE NUMBER OF HEIR CALLED TO SUCCESSION**

Under state law, up on the death of the deceased, the first degree relatives of the deceased who are called to succession are his/her children. It is only on the non-existence of his/her children that the next degree relatives are called to succession. What we understand from this rule is that women that can be called to succession of the deceased on the *first degree are only his*

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<sup>66</sup>Abdul Rahman Alsheha, *supra* note 31,P.85.

<sup>67</sup> Revised Family Code of Ethiopia, Proc. No. 213/ 2000,Arts. 241 and 310.

<sup>68</sup> Fatima Umar Nasef, *supra* note 61,P.176.

*daughters irrespective of their number.*<sup>69</sup> However, under Islam, there are *first twelve degree* heirs that are called to succession at one time. This is due to the wider distribution of property in smaller share or for the purpose of breaking up concentration of wealth among a few hands thereby ensuring the socio-economic welfare of a society at large. Out of these twelve primary heirs, the female inheritors are *eight* in number.<sup>70</sup> Here one may guess the situation in which the total amount of share inherited by these women becomes proportional with total amount inherited by the remaining men jointly even if it differs at individual level.

Another point is, remember what has been said in connection with a husband and a wife inheriting each other under Islam. The author has said that the wife inherits one eighth (1/8) of her husband property if he died while the husband inherit half of his wife property if she died (this is in a situation where they have survived by a children) and also we have said that the wife inherit one fourth (1/4) of her husband property if he died while the husband inherit half of his wife property if she died (this is in a situation where they have not survived by the children). In addition to the reason we have mentioned above, the full implication of this idea must be seen in light of the fact that the husband and wife hold their properties and possession independently of each other. This is to mean that there is no mandatory communality of property between husband and wife in Islam as we have mentioned above.

Thus, it is an interestingly verifiable proportion that the Muslim husband usually owns more than his wife and therefore he is likely to leave more behind than she should. For example, if he survives her, which is less likely from a demographic standpoints, his arithmetically larger share of inheritance – the one half of her independently held and owned property – may in fact be equal to or even less than her arithmetically smaller share, the one-fourth of his independently held and owned property<sup>71</sup>. This is assuming that there are no children involved; otherwise, his one-half becomes one-fourth and her one fourth an eighth.<sup>72</sup> Yet the value of a larger share of a

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<sup>69</sup> Civil Code of the Empire of Ethiopia, Proc. No.165/1960, Art.842 (1).

<sup>70</sup> Abdul Rahman Alsheha, *supra* note 31, P.25.

<sup>71</sup> Hammudah Abdal Ati, *supra* note 28, P.268.

<sup>72</sup> *Ibid.*

small estate may be equal to or perhaps even less than the value of a small share of a large estate. Here the end result would seem while the two shares are arithmetically different, they are not necessarily unequal in the final result.<sup>73</sup>

In general, based on the above reasons, demanding a fair, just, or equal share between Muslim men and women who do not carry equal financial obligation or responsibility becomes unfair and unjust demand as to the author.

If the women share in inheritance and her financial responsibility is juxtaposed, one can realize that Islamic law is more favorable to women than men since it allows women to inherit without imposing any financial obligation to spend for anything even for themselves. In short, the financial status of women, if maintenance right, inheritance right and right of marital gift are added together, the Muslim women are far in a better position than men. Here, one may say putting the women on a better position than men contradict with the principle of equality /fairness by itself. However, this has its own reason and justification that the author reserves it to be discussed under independent work.

As opposed to Islamic law, men and women are equally responsible under state law to contribute to their household expense in proportion to their earning. They are also equally obliged to carry inside home and outside home responsibility to serve their family even though the inside home responsibility is left to the women in reality.<sup>74</sup> This dual responsibility at inside home and outside home is the misuse of women in Ethiopia. This is strenuous and irksome for women to work both at inside home and outside home while men are working only at the outside home but carrying equal responsibility of household with women. This is far different from women under Islam who relieved free from the outside home responsibility/activity (this is not to mean that they are prohibited from working outside home, and whatever they work in outside home, it is their personal) at the same time

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<sup>73</sup> *Ibid.*

<sup>74</sup> Revised Family Code of Ethiopia, Proc. No. 213/ 2000, Arts.72 and 50.

taking her obligatory share without carrying any household financial responsibility.

## 6. CONCLUSIONS AND RECOMMENDATIONS

Now, internationally ratified treaties recognized absolute equality between men and women. Similarly, the state laws also recognize absolute equality between men and women. As per these laws, one of the mechanisms by which the equality of men and women are recognized is through the enjoyment of equal share during succession. Different internationally ratified treaty and state laws are clearly and expressly recognized absolute equality of share between men and women.

However, Islamic law has a different approach towards the share of women during succession. Under Islamic law, women have no equal share with men in principle although this is not without exceptions. Hence, according to the author, it is better if the share given to women under Islamic Succession Law is considered from the perspectives of the reason that justifies it and legal pluralism that accommodates overlapping laws (as recognized by the FDRE Constitution), but not from the perspective of share of women under state laws. Also, decisions rendered by Sharia Courts (that apply Islamic Succession Law) should not be expected to meet absolute equality standard state laws as long as parties are voluntarily consented to be adjudicated by Sharia Court.

The negative attitude against Sharia succession law can be addressed by raising the awareness of people, especially women's. In this regard, the state is required to encourage and facilitate forum for discussion and awareness creation. Also, different Medias either governmental or private one can play vital roles. Furthermore, it is better if the government makes Islamic law related with personal matter to be delivered in the universities as separate and independent course in addition to Sharia law/course that is rendered in a general way. Because, this may help law students to raise and discuss the existing controversies in the area thereby increasing awareness and understanding on Islamic law in general and its succession law in particular. Even this may help law graduates to become a judge in Sharia Courts as one of the institution that endowed with judicial power.

## LAND GOVERNANCE IN ETHIOPIA: TOWARDS EVALUATING GLOBAL TRENDS

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### ABSTRACT

*Land is a vital resource and a driver of economic growth and development. The way it is governed and administered therefore has a significant impact on a certain country's future. Land and the institutions that govern its ownership and use greatly affect economic growth and contributes in poverty reduction. Lack of access to land and inefficient or corrupt systems of land administration have a negative impact on a country's investment, climate and general wellbeing of the society. Well-functioning land institutions, land markets and easy access to credit facilities for entrepreneurs contribute for development.*

*Land governance must help to eradicate poverty, not contribute to it. Hence, Ethiopia needs to have a land governance policy that fosters transfer of land rights, fosters respect for human rights, and rescues the environment from imminent peril in line with the principles of sustainable development. Hence, this article contributes knowledge towards responsible land governance and evaluated the Ethiopian lands regime in line with the accepted norms of land governance. Thus, the method of analysis is doctrinal legal research.*

**Key Words:** *Land, Land Governance, MDG, Sustainability, Poverty.*

### Abbreviations

**AA**-Action Aid

**EU**-European Union

**FAO**-Food and Agriculture Organization of the United Nations

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**FDI** -Foreign Direct Investment

**GDP**- Gross Domestic Product

**IIED**-International Institute for Environment and Development

**IFAD**-International Fund for Agricultural Development

**ILC**-International Land Coalition

**IMF**-International Monetary Fund

**MDGs**-Millennium Development Goals

**NGOs** -Non-Governmental Organizations

**OECD**-Organization for Economic Co-operation and Development

**UN**-United Nations

**VGs** -Voluntary Guidelines on Tenure of Land, Forests and Fisheries

**WB** -World Bank

## **1. INTRODUCTION TO LAND GOVERNANCE AND DEVELOPMENT**

### **1.1. BACKGROUND OVERVIEW**

Land is a vital resource and a driver of economic growth and development.<sup>1</sup> Land is one of the greatest resources in most countries. People require land and related resources such as forests and water for the production of food and to sustain basic livelihoods. Land provides a place for housing and cities, and is a basic factor of production as well as a basis for social, cultural and religious values and practices. Access to land and other natural resources and the associated security of tenure have significant implications for development and security. Nonetheless, the land rights of the poor and vulnerable are increasingly affected by climate change, violent conflicts and natural disasters, population growth and urbanization, and demands for new energy sources such as bio-fuels.<sup>2</sup>

While some progress has been made in improving secure access to land and other natural resources for the rural and urban poor, a number of longstanding challenges remain. Although ancestral rights to land and other

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<sup>1</sup>Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation*, 1981.

<sup>2</sup> David Palmer et.al, *Towards Improved Land Governance*, 2009.

natural resources are a cornerstone of the livelihoods of indigenous people, the legal recognition and safeguarding of such rights has been uneven.

The paper argues that the quality of land governance is an important determinant of the number and scale of tenure-related problems. The quality of land governance, moreover, will also affect the outcome of reforms designed to address these same problems. Weak land governance has adverse consequences for society. It is found in formal statutory land governance as well as in informal and customary tenure arrangements. The poor are particularly vulnerable to the effects of weak governance as they lack the ability to protect their rights to land and other natural resources. In many cities, the poor live under the fear of forced evictions, or more commonly today, development based eviction.<sup>3</sup>

Weak governance promotes gender inequality as poor women tend to be less able to secure their rights. It fosters social inequality with potentially destabilizing consequences as the rich are able to benefit from opportunities to acquire land and the poor lose their rights to land and common property resources such as grazing lands and forests, jeopardizing community land rights. In addition, weak governance leads to environmental degradation as corrupt public officials and private interests collude to ignore controls on land use, the extraction of water and minerals, and the clearing of forests. The degradation of state land, including national parks, and its illegal appropriation are direct results of weak governance. The evasion of property taxes reduces municipal revenues that could be used to extend infrastructure and provide basic services. The arbitrary application of the rule of law discourages investment and constrains economic development. Weak governance in land tenure tends to flourish where the law is complex, inconsistent or obsolete, where people who work in land agencies lack motivation and are poorly trained and paid, or where decision-making processes are opaque and civil society is weak. Left unaddressed, land-related grievances can degenerate into violence and conflict.

In contrast, good governance of tenure can ensure that rights in land and natural resource are recognized and protected. By doing so, it helps to reduce hunger and poverty, promotes social and economic development and

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<sup>3</sup> *Ibid.*

contributes to more sustainable urbanization.<sup>4</sup> Good governance can contribute to the achievement of a variety of development objectives, including the achievement of the Millennium Development Goals (MDGs), the goals are also aligned to the SDGs.

With respect to MDG1 (Eradicating extreme poverty and hunger) secure access to land and other natural resources is a direct factor in the alleviation of hunger and poverty. Rural landlessness is often the best predictor of hunger and poverty: the poor are usually landless or land-poor. Improved access to land may allow a family to produce food for household consumption, and to increase household income by producing commodities for sale in the market. Secure access to land provides a valuable safety net as a source of shelter, food and income in times of hardship. In cities, security of tenure is a prerequisite for poverty reduction. An estimated 700 million urban poor live in conditions of insecure tenure and an estimated 2 million people are forcibly evicted each year.<sup>5</sup> Security of tenure for the urban poor promotes investment in homes, neighborhoods and livelihoods, including urban agriculture.

Again MDG3 (promoting gender equality and empower women) need to be considered while talking about land governance. Women often have fewer and weaker rights to land for a variety of reasons including: biases in formal law, in customs, and in the division of labor in society, as well as due to the HIV/AIDS pandemic and the increase in violent conflict and natural disasters that can increase the risk of disinheritance. Land tenure initiatives that promote gender equity can serve to increase women's power in agricultural production and help secure their inheritance rights. Rights to land are also linked to other access and resource rights, including water, pasture and to timber and non-timber forest products. Secure rights in land can also enhance political voice and participation in decision-making processes.

MDG7 (Ensure environmental sustainability) is also a factor that comes in matters of land governance. Through MDG7, Target 11, Governments commit to having “achieved a significant improvement in the lives of at least 100 million slum dwellers” by 2020. Today there are an estimated 900

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<sup>4</sup> Land Governance in Support of the Millennium Development Goals (FIG / World Bank 2009).

<sup>5</sup>*Ibid.*

million slum dwellers; this figure is projected to increase to 1.4 billion by 2020 and may reach 2 billion by 2030. These figures suggest that even if Target 11 is achieved, it will meet only a small proportion of existing needs and only seven percent of future estimated needs by 2020.<sup>6</sup> Many informal settlements are located on hazardous land and are at risk from natural disasters and climate change. High land values in urban and pre-urban areas can also create opportunities to use the windfall gains to upgrade informal settlements while minimizing the need for relocation. Ensuring an adequate supply of affordable land is also critical to the prevention of the growth of new slums. Tenure also plays an important role in rural environmental sustainability. By defining access and security of rights to land and its resources, tenure affects how people decide to use the land, and whether they will invest in improvements to the land. Inappropriate tenure policies and inequitable access to land result in over-cultivation and overgrazing of marginal lands. Farmers are more likely to invest in improving their land through soil protection measures, planting trees and improving pastures if they have secure tenure and can thus expect to benefit from their investments over the longer term.

Improving tenure arrangements and governance can play a substantial role in the achievement of MDG8 (the development of a global partnership for development). This goal includes a commitment to good governance both nationally and internationally under Target 8.A (“Develop further an open, rule-based, predictable, nondiscriminatory trading and financial system”), and the recommendations of this paper are directly relevant to meeting that goal. There is a perceived need for a global partnership to improve coherence among donor approaches and to develop standards for the governance of land tenure. At the country level, the global partnership can also be reflected in strengthened efforts to improve donor coordination in the land sector in line with the Paris Declaration (2005).<sup>7</sup>

In addition, improved access and tenure security contribute indirectly to other goals. Legally recognized rights in land are often critical to establishing legal identity, which in turn is linked to access to other services such as education (MDG2) and health (MDG5). Secure rights also help ensure that

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<sup>6</sup> David Palmer et.al, *supra* note 2.

<sup>7</sup> Paris Declaration, 2005.

women's land and property rights are not at risk of disinheritance due to HIV/AIDS (MDG6). Achieving good governance in land is not easy. Policy reforms to strengthen governance require the political will to overcome opposition from those who benefit from non-transparent decision-making and corruption. Improving governance demands the strong commitment of the people involved, and the development of capacity in order to make changes possible. A number of countries around the world have recognized the link between improved land governance, poverty reduction and the achievement of the Millennium Development Goals.<sup>8</sup>

However, in juxtaposition to the MDGs and development plan of Ethiopia, the land regime stands often either in conflict or that it lacks harmony and unity of purpose.

## **1.2. HIGHLIGHT OF CURRENT LAND GOVERNANCE IN ETHIOPIA**

In Ethiopia, all land is under public/state ownership. While land is not subject to sale or other means of exchange, the government does recognize use rights and holdings. The country's legal and institutional structure with regard to land governance has been criticized for being unnecessarily complicated. The Ministry of Agriculture and Natural Resource is the key responsible organ (under the directorate for land administration and use) towards discharging federal roles in land governance and revisiting existing legislation and so on. The land regime is found in different legislation and again backed by also different customs. The typical feature, therefore, is plurality of laws and institutions. Moreover, Ethiopia's federal structure gives its regions a lot of autonomy, which, in turn, has led to a coexistence of different laws and institutions with at times unclear responsibilities at different levels.

### **1.2.1. Matters of Urban Land**

Urban land administration is given under the federal constitution to city governments and municipalities. However, there is no common system to administer land in urban areas. Urban land is governed essentially through a

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<sup>8</sup> David Palmer et.al, *supra* note 2.

lease system, a perpetual permit system and separate legislation for condominiums.<sup>9</sup> While the 2011 Urban Land Lease Holding Proclamation stipulates that the leasehold system will apply to all urban land areas irrespective of how they were acquired, relevant authorities have yet to adopt the leasehold system. This has led to the coexistence of different systems and a high level of informality. In addition, there is no real system to record rights and restrictions, and the registry faces multiple challenges. There is a standard registration fee of ETB 45 per registered property plus an additional stamp duty of 2% of property value.

Nevertheless, as property value estimates are considered to be very low due to the absence of a standard property valuation system, experts argue that there is a significant loss of potential revenue. The urban planning and expansion of Addis Ababa, the capital, is also a contentious issue. This is particularly in the context of urban investments and growth.<sup>10</sup> The World Bank study highlights the encroachment of the city's master plan in current urban developments. For example, most of the green areas and some of the roads in the master plan have been allocated for private use. Moreover, the city's expansion also has consequences for the surrounding Oromia region. According to a new iteration of Addis Ababa's master plan, which has been met with opposition (and later on officially abandoned by the government) by Oromo residents, Oromia would lose an additional 36 towns and cities to Addis Ababa.<sup>11</sup> According to researchers, the city's expansion in the past has led to forced evictions and displacement of local farming Oromo residents. Protesters feared that seceding Oromo lands to Addis Ababa would lead to more losses in Oromo identity and culture. Thus, urban expansion here and there is being done at the expense of the surrounding farming community without proper compensation plan.

### **1.2.2. Matters of Rural Land**

Rural land administration is afforded to the regions. These take the form of administrative bodies such as, for example, in the regions of Amhara and

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<sup>9</sup>Belachew, M. and Aytenfisu, Facing the Challenges in Building Sustainable Land Administration Capacity in Ethiopia ( FIG Congress, 2010).

<sup>10</sup>Yirsaw, B., Urban Land Lease Policy of Ethiopia: Case Study on Addis Ababa and Lease Towns of the Amhara, 2010.

<sup>11</sup> Think Africa Press, Protests Grow over Addis Ababa's Expansion, 2014.

Tigray, the “Land Administration and Use Bureau or Authority” or in the region of Oromia, the “Land Administration and Use Bureau. However, unclear responsibilities at different levels of government have led to overlaps. For example, in rural areas, both the land administration institutions and the investment authorities have a mandate to allocate land to investors.

In addition, land registration and certification is also delegated to voluntary, community-elected Land Administration Committees at *kebele* (village) and *woreda* (district) level. While these committees have been argued to build community trust in land registration, others point out that these committees are not always provided with sufficient resources. The Ethiopian constitution maintains that all rural residents are entitled to indefinite-term use rights to land. However, the transferability of use rights is primarily restricted to inheritance. Moreover, land laws also mandate that landholders either farm their land or risk losing it through redistribution or expropriation. In other words, rural landholders cannot lease out and stay away from their holdings and pursue nonagricultural livelihood strategies. For example, in the Tigray region, land use right can be lost if the holder leaves the *kebele* for more than two years.

Critics of the government-owned land system have argued that the fear of land redistribution have heightened the farmer’s sense of tenure insecurity and undermined investment in productivity. At the same time, critics also argue that it diminishes rural urban mobility as farmers are bound to a life of farming in order to remain landholders.

While land use is free for rural farmers, there are fees collected during rural land registration, namely for certificate costs. However, these are waived for first-time registration in some states. Registration fees range between ETB 5 to ETB 2 depending on the state. While experts have praised Ethiopia’s rapid, pro-poor and gender-sensitive rural land right registration over the past years, issues still remain.<sup>12</sup> For example, only five of the nine regions have actually enacted laws to register rural land holdings. In addition, Ethiopia does not have sufficient land record-keeping systems. This risks undermining

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<sup>12</sup> World Bank, *supra* note 4.

the land registration process itself. The tenure insecurity that this causes is argued to lead to informality and hinder rural income diversification.<sup>13</sup>

## **2. LAND GOVERNANCE AND THE GLOBAL AGENDA**

### **2.1. MEANING AND ESSENCE OF LAND GOVERNANCE**

While the term “land” has a long-established history, the concept of governance emerged in its current form only in the 1980s. While many institutions have developed their own definitions, four specific characteristics of the concept are now generally accepted.<sup>14</sup> First, governance is conceptually broader than government. An inclusive approach is fundamental because, in many countries, state actors co-exist with their customary, religious and/or informal counterparts. The stakeholders in land thus reflect a broad spectrum of state actors, customary authorities, non-state actors, and the private and professional sectors. Hence, land governance must bring together and network all stakeholders. Governance is more about cooperation than confrontation, and especially in land it is more about cooperation with all stakeholders.

Second, governance emphasizes processes and institutions. Processes define how issues are put on the agenda, how decisions are made and by whom, how those decisions are implemented, and how differences and grievances are managed. The focus on processes also highlights the importance of different ways actors can interact: dialogue, cooperation, conflict, unilateralism, negotiation, compromise, exit, etc. As interaction can change from one mode to another, a governance paradigm also implies dynamic system. From an institutional perspective, governance refers to the rules and the structures that govern and mediate relationships, decision-making and enforcement. As noted above, the rules and structure of land tenure can be formal (e.g. laws, regulations, and bylaws administered by parliaments, courts and municipal councils) as well as informal or customary (e.g. elders councils, social networks, patronage, etc.) or a combination. Hence, the concept of governance fits neatly with this pluralistic institutional framework

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<sup>13</sup> World Bank, *Diagnosing Corruption in Ethiopia: Perceptions, Realities, and the Way Forward for Key Sectors*, 2012a.

<sup>14</sup> David Palmer et.al, *supra* note 2.



for land. This is important because the legal system in some countries does not effectively recognize or incorporate customary institutions.

Third, with its emphasis on authority, governance recognizes the importance of politics and power. Politics and power relations have a significant impact on the understanding of a given context or issue, and in developing approaches for reform. Land as a key resource can be manipulated to ebb a factor for ill- governance. Hence, political commitment is needed to use the potential of land for development than exacerbating poverty. Finally, governance is conceptually neutral. The quality of land governance can be good or weak, improving or declining. In order to determine whether governance is effective or weak, one must look at processes as well as outcomes. Thus, what is land governance all about?

### **2.1.1. Land Governance - A Working Definition**

The following working definition for land governance is proposed:

*“Land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, the way that competing interests in land are managed.”<sup>15</sup>*

Land governance encompasses statutory, customary and religious institutions, as well as informal institutions. It includes state structures such as land agencies, courts, and ministries and municipalities responsible for land. It also includes informal land developers and traditional bodies. It covers the legal and policy framework for land, as well as traditional practices governing land transactions, inheritance and dispute resolution. In short, it includes all relevant institutions from the state, civil society and private sectors.

Land governance is fundamentally about power and the political economy of land. Who benefits from the current legal, institutional and policy framework for land? How does this framework interact with traditional authorities and informal systems? What are the incentive structures for, and what are the constraints on, the diverse land stakeholders? Who has what influence on the

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<sup>15</sup> David Palmer et.al, *supra* note 2.

way that decisions about land use are made? Who benefits and how? How are the decisions enforced? What recourse exists for managing grievances? The answers to these questions vary from country to country, and from issue to issue within a given country.

### **2.1.2. Land Governance for Sustainable Development**

Arguably sound land governance is the key to achieving sustainable development and to supporting the global agenda of the MDGs (now SDGs). Even in terms of standard indicators such as corruption, land has long been known to be one of the sectors most affected by bad governance, something that is not difficult to understand in light of the fact that land is not only a major asset but also that its values are likely to rise rapidly in many contexts of urbanization and economic development.

Beyond the negative element of reducing opportunity for corruption and bribery, good land governance is also critical as a precondition for sustainable economic development in a number of respects. First, those who have only insecure or short-term land rights are unlikely to invest their full efforts to make long-term improvements attached to the land and may instead be forced to expend significant resources to defend the rights to their land, without producing benefits for the broader economy. Land rights are particularly important for women (especially in case of inheritance or divorce) and for other traditionally disadvantaged groups such as migrants or herders.

Second, secure land tenure facilitates transfer of land at low cost through rentals and sales, improving the allocation of land. Without secure rights, landowners are less willing to rent out their land, something that may impede their ability and willingness to engage in non-agricultural employment or rural-urban migration, reducing the scope for structural change and reducing the productivity of land use in both rural and urban areas.

Third, setting up or expanding a business requires physical space, i.e. land. Nontransparent, corrupt, or simply inefficient systems of land governance constitute a major bottleneck that makes it more costly for small and would-be entrepreneurs to transform good ideas into economically viable

enterprises. Also, to the extent that easily transferable land titles can be used as collateral, their availability will reduce the cost of accessing credit, thus increasing opportunities for gainful employment and contributing to innovation and the development of financial systems.

Finally, economic development increases demand for land, and together with public investment in infrastructure and roads, tends to increase land values. But the lack of well-functioning mechanisms to tax land limits the benefit for society, in particular local governments, as much of the gains end up with private individuals and may fuel speculation. If land institutions function properly, land taxation provides a simple, yet efficient, tool to increase effective decentralization and foster local government accountability.

## **2.2 THE GLOBAL AGENDA IN LAND GOVERNANCE**

There is no convention on land at global level yet, there are important guidelines that can be used for nations to improve their land governance system. Among these are the UN Voluntary Land guideline<sup>16</sup>, the African land declaration<sup>17</sup> and the recent Africa women land declaration.<sup>18</sup> These all instruments do not have a binding legal force yet they have more of political persuasive power capable of guiding the actions of governments. At the core of all these instruments is the idea of good land governance, or responsible land governance.

Land governance is about the policies, processes and institutions by which land, property and natural resources are managed. This includes decisions on access to land, land rights, land use, and land development. Land governance is basically about determining and implementing sustainable land policies and establishing a strong relationship between people and land.

Sound land governance is fundamental in achieving sustainable development and poverty reduction and therefore a key component in supporting the global agenda, set by adoption of the MDGs and SDGs. The contribution of

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<sup>16</sup>Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, 2009. The aim of the guideline is to explicitly strengthen people in developing nations, so that they can secure their livelihood by their own efforts.

<sup>17</sup>Declaration on Land Issues and Challenges in Africa, 2009.

<sup>18</sup>2017, Declaration.

the global community of Land Professionals is vital. Measures for adaptation to climate change will need to be integrated into strategies for poverty reduction to ensure sustainable development. The land management perspective and the role of the operational component of land administration systems therefore need high-level political support and recognition.

The Land Governance for the 21<sup>st</sup> Century theme focused on adapting and improving our approaches to land governance to be more sensitive to and supportive of these new challenges and to make stakeholders fully aware of the incentives to adopt this paradigm shift. Good land governance must not only control and manage the effective use of physical space, but must also be holistic to ensure sound economic and social outcomes. The World Bank's land governance assessment framework provides countries with an opportunity to assess and improve their current approaches to meet these global challenges, especially climate change. Land governance must be further democratized by developing tools for all stakeholders to increasingly participate and form partnerships in policy formulation, implementation and monitoring all within more realistic timeframes. The international community must also provide guidance and contract evaluation tools and services to mitigate the risks for countries negotiating international land acquisition contracts – the so called 'farmlands grab.'

### **2.2.1. INDICATORS OF GOOD LAND GOVERNANCE**

The Land Governance Assessment Framework (LGAF) is intended as a first step to help countries deal with land governance issues.<sup>19</sup> It is a diagnostic tool that is to be implemented at the local level in a collaborative fashion, that addresses the need for guidance to diagnose and benchmark land governance, and that can help countries prioritize reforms and monitor progress over time. The core version of the LGAF comprises a set of detailed indicators to be rated on a scale of precoded statements (from lack of good governance to good practice) based, where possible, on existing information. These indicators are grouped within five broad thematic areas that have been identified as major areas for policy intervention in the land sector:

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<sup>19</sup> Klaus Deininger et al., *The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in the Land Sector* (World Bank, 2012).

**A) Legal and Institutional Framework:** Indicators related to the legal and institutional framework are designed to help policy makers assess (a) the extent to which the range of existing land rights is legally recognized, (b) the level of documentation and enforcement, the cost of enforcing or gradually upgrading these rights, and (c) whether regulation and management of land involve institutions with clear mandates as well as policy processes that are transparent and equitable.

**B) Land Use Planning, Management, and Taxation:** The intention of this category is to assess whether (a) land use restrictions are justified on the basis of the public interest, (b) necessary exemptions are granted promptly and transparently, (c) the process for land use planning is efficient, and (d) taxes on land and real estate are transparently determined and efficiently collected.

**C) Management of Public Land:** A focus on public land management aims to help assess the extent to which (a) public landholdings are justified and transparently inventoried and managed; (b) expropriation procedures are applied in the public interest through clear, transparent, and fair processes involving the compensation of all those who lose rights; and (c) the transferor devolution of state land is transparent and monitored.

**D) Public Provision of Land Information:** Indicators related to this category assess (a) whether land information systems provide sufficient, relevant, and up to-date data on land ownership to the general public and (b) whether land administration services are accessible, affordable, and sustainable.

**E) Dispute Resolution and Conflict Management:** This fifth set of indicators can be used to assess (a) whether a country has affordable, clearly defined, transparent, and unbiased mechanisms for the resolution of land disputes and (b) whether these mechanisms function effectively in practice.

### **3. CHALLENGES OF LAND GOVERNANCE IN ETHIOPIA**

The challenges of land governance in Ethiopia can be contrasted to the global standards. However, there are a number of elements in Ethiopia's current land governance system that can create potential entry points for corrupt activities to occur. These include: lack of clear policies, weak institutions, lack of transparency, and limited public participation, and capacity challenges. These points relate to both urban and rural land.

#### **3.1. LACK OF CLEAR LAND POLICIES GEARED TOWARDS DEVELOPMENT**

The Ethiopian land governance system is troubled with a high degree of informality. One of the main causes of this is the absence of clear legislation as well as confusion about the applicability of legislation. Indeed, where there is legislation, implementation guidelines are oftentimes lacking, which creates confusion. No single document sets out Ethiopia's land policy. Moreover, with guidelines or without, the enforcing institutions are weaker.

Instead, laws and policies must be inferred from federal laws, together with laws and directives set by regional and municipal governments. In some cases, there is confusion on the applicability of laws. The country lacks comprehensive land policy. Lack of compressive land policy and strong institutions which help in the implementation of the policy at a federal level has been a major flaw of the land governance regime. The laws lack consistency and coherence because they lack a policy guide which gives general guide to the laws put in place.<sup>20</sup>Ethiopia's legal framework comprises its constitution, federal laws (the civil code, the 1997 rural land law as anew enacted in 2005 ( it is also being revised now, draft level), and the 1993 urban land lease law, revised in 2002, and enacted anew in 2011 and regional laws and directives.<sup>21</sup>Besides, the customary land governance

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<sup>20</sup>Daniel Behailu, *Transfer of Land Rights in Ethiopia: Towards A Sustainable Policy Framework*, 2015.

<sup>21</sup>For rural areas, see the Rural Land Administration Proclamation (No. 89/1997) and the Rural Land Administration and Land Use Proclamation (No. 456/2005) issued at the federal level; the Revised Amhara National Regional State Rural Land Administration and Use Proclamation (No. 133/2006); the Regulation for the Implementation of Proclamation 133/2006 (Regulation No. 51/2007); Oromia National Regional State Proclamation (No.

institutions are at large. However, the formal laws stipulate that all land is owned by the government, but use rights of holdings are recognized: private individual; communal, in rural areas; and condominium, in urban areas. Some heterogeneity occurs across regions, which are assigned responsibility for land management and administration by the constitution.

In matters of rural areas, almost all regions had passed implementing legislation or regulations to issue land certificates that recognize individual rights.<sup>22</sup> Thus far, registration and certification of rural private holdings have covered close to 100% percent of rural households in the major four regions. Though individual rights are recognized, their transferability is restricted in a number of ways.

Private holdings cannot be sold or otherwise transferred except through inheritance, which is restricted also to family members.<sup>23</sup> Although rents are allowed, in most regions only part of a holding can be rented out fulfilling many precondition (minimum holding, consent, certification, etc.), and there is also upper limits on the lease period.<sup>24</sup> The constitution maintains that all Ethiopians can get rural land use for free on condition that one is of age and is willing to live on agriculture.

This may significantly limit tenure security. Subdivision below a minimum parcel size of 0.5 ha in rural areas and 2.0 ha in resettlement areas is also

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130/2007), Proclamation to Amend Proclamations 56/2002, 70/2003, 103/2005 of the Oromia Rural Land Administration and Utilization Proclamation; Southern Nations, Nationalities, and Peoples Regions Rural Land Administration and Utilization Proclamation (No. 110/2007); Tigray National Regional State, Rural Land Administration, and Utilization Proclamation (No. 97/2006); and Tigray Land Administration and Utilization Regulation (Regulation No. 37/2007). For urban areas, see Proclamation No. 80/1993 and the Lease Proclamation No. 272/2002.

<sup>22</sup>However, some regions (Afar, Benishangul-Gumuz, Gambella, Harar, and Somali) lack implementing legislation, making it difficult to formally recognize or enforce peasants' and pastoralists' rights. Afar is reported to have issued a rural land administration proclamation recently.

<sup>23</sup>Investors can pledge their use rights over the remaining lease period as collateral.

<sup>24</sup>For instance, the SNNPRS land administration law (Proclamation No. 110/2007) provides that land rent among peasants can be for a duration of up to 5 years and for investors for a duration of up to 10 years, or rent may extend up to 25 years if the investor is cultivating perennial crops (Article 8). The Oromia Land Administration Law (Proclamation No. 130/2007) provides a duration of up to 3 years if the land is rented out to traditional farmers and up to 15 years for mechanized farming and also limits the land to be rented out to half of a peasant's landholding (Article 10).

prohibited. Though these restrictions may appear justified from a perspective of equity or productivity, they may in practice contribute little to either or even have perverse effects, and may lead to informality, or may hinder rural income diversification.

The laws are also not clear with regard to communal landholdings because they lack provisions about the nature of those rights and of ways to record or enforce them. The resulting legal vacuum threatens to undermine equity and effective management of common property resources. This hazard is particularly relevant for pastoralists (15 percent of the rural population), whose rights, despite a communal use pattern, appear to be treated as individual ones. Besides, community lands in the highlands are also of prime importance as they are keys in livelihood diversification via providing grazing land. Often community land is not registered yet at times, without a clear definition, *ad hoc* practices have often been adopted in land certification, with such lands often registered in the name of the *kebele* (village) government. This practice is not conducive to effective management and may lead to encroachment and poor management of such lands.

In urban areas, the previous and the current Urban Land Lease Holding Proclamation No. 721/2011(the Lease Proclamation) stipulates that land is allocated through lease system yet regularities are also common feature. The law does not provide criteria to determine as to how the lease system is to operate (via auction, or negotiation or lots). There is also a problem of coexistence of the old permit system (permits granted prior to 1993), under which an annual land rent is paid to the government, and the new lease system (from 1993 onward), which requires payment of the agreed-on lease amount to the relevant government within a period of time to be determined by regions or city government within the lease contract. The Lease Proclamation stipulates that the leasehold system will apply to all urban lands irrespective of how they were acquired. However, the fact that the relevant authorities have to first adopt the leasehold system, something that has rarely happened, leaves ample room for discretion.<sup>25</sup> For example,

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<sup>25</sup>The Lease Proclamation (No. 272/2002, Art. 12/2) states that urban land use may be changed only through a permit granted in writing by the appropriate body. Subsection 3 of the same article provides that the period of a lease for urban land, performance of payments,



whereas large towns in Amhara have moved to the lease system, smaller towns have adopted a permit rent system on a virtually permanent basis.

Even under the lease system, payment schedules are excessively complicated, and amounts collected total only a fraction of market values, suggesting that local governments lose large amounts of revenue and the system may not be sustainable.

In contrast to practices for rural land, urban leases or permits are fully transferable except the curtailment introduced in the new lease proclamation of 2011.<sup>26</sup> However, the lease proclamation fails to deal with formalization of informal residential holdings. Rules of adverse possession (long-term peaceful use without legitimate challenge over a period of 15 years) that are still operational under the civil code may provide some legal basis for recognizing squatters' rights. However, because the code refers to private rights only, its applicability is far from certain. Also, transfer of rights through sale or change of use for commercial purposes will convert the permit into leasehold.

Condominium holdings, which have become widespread in urban areas, are also recognized under Condominium Proclamation No. 370/2003. That document provides clear rules regarding the management of the building, but it lacks clarity regarding the rights to the land beneath the common property.

Apart from condominium holdings, there is no legal recognition of communal holdings such as green areas, forestland, playing fields, and so forth in urban areas, although such holdings exist and are identified in urban plans. Thus, registration of individual holdings in urban areas is lagging rural areas; in 2006, the share of registered housing units was estimated to be 95 percent in Adama (Oromia), 65 percent in Addis Ababa (Oromia), 50 percent in Bahirdar (Amhara), 75 percent in Hawassa (SNNP), and 90 percent in Mekelle (Tigray).<sup>27</sup>

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and tax rates are to be changed upon such conversion. This part seems intended to allow the government to capture a share of benefits arising from land use changes.

<sup>26</sup>Article 13 of the Lease Proclamation (No. 272/2002) stipulates that any leasehold possessor can transfer or mortgage the right of leasehold.

<sup>27</sup> Klaus Deininger et al., *The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in the Land Sector* (World Bank, 2012)

If one takes into account that a large number of holdings have not yet been formalized, only about 25 percent of the existing individually held urban properties are estimated to be registered in these offices. Between 35 percent and 45 percent of land registered to physical persons is estimated to be registered in the name of women, with variations across regions.

In Amhara, more than 85 percent of certificates name a woman as individual or joint holder, but this share is lower in Oromia and SNNP, where polygamy is more common and holdings are registered in the name of individuals rather than households. Still, there is no doubt that the campaign to register land has significantly improved women's land rights. The requirement in Amhara and Oromia not only to list females' names on certificates but also to have their pictures attached appears to have had a very positive effect in this respect.

Though informal settlements account for up to 30 percent of residential holdings in Addis Ababa, no policies or procedures require the systematic regularization of informal holdings. In fact, formalization projects have no basis in federal legislation, and the few sporadic initiatives to formalize existing settlements (in Addis Ababa, *Diredawa*, and Hawassa) were very costly and of a discretionary nature. Established by *ad hoc* municipal directives, they lacked transparency and were discontinued without reaching their targets.

### **3.2. WEAKER INSTITUTIONS**

As with legislation and policies, there is a lack of clarity regarding the roles, responsibilities and mandates of institutions. In principle, assignment of responsibilities for policy making and implementation is unambiguous: the federal level formulates policies; regional or municipal governments are responsible for implementation and management of land administration; and the judiciary resolves disputes that might arise in the process. The practice is more complex and could give rise to concerns regarding governance.

Although no single document sets out Ethiopia's land policy, principles can be inferred from federal laws, together with the laws and directives promulgated by regional and municipal governments. However, the wide delegation of federal mandates to lower levels of government, without

sufficient policy guidelines or laws to clearly define the roles of various levels of government, causes ambiguities and vertical overlap.<sup>28</sup> In fact, the mandates on land allocation and administration to the different levels of government within a regional state are usually determined by unpublished administrative directives that often change quickly and without public notice. These practices are not in line with principles of good governance. This problem is mirrored on the side of the judiciary, where unclear mandates of federal first-instance courts, municipal courts, and land clearance and appeals commissions create temptations for forum-shopping and contradictory rulings.

In addition to unclear responsibilities at different levels of government, horizontal overlap is an issue. In rural areas, both the land administration institutions and the investment authorities have a mandate to allocate land to investors. In Addis Ababa, there is lack of clarity regarding the roles of the central administration and the 10 sub-cities in allocating land and administering rights over land.

In one case, this complexity led to allocation of public use areas to construction of housing and commercial buildings. Although the municipal agency responsible for management of parks and green areas in Addis Ababa belatedly identified the trespass of its mandate, no action was taken, because construction had already begun. The fact that the allocating authority felt secure in its mandate to manage the concerned areas, together with the delayed and ineffective response by the agency that was by law responsible for making decisions, illustrate the extent to which mandates are confused and the effect on land governance.

Some institutions have prerogatives for both policy making and implementation, which may lead to conflicts of interest. Three prominent cases are (a) the Ministry of Agriculture, regarding management of forestland and wildlife; (b) the delegation of legislative powers on important policy issues to regional and municipal land administration authorities, in addition to the authorities' primary policy implementation mandates; and (c) the fact that members of the executive who decide on expropriation may sit

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<sup>28</sup> These lower levels of government that receive mandates are the village (*kebele*), district (*woreda*), municipality, zone, and region.

with the Clearance Order Appeals Commission that decides appeals in expropriation cases.

The widespread practice of assigning members of legislative councils and executive committees to serve on land administration committees and lease boards, which have both executive and adjudicatory functions, can also create conflicts of interest. This possibility is not only theoretical; the fact that these committee members sit concurrently on the respective regional or municipal executive councils is reported to have led to the issuance of directives that were specifically targeted to influence the resolution of specific cases.

In addition to the constitutional provision that gives every rural Ethiopian the right to a plot of land, rural land laws explicitly recognize land rights of orphans and women. The corresponding urban land lease laws have provisions making reference to women and persons who have disabilities or who are physically challenged.<sup>29</sup> However, the equity effect of land policies is not systematically monitored in a way that allows public scrutiny. Although land institutions submit periodic reports, the source and reliability of the underlying data are not always clear. Also, though participatory procedures for lawmaking are enacted and further reinforced by the apparent decentralization of decision making, many laws were developed by experts with little or no public consultation prior to draft laws being forwarded to the legislature. Even in cases of consultation, as in the case of developing the building code, input was by invitation only, something that may exclude many relevant stakeholders such as the academic community and other non-state actors.

### **3.3. LACK OF TRANSPARENCY AND PUBLIC PARTICIPATION**

Another key issue is the lack of transparency and access to information. Lack of transparency is seen to permeate almost all aspects of land administration. For example, some of the policies that govern land administration are determined on the basis of unpublished directives, as mentioned above. This creates a system of uncertainty and lack of clarity for those involved in land

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<sup>29</sup> See, for example, The Rural Land Administration and Land Use Proclamation No. 456/2005, Art.5.

administration. Only about 25% of individually held urban properties have been recorded and the records are not reliable or conclusive. About 70% of rural holdings have been registered, but the records are not being kept up to date, which reduces their usefulness.<sup>30</sup> Ethiopian land administration also lacks an inventory of public land systems. Rural areas have no maps of registered holdings and urban areas have limited mapping of registered property. This makes the issuing of forged documents easier.

There is also lack of transparency in the allocation of public land. For example, due to the lack of transparency around tendering for land leaseholds, many people resort to corrupt means to gain land. Moreover, the lack of transparency heightens the insecurity of many land users who are unaware of their rights.

Experts agree that there is limited participation in the land administration process. This affects, for example, the preparation of land use plans. Limited public consultation leads to very limited public awareness of policy and public engagement with policy implementation. Ethiopia's commercial leasing process to foreign investors has also been criticized for lacking transparency and public participation. It is argued that the leasing process does not adequately consult with stakeholders (including current users of the land) and the terms of the leases are not transparent. As such, there have been some cases large-scale agricultural projects that are not being used as intended. Similarly, it is argued that Addis Ababa's master plan was developed with little public participation of Oromo people.

### **3.4. LACK OF CLEAR PROCEDURES FOR UPDATING LAND RECORDS AND REGISTRATION**

Rural land certification in Ethiopia's four main regions is one of the largest and most cost-effective land registration programs worldwide. Over a period of three to five years, the initiative has registered some 25 million parcels. It has been implemented effectively and in a participatory, pro-poor, and gender-sensitive manner. The program significantly departs from the approach of the traditional land titling interventions in a number of ways: (a) by issuing usufruct rights certificates rather than full titles; (b) by promoting

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<sup>30</sup> Klaus Deininger et al., *supra* note 27.

gender equity with joint land ownership; (c) by using a participatory, decentralized process of field adjudication; and (d) by using low-cost community identification of boundaries.

All of these helped establish the basis for a low-cost land administration system in rural areas. The cost of registering a property transfer is low, particularly in rural areas. The only fees collected on rural land registration relate to certificate costs, and even these are waived for first-time registration in Amhara. Rural landholding certificates are issued to landholders for free in Amhara, for ETB 5 in Oromia, and for ETB 2 in SNNP. The direct costs of land registration have been calculated at about ETB 29.5 per household or ETB 8.3 (less than US\$1.00) per plot, excluding the cost of the certificate and the annual maintenance cost once the cadastre is established. Registries operate as part of the general administration rather than on a self-sustaining basis.

There is practically no capital investment in the rural land registration system, something that jeopardizes the financial sustainability of the registry.

For sustainability of the gains from first-stage certification in rural areas,<sup>31</sup> land records need to be properly maintained, in particular, those involving the registration of changes. Procedures specify that duplicate registry books be maintained at village (*kebele*) and district (*woreda*) levels, but lack of registry books by many *kebeles* requires travel to the *woreda* to make changes. The type of books of possession issued to landholders varies widely across regions, with some being parcel based and some being holding based. Agreement on a common computerized system is lacking, and fundamental questions remain unresolved.

No clear procedures exist for updating records, and neither registry books nor landholding certificates are structured in a way that would facilitate recording of changes in rights over time.<sup>32</sup> There are no clear rules on when

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<sup>31</sup> The first stage involves the issuance of textual holding certificates that identify neighbors. They do not include boundary descriptions that are to be provided by cadastral maps, which are to be generated in a second stage.

<sup>32</sup> For example, landholding certificates in Oromia and SNNP provide no space for updating. Registers used in Amhara, Oromia, and Tigray provide spaces for transfer through inheritance or expropriation. Short-term transfers are not considered in the registers of any region.

and how registers must be updated (for example, inheritance or short-term transfer) or what sanctions may be incurred if that is not done. This lack of requirements suggests that no information is available on recorded (or actual) transactions.

Because none of the regions have developed ways to prepare cadastral maps on a large scale, rural land records lack a spatial reference. Neither private encumbrances nor public restrictions are recorded, and the records in the registry can be searched only by holder name. Although some rural areas have *ad hoc* standards relating to requirements for services and a time frame for service provision, there is no evidence of their publication. Instead, customers are normally informed of applicable standards at the time of their request. Even where individual rights have been registered, little, if any, of the land held under communal tenure has been mapped and recorded, which reportedly gives rise to significant encroachment.

Given the lack of a formal urban registration system, registration in urban centers is normally linked to the provision of land for new holdings or transfer of ownership for existing holdings. Cadastral plans often identify parcels on A4-size plans prepared in AutoCAD that are printed and appended to the file or, in the case of Addis Ababa, are printed directly on the title certificate.

Though the practice is not consistent, municipalities in major towns mainly keep ledger books (registers) for transfers, mortgages, and title deeds separately. Urban ledger books for title deeds, the nearest thing to a register in some of the urban centers, are stored as files for each property identified by a physical address. Private encumbrances, if registered at all, are thus listed in separate documents, and the fact that registers are held separately from each other without clear cross-referencing makes it difficult for third parties to access them.

The extent of timely access to relevant urban property records varies across urban areas as well as institutions within the same municipality. Although authenticated copies of title deeds and transfer contracts are swiftly provided upon request in Addis Ababa, other municipalities without computerized systems have cumbersome procedures that take significantly more time. Misplacement or even loss of files is also a serious problem in municipalities

and semi-urban areas. Available information indicates that service standards exist only for a few aspects related to property registration in urban areas. Even these incomplete standards are rarely published and may change at any time without notice.

In urban areas, information on land rights is available to interested institutions upon written request at no cost. But the absence of relevant information, such as encumbrances over property, makes it very difficult to access land information in practice. Registration fees can be obtained by asking, although they depend on property values. Only intermediaries can obtain copies or extracts of documents, which usually takes more than a month. Mechanisms to handle complaints on land registration include the Office of the Ombudsman at federal and regional levels, as well as complaint committees in most major towns and in rural areas. Because these operate outside the registry system, there is little monitoring of staff in the registry or proactive systems to discourage illegal activity by registry staff.

The costs of adding a title plan to a certificate is about ETB 250. Similarly, the only fees directly related to registration are rather low, at ETB 45 per registered property. In urban areas, an additional stamp duty of 2 percent of property value must be paid. Given widespread under declaration of property values, actual amounts paid are low, contributing to insufficient capital investment in the system.

### **3.5. LACK OF AN EFFECTIVE DISPUTE RESOLUTION MECHANISM**

Disputes over land are common over the world: for example, neighbors disagreeing over boundaries, two parties disputing ownership over a piece of land, conflicts between landlords and tenants, disputes over use rights on common property or collective land, intra-household disputes, inheritance disputes, etc. The critical governance issue regarding disputes, however, is not whether there are disputes, but rather what rules, processes and mechanisms are in place to address grievances, manage disputes and to enforce agreements.

The lack of an effective dispute resolution in the land administration system gives officials a lot of discretion in resolving disputes (World Bank 2012b).



Rules for access to land are not clear and some have better access than others, largely due to relationships or payment of bribes. The private sector usually cannot rely on or wait for the lease or auction process, so it looks to other means.

Despite a system of village-level courts to complement first-instance courts at the *woreda*, access to justice is difficult. Judges are often ill-informed, because it is difficult to obtain copies of regional legislation for purchase. Courts can be physically distant, especially from pastoral communities and peripheral areas; are often not functional; and may refuse to hear arguments in nonofficial regional languages. Where formal conflict resolution institutions are not functional, as well as in the lowlands, traditional and religious dispute resolution mechanisms have become the most important dispute mechanisms to replace the formal justice system. Decisions of these entities are recognized by the formal system. However, decisions by the traditional elders at the local level may not always be equitable or gender sensitive.

Parallel avenues for conflict resolution also exist, with a number of alternative forums available, including land administration boards, land clearance appeals commissions, municipal courts, regional courts, federal courts, and other institutions with adjudication mandates. There is no mechanism to share information, so collaboration between these institutions is very limited and often informal. As a result, three or four venues may entertain the same case at the same time, especially when one of the parties has the resources. In litigation on land issues, decisions at the first-instance court normally tend to favor the government. Courts are clogged with long-standing land disputes. This backlog is exacerbated by parties lodging parallel actions. It is estimated that land disputes in Ethiopia constitute between one-third and one-half of all cases within the formal justice system.

Overlap also occurs between different conflict resolutions institutions at different administrative levels and in cases of outside investment.

### **3.6. RESOURCE BASED CHALLENGES**

Capacity limitations are also one of the challenges of land governance. In this case, capacity is seen to mean both human resources as well as technical and financial resources.

One of the drivers of corruption has to do with staff funding. Underfunded staff with low motivation that operates in an environment of complicated procedures can have a direct impact on corrupt activities.

In addition, capacity constraints are seen as a major hindrance for the Ethiopian government to carry out its land administration and record land rights. While computerization is being implemented in some level, it is challenged by lack of other infrastructure, such as broadband telecom services. Non-computerized systems have cumbersome procedures that take significantly more time.

In addition, there are issues of misplacement and loss of files. Lastly, financial unsustainability of the land registry is noted as an area of concern. For one, there continues to be limited investment in land administration. In addition, the fees for registering land, both rural and urban are noted to be especially low and not conducive to financial sustainability.

Similarly, lack of clear land valuation system has led to very low rents that do not reflect economic values of properties, which results in local governments forgoing large amounts of potential revenue, which could be used to provide services and infrastructure. While the rural registration process has been commended for positively impacting registration levels among women and the poor, it has also been criticized for allegedly creating an environment of corruption. According to the World Bank study, low fees can provide scope for petty corruption as higher, informal fees become routine in some contexts.

## 4. CONCLUSIONS AND RECOMMENDATIONS

### 4.1. CONCLUSIONS

Land is the ultimate resource, for without it life on earth cannot be sustained. Land is both a physical commodity and an abstract concept in that the rights to own or use it are as much a part of the land as the objects rooted in its soil. Good stewardship of the land is essential for present and future generations.

Effective and democratized land governance is at the heart of delivering the global vision of our future laid out in the MDGs. However, the route to this vision is rapidly changing as a series of new environmental, economic and social challenges pervade and impact every aspect of our lives. Land Professionals have a vital role to play and we must understand and respond quickly to this on-going change. Our approaches and solutions across all facets of land governance and associated Land Administration

Systems must be continually reviewed and adapted so that we can better manage and mitigate the negative consequences of change. Central to this is our response to climate change, food security and poverty alleviation.

There are guidelines, frameworks, and principles adopted and recommended by the UN, AU and EU, which could all serve as a reference point for rethinking the reform efforts in Ethiopia. However, it is to be noted that there are no binding legal documents on land governance both at the international and the African level. In the absence of such global binding laws or treaties, it is essential to pay attention to the guidelines. The guidelines give considerable flexibility and room for adjustment where there is a political will to reform the land policy.<sup>33</sup>

### 4.2. RECOMMENDATIONS

Ethiopia lacks a comprehensive and versatile land policy which is detailed with proper legislation reinforced by effective implementing institutions. The

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<sup>33</sup> Daniel Behailu, *supra* note 20.

availability of the comprehensive land policy geared towards sustainable development is not only essential but mandatory.<sup>34</sup>

Policy recommendations for Ethiopia have identified the necessity to provide guidelines for the implementation of federal laws, to have harmonized and realistic restrictions on land rights, to strengthen the legal recognition of women's rights to rural land, to review participatory process in land policy and legislation, to design federal policies of formalization, to create a federal institution for land valuation, to consistently consider land values when land is transferred, to establish a complete mapping of land types, to ensure sustainability of the land registration system, and to improve local capacity.<sup>35</sup>

**A) Policy and Institutional Guidelines:** Policies and legislation must recognize the many facets of land rights and usage. Above all, poor rural people must be empowered to participate in policy formulation to ensure that their needs and rights are addressed and protected. Although land legislation is the mandate of the federal government, key policy choices have been delegated to regional states. However, detailed guidelines on how federal laws, proclamations, regulations, or directives are to be implemented, and the hierarchy of legislation, are missing. There is no monitoring of implementation, precluding an assessment of the degree of adherence to policies and the reasons for this adherence. An institution to monitor implementation of key laws and regulations in a uniform and consistent manner would be desirable. Define roles and responsibilities of different institutions, including standards for the separation of responsibility for policy formulation, implementation and handling of disputes as well as an agreement on appropriate oversight arrangements.

**B) Reasonable Restrictions on Land Rights:** In rural areas, some of the restrictions on land use by peasants may be difficult to justify or implement consistently. For example, limiting inheritance to family members actually living on the land may run counter to the land policy's equity and nondiscrimination objectives and may stymie development of the nonagricultural economy. Constraints on the share

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<sup>34</sup>*Ibid.*

<sup>35</sup> Klaus Deininger et al., *supra* note 27.

of land that can be leased out may similarly limit incentives for investment and nonfarm employment. In fact, despite the existence of land registration, urban residents have, in practice, rights that are more robust than those of their rural counterparts. A review of land transfer restrictions is warranted, with a view to ensuring rural-urban equity in landholding rights, and in light of experience thus far. In urban areas, land use restrictions often are not enforced because laws may be conflicting. Injunctions to protect the possessory rights of persons found in violation of land use legislation are also a serious issue. Though this issue can be sustainably resolved only through a review of the 1960 civil code, its potentially irreversible impact calls for immediate resolution through specific legislation. Such legislation may also consider harmonizing adjudicatory mandates among judicial bodies at the federal, regional, and municipal levels.

- C) **Appreciation of Women's Rights to Rural Land:** Though the rights of women to have access to land on equal footing with men have been explicitly stated in the relevant federal and regional laws, and major strides to secure these rights have been made through rural land certification, two gaps remain. One is that laws in Oromia and SNNP do not clearly address the rights of women in polygamous unions. A second gap is that laws promoting female equality are limited to agrarian contexts, and guidelines are lacking for women's rights in the context of communal landholdings in pastoral areas. A review of rural land use legislation at all levels is recommended to clarify the status of the women's land use rights, together with follow-up actions to encourage effective exercise of these rights (for example, through female participation on land certification committees).
- D) **Participatory Decision Making on Land Issues:** Carry out comprehensive public awareness campaigns, including systems to capture public feedback. Though highly desirable, decentralization in the design and implementation of land policy, legislation, and land use planning has not led to the expected levels of public participation. Thus, a review of the decision-making processes relating to land issues in light of federal policy on local government and decentralization will be useful. This effort should include a review of

the extent to which equity and nondiscrimination in land policy and legislation can be mainstreamed and integrated into existing policy frameworks. It can be combined with an assessment of the results of the implementation of rural land policy thus far and the suggestion of monitoring indicators for the future.

- E) **Formalization in Urban Areas and Prevention of Informality in Rural Areas:** Informality, through squatting and non-formalized holding rights, is a problem of increasing importance for land use and policy in Addis Ababa and other towns. Yet, efforts to address the problem have been limited and piecemeal, often in the context of ad hoc measures that lacked clarity and uniformity. Given the size of the problem, it would be more appropriate to address the issue through policy decisions at the federal level. Informal settlement by peasants in forestland or other public land is also likely to become a serious challenge to rural land use, and policy measures to address the problem at an early stage are needed, preferably at the federal level.
- F) **Property Valuation Institution:** Gaps and problems in property valuation are widespread. A contributing factor is the absence of a uniform system of land valuation in line with Ethiopia's land tenure system. This uniformity can best be achieved by creating a specialized institution to set guidelines for land and property valuation in urban and rural areas. Such an institution would be most effective if supported by legislative provisions at the federal level. Moreover, to the extent that the current infrastructure-based valuation system is to be maintained in urban areas, the outdated studies used as the basis for valuation need to be updated.
- G) **Transfers to Take into Account Land Value Consistently:** A key factor underlying the discrepancies between the land rent and taxation systems and the market is the fact that land value is not taken into account in assessing the value of properties. Though apparently consistent with public policy considerations, the current system is unrealistic. Such deficiencies are particularly serious for compensation and relocation assistance in cases of clearance and expropriation. Mechanisms to base these cases on market values are a priority. Also,

although laws provide for compensation for clearance of land in rural areas, current practice has led to uncompensated clearance of peasants in some areas because of a failure to clearly identify the party responsible for payment of compensation. Analysis of the gaps is recommended, with identification of immediate measures to protect peasants having to clear their landholdings for urban expansion.

**H) Complete Mapping of Publicly, Privately and Communally Held Land:**

Although land certification had very positive effects in terms of perceived tenure security and female empowerment, incomplete registers and maps reduce its effectiveness. Efforts to put in place cadastres in urban areas are encouraging, but they should be comprehensive (covering state, private, and communal land) and clearly linked to land rights. Also, because many problems with the current land use planning and policy framework can be traced in part to absence of comprehensive and up-to-date land use information, prompt compilation of such information (including up-to-date benchmarks for valuation) is needed. Finally, there is need to ensure that institutions using land-related information share databases to avoid duplication of effort and confusion. In land dispute adjudication, absence of a mechanism to share information led to extensive forum shopping and parallel processes. Establishment of a networking system such as the one between police, prosecution, and courts in criminal cases is recommended.

- I) Sustainability of the Rural Land Registration System:** Ensuring the sustainability of rural land registration requires at least a minimum level of investment in equipment and human resources for maintenance. Such investment will need to be linked to monitoring of registry performance and establishment of financing arrangements (for example, clear user fees and possibly some cross-subsidies from urban areas) to ensure sustainability of the registration system at federal, regional, and local levels. Federal standards can greatly reduce the cost of such maintenance.

**J) Strengthening of Local Governance:** A very positive aspect of the current land administration system is its high level of decentralization.

However, though authority for most decisions rests at the local level, guidance to inform officials at *woreda* and village levels is lacking. Defining local governance structures, roles, and mandates in land governance should be considered. Because limited capacity of local implementing structures at the local level is a pervasive problem, building the capacities of these structures should continue to be a policy priority. Capacity-building efforts should also be considered by putting in place the necessary federal and regional laws, regulations, and guidelines as well as making technical support available.



## **INISTIITIYUUTHI LEENJII OGEESSOTA QAAMOLEE HAQAA FI QORANNOO SEERAA OROMIYAA: HOJIIWWAN GURGUDDOO HANGA YOONAATTI HOJJETE**

### **SEENSA**

Ol'aantummaa seeraa mirkaneessuu keessatti qaamolee haqaa sirna heeraa kabajanii fi kabachiisan uumuudhaan mirgoota bu'uuraa lammiileen heeraan argataniif wabii akka ta'an gochuun murteessaa dha. Akkasumas, tajaajila haqa qabeessaa fi saffisaa ta'e ummataaf kennuu akka danda'an ogeessota dandeettii fi ogummaa olaanaa qaban horachuu, sirni haqaa iftoomina akka qabaatu taasisuu fi sirni haqaa ogeessota gahumsa qabaniin akka ijaaramu gochuun murteessaa dha.

Inistiitiyuutiin Leenjii Ogeessota Qaamolee Haqaa fi Qo'annoo Seera Oromiyaa rakkolee sirna haqaa naannichaa keessatti mul'atan kanneen akka hanqina humna namaa, ogummaa, naamusaa fi hojimaataa furuuf dambiidhaan akka hundeeffamu ta'ee jira.

Bu'uuruma kanaan, Inistiitiyuutichi kaayyoo hundeeffameef kana bakkaan gahuuf toorawwan xiyyeeffannoo lama irratti hojjetaa jira. Isaanis, hanqina gahumsa ogummaa fi naamusaa ogeessota qaamolee haqaa naannichaa keessatti mul'atan leenjiidhaan guutuu, fi rakkoowwan hojimaataa sirnicha keessa turan furuudhaaf immoo hojii qo'annoo fi qorannoo seeraa gaggeessuu dha. Haaluma kanaan, Inistiitiyuutichi hundeeffama irraa eegalee hojiiwwan gurguddoo armaan gadii raawwatee jira.

### **1. HOJII KENNA LEENJII FI TAJAAJILA GORSAA**

Hojiin kenna leenjii Inistiitiyuutichaa ogeessota qaamolee haqaa naannichaa keessatti tajaajila haqaa kennuu irratti bobba'an; akkasumas, kanneen gara sirna haqaa naannichaatti haaraa makaman ogummaa fi naamusa ogummaa hojichi barbaadu akka gonfatan taasisuu irratti kan xiyyeeffatu dha. Leenjiin kennamu kunis bifa sadii qaba. Isaanis: leenjii hojiin duraa (pre-service training), leenjii hojiirraa yeroo dheeraa (long-term in-service training), fi leenjii hojiirraa yeroo gabaabaa (short-term in-service training) dha.

### 1.1. SAGANTAA LEENJII HOJIIN DURAA

Sagantaan kun ogeessotni seeraa digirii jalqabaa qabanii fi gara sirna haqaa naannichaatti makamuuf fedhii qaban dorgomanii gara Inistiitiyuutichaa dhufuun leenjifamanii gahumsi isaanii mirkanaa'ee gara qaamolee haqaatti sagantaa ittiin makamani dha. Kaayyoon sagantichaas ogeessota seeraa kana dandeettii, ogummaa fi naamusa ogummichaaf barbaachisu akka gonfatan taasisuu dha. Inistiitiyuutichi leenjifamtoota kana gahoamsuuf yeroo seenan irraa eegaluun hanga xumuranii bahanitti leenjii daree fi shaakallii qabatamaadhaan deeggaramanii akka leenji'an taasisuun; akkasumas, sirna madaallii fi hordoffii naamusaa itti fufiinsa qabu diriirsee ittiin hojjechaa tureera; jiras.

Haaluma kanaan, hundeeffama irraa eegalee hanga xumura bara 2009'tti abbootii murtii fi abbootii alangaa baay'inni isaanii **2,422** (dhiira 2192, dubara 230) ta'an sagantaa kanaan simatee leenjisee jira. Bara 2010 kana keessas ogeessotni **399** (dhiira 391, dubarri 8) simatamanii sagantaa leenjii kana hordofaa jiru.

Dabalataan, rakkoo hanqina humna namaa Manneen Murtii fi Biiroo Haqaa Oromiyaa mudate irraa ka'uun leenjifamtootni **149** (dhiira 136 fi dubartii 13) murtii Gumii Inistiitiyuutichaatiin bifa addaatiin sagantaa leenjii hojiin duraa baatii lama qofa turuun simatamanii Fulbaana 30 bara 2010 irraa eegalee gara sirna haqaa naannichaatti akka makaman ta'eera.

### 1.2. SAGANTAA LEENJII HOJIIRRAA YEROO DHEERAA

Ogeessotni seeraa leenjii hojiin duraa osoo hin fudhatiin gara sirna haqaa naannichaatti makamarii hojii irra jiran leenjii hojiirraa yeroo dheeraa baatii shaniif turu akka fudhatan godhamaa tureera. Sagantaa kanaan, bara 2002 irraa eegalee hanga bara 2008'tti ogeessotni **2,166** (Abbootii Alangaa **1,299** fi Abbootii Seeraa **867**) sagantaa leenjii kana fudhachuun waraqaa ragaa gahumsa ogummaa fudhatanii gara hojii isaaniitti deebi'aniiru.

### **1.3. SAGANTAA LEENJII HOJIRRAA YEROO GABAABAA**

Sagantaan leenjii kanaan leenjiiwwan gaggabaabaan guyyoota sadii hanga kudhanii fudhatan hanqina raawwii hojii keessatti mul'atan duuchuuf sakatta'iinsa fedhii leenjii irratti hundaa'uun abbootii seeraa, abbootii alangaa, poolisii, ofiseroota seeraa, abukaattoo ittisaa fi kkf'f leenjii kennamaa ture dha. Haaluma kanaan, hanga bara 2010'tti mata-duree leenjii **149** ta'an irratti hirmaattota **35,842** ta'aniif leenjiin kun kennamee jira.

### **1.4. HOJII KENNA TAJAAJILA GORSAA**

Sirna tajaajila gorsaa diriirsuun kan barbaachiseef, dhimmoota leenjiin booda ka'aniif duubdeebii fudhachuun tajaajila gorsaa itti fufiinsa qabu kennuun rakkoo hubannoo ogeessota hojii irratti mudatu tajaajila gorsaa itti dhiyeenyaan kennuun hiikaa adeemuuf yaadameeti. Kana malees, fedhii tajaajila gorsaa haguuggii leenjiin ala dhufu simachuun tajaajilicha kennuun barbaachisaa waan ta'ee fi.

Kana dhugoomsuuf sirna tajaajila gorsaa ammaayyaa'aa ta'e diriirsuu, dhimma gorsa barbaadu akkaataa barbachisummaa isaatti ogeessa dhimmicha irratti muuxannoo fi gahumsa olaanaa qabuun akka kennamu gochuu, teekinooloojii hammayyaawaan deeggaruun qaamolee gara garaa waliin hariiroo uumuun tajaajila gorsaa qulqulluu ta'e kennuuf Inistiitiyuutichi hanqinaalee gama kenna tajaajila gorsaatiin jiran furuuf ciminaan hojjetaa jira. Haaluma kanaan, hanga bara 2010'tti dhimmoota **55** irratti tajaajilli gorsaa fedhii maamiltootaa fi dhimmamtoota irratti hundaa'ee kennamee jira.

Walumaa galatti, dhimmootni kenna leenjii fi tajaajila gorsaa waliin wal qabatee armaan olitti Inistiitiyuutichaan hojjetaman kun sirna haqaa naannichaa keessatti garaagarummaa hiikkoo seeraa irratti mul'atu xiqqeessuu, kenniinsa tajaajila haqaa tilmaamawaa, bu'a qabeessaa fi dhaqqabamaa ta'e dhawaataan uumuu keessatti shoora olaanaa qabaachuu isaa sakatta'insi bu'aa leenjii yeroo garaa garaa gaggeeffame ni agarsiisa.

## 2. HOJII GAGGEESSA QORANNOO FI QO'ANNOO

Akkaataa Dambii Hundeeffama Inistiitiyuutichaa, Dambii Lak. 77/1999 keewwata 7 (3) jalatti tumameen aangoo fi gahee Inistiitiyuutichaaf kennaman keessaa tokko hojimaata kenniinsa haqaa bibittinnaa'anii sirna haqaa naannichaa keessatti mul'atan sirraa'anii bifa tokkummaa akka qabaatanii fi kenninisi sirna haqaa sadarkaa isaa eeggate bakka hundatti akka dhugoomuuf qorannoo fi qo'annoo gaggeessuun yaada furmaataa burqisiisuu kan jedhu dha.

Haaluma kanaan, Inistiitiyuutichi hanga bara 2009'tti sakata'aa fedhii qorannoo yeroo yeroon gaggeessuun dhimmoota dursi kennamuufii qabuuf dursa kennuun mata-dureewwan **shantama (50)** irratti qorannoo fi qo'annoo gaggeessee bu'aa isaa qaama ilaaluuf kan dhiheesse yoo ta'u, bara baajataa 2010 kana keessas mata-dureewwan **shan (5)** irratti qorannoo gaggeessuu irratti argama.

Hojii irra oolmaa bu'aa qorannoo ilaalchisee bu'aawwan qorannoo workishooppiif dhiyeessuun dhimmamtootni akka irratti mari'atan gochuu, bu'aa qorannichaa qaama ilaaluuf erguu, gara moojuliitti jijjiiruun leenjiin akka irratti kennamu gochuu, toora mar-sariitii mana hojichaa irratti gadi lakkisuun dhaqqabamaa taasisuuf hojiin hojjetame jajjabeessaa dha. Gama birootiin, qorannoowwan bara 2006-2009 jidduutti gaggeeffaman keessaa qorannoowwan 10 filachuun argannoo isaanii gurguddoo bakka tokkotti jiildessuun waraabbii 1,500 akka maxxanfamanii fi qaamolee haqaatiif bilisaan akka raabsaman taasifamee jira. Dabalataan, qorannoowwan hojjetaman keessaa kanneen gahumsa ol'aanaa qabu jedhamanii itti amanaman shan (5) filatamuun Joornaalii Seeraa Oromiyaa irratti maxxanfamaniiru. Kunis qorannoowwan hojjetaman dhaqqabamaa akka ta'anii fi hojiirra akka ooluu danda'an deeggaruu keessatti shoora olaanaa qaba.

Maxxansi Joornaalii Seeraa Oromiyaa waggaatti yeroo tokko maxxanfamus hanga bara 2010'tti Jiildii 7<sup>ffaa</sup> irra gahee jira. Joornaalichi hayyootni rakkoolee sirna haqaa keenya keessatti mul'atan ilaalchisee qeeqaa fi yaada qaban akka ibsatan akka waltajjii tokkootti akka gargaaru yaadamee kan hundaa'e yommuu ta'u, beekamtii qabu caalaatti dabaluu akka danda'utti

yeroo gabaabaa keessatti miseensa joornaalota Afrikaa toora interneetii irraa (*African Journals Online*) ta'ee jira.

### 3. GUDUNFAA

Akka waliigalaatti, hojii kenna leenjii fi tajaajila gorsaa fi gaggeessa qorannoo fi qo'annootiin rakkoowwan qaamolee haqaa naannichaa mudachaa turanii fi jiran xiqqeessuu keessatti gahee Inistiitiyuutichi taphate guddaa dha. Haa ta'u malee, caalaatti yeroo waliin of-fooyyeessaa adeemuu fi caalaatti dorgomaa ta'ee argamuuf hanqinaalee raawwii hojii keessatti isa mudatan yeroo yeroon sakatta'uun tarkaanfii sirreeffamaa fudhachaa adeemuu barbaachisa. Kana malees, hariiroo hojii maamiltoota isaa, abbootii hirtaa, qaamolee mootummaa fi miti-mootummaa waliin qabu cimsuudhaan mul'ata keewwate bira gahuudhaaf tattaaffii cimaa taasisuun isarraa eeggama.

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# **Ergama, Mul'ata, Toorawwan Xiyyeeffannoo, 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 gonfatanii 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 Xiyyeeffannoo**

1. Gahumsa Ogeessota Qaamolee Haqaa
2. Qo'annoo fi Qorannoo

## **Duudhaalee Ijoo**

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

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 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**

1. Competence of the Justice Sector Professionals
2. Studies and Research

### **Core Values**

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

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Oromia Justice Sectors Professionals Training and Legal Research  
Institute

Adama, Oromia, Ethiopia

## Imaammata Gulaallii Barreessitoonni Hordofuu Malan

JOORNAALIIN SEERAA OROMIYAA (JSO) joornaalii waggaatti yeroo tokko Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qo'annoo Seeraa Oromiyaan yoo xiqqaate waggaatti yeroo tokko maxxanfamu dha. Ogeessoonni gumaachuuf fedhii qabdan imaammata gulaallii armaan gadii haala tilmaama keessa galcheen gumaachuu dandeessu.

1. Gumaachawwan dhiyaatan barruuwwan gaggabaaboo dhimmoota seeraa, dinagdee, siyaasaa, fi hawaasummaa Oromiyaa, Itoophiyaa fi Addunyaa irratti xiyyeeffatan ta'ee, hojii dhuunfaa keessanii kana dura bakka biraatti hin maxxanfamne ta'uuti irraa eegama. Hojiiwwan biroo kan akka dhimmoota ceephessuu, xiinxala kitaabaa, yaadawwan seerota ba'an irratti kennaman ta'uus danda'a. Haa ta'u malee, gumaachawwan rakkoo qabatamaa manneen murtii fi waajjiraalee haqaa Naannoo Oromiyaa hiikuurratti xiyyeeffachuun dhiyaatan baay'ee jajjabeeffamu.
2. Gumaachi dhiyaatu Afaan Oromoon, Afaan Ingiliziin, ykn Afaan Amaaraan ta'uu danda'a.
3. Gumaachi dhiyaatu Kompuuteraan ta'ee Afaan Oromoo fi Afaan Ingiliziif walirraa fageenya sararoota lamaan jidduu jiru (space between lines) 1.5; gosi barreeffamaa *Times New Roman*; gurguddinni qubee (font size) 12 dha. Yaadannoowwan miiljaleef ammoo walirraa fageenya sararoota lamaanii 1.0; gosi barruu *Times New Roman*; gurguddinni qubee 10 dha. Gumaachi afaan Amaaraas haaluma walfakkaatuun kan dhiyaatu ta'ee gurguddinni qubee yaadannoo miiljalee garuu, 9 dha.
4. Dheerinni gumaachaa barruuwwan afaan Oromoon dhiyaataniif fuula 15 hanga 30 yoo ta'u, afaan Ingiliziif ammoo fuula 10 hanga 30 jidduu ta'uu qaba. Gumaachawwan gosa biroo fuula 5 hanga 10 jidduu ta'uu danda'u.
5. Gumaachi dhiyaatu mata-duree, axereeraa, seensa, qaama, yaadota gudunfaa fi furmaataa of keessatti hammachuun kan qindaa'ee ta'uu qaba.
6. Gumaachawwan maxxansa jiil 8<sup>ffaa</sup> lak.1f dhiyaatan hanga Mudde 30, 2011 A.L.I yoo ta'e filatama. Gumaachawwan guyyaa kanaa booda dhiyaatan maxxansa itti aanutti kan ilaalaman ta'u.
7. Gumaacha keessan Boordii Qophiitti ([hweldesebet@yahoo.com](mailto:hweldesebet@yahoo.com)) ykn Koree Gulaalliitti teessoo imeelii ([bekele.teferi@yahoo.com](mailto:bekele.teferi@yahoo.com); ykn [milkiw@yahoo.com](mailto:milkiw@yahoo.com)) dhaan erguu dandeessu.



# Submission Guidelines

Oromia Law Journal (OLJ), a journal hosted by Oromia Justice Sectors Professionals Training and Legal Research Institute is published at least once annually. It accepts and publishes submissions fulfilling the following criteria upon revisions by the editors and approval by the Preparatory Board.

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, 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, abstract, introduction, 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 Preparatory Board (hweldesensbet@yahoo.com) OR Editorial Committee (bekele.teferi@yahoo.com OR milkiw@yahoo.com ) in soft copy or hard copy. Submissions in hard copy should not reveal the identity of the author in any way.