

JOORNAALII SEERAA OROMIYAA OROMIA LAW JOURNAL

Jiildii 9^{ffaa} , Lakk.1
Vol.9, No.1
ISSN 2304-8239

Waggaatti Yeroo Tokko Kan Maxxanfamu
Published At least Once Annually



Barruulee Articles

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OROMIA LAW JOURNAL

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REGISTRATION OF VITAL EVENTS IN ETHIOPIA: GAPS IN THE LAWS ON REGISTRATION OF MARRIAGE AND ITS DISSOLUTION

*Serkalem Eshetie**

ABSTRACT

In any country, a well-established system of registration of vital events plays key roles to bring political, social, and economic developments. To this end, it is indispensable that the system shall be based, inter alia, on well designed laws. Though many countries have very established system of civil registration, the full-fledged practice of registration of vital events and laws are of recent vintage in Ethiopia. Partly attributed to this, there appear some flaws in the laws on vital events registration in Ethiopia. The aim of this article is to highlight the gaps in that part of the laws dealing with registration of marriage and its dissolution. In so doing, it examines the current laws connected with registration of marriage and its dissolution in light of other laws and established practices. In addition, it also attempts to look into Ethiopia's past experiences in relation to registration of civil statuses. It then identifies gaps regarding the persons responsible to declare marriage or divorce for registration, time and place of registration that would have their own impact in the endeavor to build a well-functioning system of registration of vital events across the country. Accordingly, the laws in force shall be considered for further amendment to avoid the defects.

Keywords: *Declarants, Place of Registration, Registration of Marriage, Registration of Divorce, Vital Events*

I. INTRODUCTION

Vital events are events concerning life and death of individuals, as well as their family and civil status.¹ Under the United Nations system, ten (10) events are deemed vital events which shall be considered for registration. These are live birth,

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¹ United Nation, Principles and Recommendations for a Vital Statistics System (*Statistical Papers, Series M No.19/Rev.3, UN, New York, 2014*), P3 (herein after *UN, Principles and Recommendations*).

death, foetal death, marriage, divorce, annulment of marriage, judicial separation, adoption, legitimation and recognition.² Since it can provide governments with the necessary vital statistics, a well-established system of registration of vital events plays key roles in any country to bring political, social, and economic developments. Civil registration allows policy-makers, programme managers, health service planners or demographers to generate up-to-date information about the population.”³ This system is also pivotal for an individual who needs to exercise a right which is based on proof of the existence of a certain vital event. The individual could meet legal requirements such as “documentary evidence of identity; legal status and resultant rights; proof of age and allowing access to rights based on age; establishing family relationships; enabling the legal transmission of property, inheritance, social insurance and other benefits.”⁴ With this, it is clear that vital events registration eases the process of registering vital events themselves.

Due to the indispensability of civil registration, there exist international agreements that require registration of some vital events. For instance, the Convention on the Right of the Child obliges parties to immediately register birth.⁵ In the same way, the African Charter on the Rights and Welfare of the Child affirms that every child has the right to be registered.⁶ The Convention on the Elimination of All Forms of Discrimination against Women requires states to make the registration of marriages in an official registry compulsory.⁷ There is also a UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage of the 1964. Article 3 of this Convention stipulates that all marriages shall be registered in an appropriate official register by the competent authority.

²Foetal death refers to dead-born foetus” and “stillbirth”. Separation is to mean the disunion of married persons, according to the laws of each country, without conferring on the parties the right to remarry. Legitimation refers to the formal investing of a person with the status and rights of a person born in wedlock, according to the laws of each country. Recognition, on the other hand, is the legal acknowledgement, either voluntarily or compulsorily, of the paternity of a child born out of wedlock. For all these, see *id.*, Pp 3-4.

³ Towards Sustainable Vital Events Registration and Vital Statistics Systems of Ethiopia: Strategy and Action Plan (2013-2018), P.3; available at <https://www.google.com/search?Client=firefox-b-d&q=Towards+Sustainable+Vital+Events+Registration+and+Vital+Statistics+Systems+of+Ethiopia+%3A+Strategy+and+Action+Plan> < accessed on March 14, 2019> (hereinafter, *Strategy and Action Plan*)

⁴*Ibid.*

⁵ Convention on the Right of the Child, Art.7 (1).

⁶ African Charter on Right and Welfare of the Child, Art. 6.

⁷ Convention on the Elimination of All Forms of Discrimination against Women, Art. 16 (2).

These international laws seem to be promulgated with a primary purpose of safeguarding the rights of children and women.

Coupled with the various social, economic and political needs of countries, the above legal instruments impose obligation on their members to implement registration of marriage and birth. Besides, states have their own domestic laws to regulate registration of events which they deem vital. The same is true in Ethiopia. In the first place, Ethiopia is a party to the above mentioned conventions. Particularly, with the advent of the 1960 Civil Code, Ethiopia formulated detailed rules for registration system of what were known as 'Civil Status'.⁸ The Civil Code also ambitiously envisaged for establishment of officers of civil status throughout the country starting from the lower administrative structure. Despite this, Ethiopia was not able to have the office even at major cities. Indeed, the Civil Code itself has suspended the application of several provisions of the Civil Code on registration of civil statuses.⁹ The Order which was expected to be published to trigger the application of the civil registration provisions had never come to existence.¹⁰ Nonetheless, municipalities were issuing certificates of birth, death, marriage, and divorce.¹¹

Though the Revised Family Code of Ethiopia (RFC) has imposed obligation on the federal government to issue registration law and establish the necessary institution within 6 months from the effective date of the code¹², it took the governments more than a decade to issue the said registration law.¹³ Besides, Ethiopia has now

⁸ Civil Code of the Empire of Ethiopia, Proclamation No 165/1960, Negarit Gazeta, 19th Year No. 2, 5th May 1960, Addis Ababa (herein after, Civil Code), Arts. 47 - 153.

⁹*Id.*, According to Article 3361, Arts 48-55, 57-70, 72-77, 79-131 and 133-145 shall not come into force until an Order to be published in the Negarit Gazeta. Until this Order, Article 3361(2) stipulated that proof of birth, marriage and death shall be made by producing acts of notoriety drawn up in accordance with the provisions of Arts.146-153.

¹⁰Strategy and Action Plan, *supra* note 3.

¹¹The World Bank Group, A Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems: Estonia, Ethiopia, Vietnam, and South Korea, P5; Available at, http://documents.World_bank.org/curated/en/237491510746694949/A-comparative-analysis-of-laws-on-civil-registration-and-vital-statistics-systems-Estonia-Ethiopia-Vietnam-and-South-Korea <accessed on February 16, 2019> (herein after, Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems).

¹²Revised Family Code, Proclamation No. 213/2000, Federal Negarit Gazeta, 6th Year, Extraordinary Issue No. 1, Addis Ababa, 4th July 2000 (hereinafter, Revised Family Code), Art. 321. Similar stipulations are made within regional family codes.

¹³ It is in 2012 that Ethiopia enacted the Vital Events Registration Proclamation, Regulation and Directives.

established the Vital Events Registration Agency through a regulation.¹⁴ This Agency establishes offices at each administrative level including at the lowest level of administrative hierarchy in the country.

Some of the reasons to enact the current registration law can be read from the preamble of the proclamation. Accordingly, one of the reasons is to establish a system of registration of vital events since they are important in the development plans of the country. The system is also believed to play key role in the provision of different social and economic services to citizens. Moreover, the registration law is justified because establishing a well functioning registration system of vital events is pivotal in making the justice administration expedient and effective.

On the basis of the aforementioned objectives and general experiences, it appears, however, that the existing vital events registration law of Ethiopia has some defects. Therefore, this Article particularly aims at highlighting the gaps in the law of registration of marriage and its dissolution in Ethiopia. To this end, it explores the relevant laws including the Revised Family Codes, the Vital Events Registration Proclamation and the Civil Code. It also looks into some foreign experiences.

The rest of the Article is organized into three sections. Section two examines as to which tier of government in Ethiopia has the constitutional mandate to enact laws on registration of vital events. It also makes abridged overview on the existing registration laws in Ethiopia. Section three, on the other hand, addresses registration of marriage, its dissolution and the related issues arising thereof. Finally, section four concludes and forwards certain recommendations.

¹⁴ See Vital Events Registration Agency Establishment Council of Ministers Regulation No. 278/2012.

II. VITAL EVENTS REGISTRATION SYSTEM IN ETHIOPIA: GENERAL OVERVIEW

A. POWER TO ENACT VITAL EVENTS REGISTRATION LAW

Regarding legal framework, though not implemented as stated above, it is the Civil Code of 1960 which, for the first time in Ethiopia, has incorporated several rules with a view to regulate registration of what it called 'civil status'. As shown above, the country has also signed some international conventions related to registration of vital events. In addition, the family codes require registration of marriage in the country though they are silent regarding the registration of divorce and other vital events including acknowledgement and judicial declaration of paternity.

Civil registration in Ethiopia is now largely regulated by the Vital Events Registration Proclamation and the related regulations and directives. Before going into the contents of this proclamation, it may be of interest to address as to which level of the government in Ethiopia has the power to enact laws on registration of vital events. Reading the relevant provisions of the federal and regional family laws, it may seem that each levels of the government can enact its own registration law. As shall be discussed shortly, this is not true as the federal government has enacted the Vital Events Registration Proclamation which regulates registration of vital events throughout the country.

Uniform civil registration laws and regulations which establish the basic policies and procedures that must apply in every part of a country are considered essential regardless of whether the administration of civil registration system is centralized or decentralized.¹⁵ This principle is adopted in Ethiopia. Looking at the family codes alone, it is simple to detect that each level of the government has the power to enact registration laws and establish the required enforcement bodies.¹⁶ In spite of this, the vital events registration proclamation tells that enacting registration laws is given to the federal government. In its preamble, the proclamation affirms that the federal lawmaker proclaimed it on the basis of Article 55 (1) and 55 (6) of

¹⁵ UN, Principles and Recommendations, *supra* note 1, Pp 71-72.

¹⁶ Art 321(1) of the RFC states the government shall, within 6 months from its effective date, issue registration law and establish the necessary institutions. There are equivalent provisions in the regional family codes.

the FDRE Constitution. This means that the federal government has invoked the constitutional provision that mandates the federal government to enact civil laws necessary to establish and sustain one economic community.¹⁷ Practically, regional states are also conducting registration of vital events in accordance with this federal law. This could bring uniformity in the law on registration of vital events which is crucial both at regional and federal level.

Given the above fact, we may wonder how the unique interests of the regional states, if any, could be accommodated. In such system of uniform legislations, the extent of compliance with the registration law is apt to vary among different regions or sectors of the population.¹⁸ Accordingly, the Vital Events Registration Proclamation attempts to create rooms for regions to safeguard their interests through registration of vital events in their jurisdiction. In this respect, Article 6 of the proclamation is one. First, it obligates regions to cause assignment of an officer of civil status for each administrative office.¹⁹ Second, the appropriate regional organ may give the officer of civil status functions other than listed in the law. More significantly, regions shall in collaboration with the appropriate federal organ prepare the registers of civil status to be used in their jurisdiction.²⁰ Through these, regions may address their special interests, if any, that the federal laws fail to address. It may be added here that they also have the right to keep one copy of the registration forms for their purposes.²¹

¹⁷ In fact, the reference to Article 55 (6) of the Constitution does not seem to be adequate as it gives power to the House of People Representatives' upon the decision of the House of Federation. As far as the knowledge of the author, there is no such decision from the House of Federation empowering the House of Peoples Representatives to enact nation-wide law on registration of vital events.

¹⁸ UN, Principles and Recommendations, *supra* note 1, P 72.

¹⁹ Art. 2 (8) of the Amendment Proclamation defines 'administrative office' as an office of a region's lowest level of administrative hierarchy or vital event registration structure. It shall be noticed that regions are required to designate an appropriate regional organ to direct, coordinate and support the registration of vital events at regional level and to transfer records of vital events to the appropriate federal organ.

²⁰ This is mentioned under Art.13 (1) of the Proclamation.

²¹ Vital Events Registration and National Identity Card Proclamation (amendment), Proclamation No 1049/2017, Art 2 (13). Certificate of vital events shall be prepared in the working language of the concerned region and in Amharic or may be in English if necessary. This is important as there are cases where individuals need the English versions.

B. VITAL EVENTS FOR REGISTRATION IN ETHIOPIA

To begin with definition of vital events, Article 2 (1) of the proclamation stipulates that “vital event” means birth, marriage, divorce or death, and includes adoption, and acknowledgement and judicial declaration of paternity. Compared to the UN lists, the proclamation requires registration of only seven vital events and whether this exhaustive list is intentionally made by the legislature may be subject to question.²² In fact, the practice also considers only the above events as vital for the purpose of registration. Despite this, however, one may doubt as to why the law does not generally consider dissolution of marriage as vital event. Under the family codes in Ethiopia, marriage may be dissolved due to divorce, court order for non-fulfillment of essential conditions of marriage, death or absence of one of the spouses.²³ It is mentioned above that annulment of marriage is a vital event in the UN system that is suggested to be registered. A fairly detailed discussion is made on such issues in the relevant part of this Article.

Historically speaking, registration of marriage in Ethiopia is said to be started in 1935.²⁴ With regard to legal framework, however, it is the 1960 Civil Code that has incorporated several provisions governing registration of ‘civil status’. The provisions of the Civil Code that run from Article 47 through 153, which are totally abrogated in 2012²⁵, dealt with registration of civil status though many of them have not been implemented.

In respect of meaning of vital event, one can notice important departure between the Civil Code and the current law of registration of vital events. In respect of terminology, the Civil Code used ‘civil status’ instead of ‘vital event’.²⁶ Though the Civil Code and the current law follow similar approach of listing what they consider ‘civil status’ or ‘vital event’, the list now is broadened. In the Civil Code, only birth, death and marriage are civil statuses for registration.²⁷ In particular,

²²Although it is an eventual goal, not every country records are vital events that the UN recommends. Priority is recommended for births, marriages, divorces, and deaths to be recorded. See Comparative Analysis, P 86.

²³Revised Family Code, Art. 73.

²⁴ See በአዲስ አበባ ከተማ መስተዳድር ምክር ቤት ሀዘጋጅነት በተሻሻለው የቤተ ሰብ ህግ ረቂቅ ላይ የተካሄደ ከንፈረንስ ቃለጉባኤ (መጋቢት 21-23፣ 1991፣ Hager Gizat Minister), P4.

²⁵Vital Events Registration Proclamation, Art. 68. It does not, however, mean that the whole provisions of the Civil Code were effective until 2012.

²⁶Civil Code, Art. 47.

²⁷Civil Code, Art 47 and the following articles.

Article 59 of the Civil Code explicitly mentions that the officer of civil status shall ensure that the *births, deaths* and *marriages* taking place within his jurisdiction be entered in the register of civil status. With regard to divorce, though the law did not oblige the officer of civil status to register, there was the practice of divorce registration.²⁸ Currently, vital event refers to birth, death, marriage, divorce, adoption, acknowledgement and judicial declaration of paternity.²⁹ And the list in the proclamation is exhaustive. Other events including declaration of absence, unless death is declared (which may be subsequently cancelled³⁰), and dissolution of marriage owing to a reason other than divorce are not considered as vital events for registration. As shall be seen in the relevant part of this Article, the appropriateness or otherwise of this position of the law should be scrutinized.

Ever since the time of the Civil Code, our registration laws specify the particulars that should be entered into the records of each vital event. Attributable to the nature of each vital events, the Proclamation has also specified corresponding time and place of registration. They also establish responsible institutions at various levels of the government administration.³¹ Furthermore, they have imposed obligations on certain individuals and institutions to declare registration of the vital events.

III. REGISTRATION OF MARRIAGE AND ITS DISSOLUTION: GAPS IN THE LAW

In establishing a good system of registration of marriage and its dissolution, the registration law should clearly regulate certain crucial matters. It shall, *inter alia*,

²⁸Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems, *supra* Note 11, P5. See በአዲስ አበባ ከተማ መስተዳድር ምክር ቤት ሀዘጋጅነት በተሻሻለው የቤተ ሰብ ህግ ረቂቅ ላይ የተካሄደ ኮንፈረንስ ቃለ ጉባኤ (መ ጋቢት 21-23፣ 1991፣ Hager Gizat Minister).

²⁹ Vital Events Registration Proclamation, Art 2 (1).

³⁰Vital Events Registration Proclamation, Art 44. This provision does not indicate judicially declared absence shall be registered. According to Art 44(1), copy of the judgment declaring absence shall be presented to the officer of civil status of the nearest administrative office to the last principal residence of the person whose absence or death has been declared. It requires this for registration of death, not of absence. In addition, it can be noted that Article 44 is within the subsection of the proclamation titled as 'Registration of Death'. In the Civil Code, there may be a possibility that a court judgment may be given which declares either absence or death of a person. According to Article 161, the court may deliver a judgment declaring death of the absentee if the evidence collected establishes the absentee is dead. Thus, one may contend that the proclamation envisages this aspect of an absentee.

³¹See Civil Code, Articles 54, 56, 71, 78, 132.

be clear on contents of the record, place of registration, time of registration and persons responsible to declare the occurrence of the vital event.³² As such, the Ethiopian registration law gives attention to these matters. To conveniently discuss the issues related to registration of marriage and its dissolution, this section separately deals with registration and dissolution of marriage.

A. REGISTRATION OF MARRIAGE

In Ethiopia, no marriage is void on any ground as any marriage shall have effect from the date of its conclusion even if it violates essential conditions.³³ The fulfillment of the essential conditions of marriage is also never to give effect for marriage. Likewise, registration of marriage has never been required for the commencement of effects of marriage. Furthermore, both ‘valid’ and ‘invalid’ marriages, irrespective of the form of conclusion of the marriages³⁴, shall be registered by the competent officer of civil status.³⁵ A certificate of registration of marriage shall then be prepared in two copies and be given to each of the spouses.³⁶

Whether or not invalid marriages shall be registered may however become a point of dispute. Having a look at Article 2 (3) of the Vital Events Registration Implementation Directive No.7/2010 E.C³⁷, it may be argued that not all marriages are eligible for registration. This directive gives definitions for the vital events enumerated in the vital events proclamation. At times, the definitions may mislead the officers of civil status since they are not usually legal experts. For instance, Article 2 (3) of the directive stated ‘there is marriage when it is proved that a man and a woman of 18 or above years of age become a husband and wife in accordance with relevant laws’.³⁸ On one hand, this provision may be understood as it does not generally require/allow registration of marriages concluded in violation of the essential conditions of age. In the vital events registration

³² UN, Principles and Recommendations, *supra* note 1.

³³ Revised Family Code, Art. 28(3). This was true in the Civil Code, too.

³⁴ Forms of conclusion of marriage pertain to customary marriage, religious marriage and civil marriage.

³⁵ Revised Family Code, Art. 28 (2)

³⁶ Vital Events Registration Proclamation, Art. 47(2)

³⁷ ለአልል ወሳኝ ኩነት መዝጋቢ ተቋማት የተዘጋጀ የወሳኝ ኩነት ምዝገባ አረፃፅሮ መመሪያ ቁጥር 7/2010 (herein after, Vital Events Registration Directive).

³⁸ Article 60 (5) of the Directive also states that a person who is under 18 years old cannot enter in to marriage.

proclamation and the family codes, however, there is no provision restricting registration only to valid marriage. On the other hand, the directive may be construed as it does not require/allow registration of a valid underage marriage. Despite this, in Ethiopia, there may be a case where underage marriage is considered valid since its conclusion. To this end, the family codes authorize the General Attorney to give a dispensation of up to 2 years for the conclusion of a valid marriage.

Though the family codes or the registration laws in Ethiopia do not attempt to define marriage, they clearly give effect to a marriage even if both or one of the spouses is below the age of 18. Furthermore, they do not stipulate that early marriages should not be registered. Given the fact that the Kebele Managers, who are responsible to register vital events, are not usually legal experts³⁹, such definition in the directive may be misleading. It is also contrary to the higher laws which do not require only marriages which do not violate the requirement of age shall be registered. At least, the definition of marriage in the directive may create confusion on whether or not an ‘underage marriage’ due to the age dispensation given by the General Attorney is a marriage for the purpose of registration. In fact, Article 60 (6) of the Directive gives recognition to the possibility of the above age dispensation. With this, the attempt by the Directive to define marriage, which is not attempted by the higher laws, may serve no meaningful purpose than creating confusion.

Generally, the relevant rules on registration of marriage are concerned, *inter alia*, with obligation to register marriage, contents of records of marriage, time of registration of marriage and place of registration of marriage. Seen particularly in light of the purposes of having a well established system of registration of vital events, it appears that there are certain gaps in the law that regulate registration of marriage. The following discussion exposes some of the defects.

i. Record of Marriage

When we read the relevant parts of the law on particulars of records of a vital event, it can be understood that the registration records show certain characteristics of the event and of the persons related to the event. The family codes in Ethiopia

³⁹ In this regard, the writer came to know this is true in many Woredas of Oromia Regional State while he was collecting data to conduct a grand research on the implementation of Oromia Family Code.

denote the particulars of the record of marriage. There are certain differences regarding the particulars required under Article 117 of the Civil Code, Article 30 of RFC and Article 30 of Proclamation. All these laws commonly require the record of marriage to show full⁴⁰ names, date and place of births of the spouses and of their witnesses, and date of celebration of the marriage. The RFC further requires the record of marriage to include the form of the marriage and date of its registration.⁴¹ Among the changes the RFC has made, the inclusion of ‘form of the marriage’⁴² is important. Among other things, indication as to the ‘form of the marriage’ provides relievable data to know the common forms of conclusion of marriage and the related problems. This is also significant for researchers.

The Civil Code discriminates between the effects of records that are entered in the registers and those that are not entered in the registers. The records of civil status regularly entered in the registers shall be proof of the statement which they contain.⁴³ It even went further when it stated that evidence to the contrary may not be adduced except where it is authorized by the court.⁴⁴ On the other hand, the Civil Code stated that records not entered in the register shall not have probatory force inherent to records which are registered.⁴⁵ They shall only have a value of mere information.⁴⁶ Though it does not make such express stipulations like the Civil Code, the proclamation recognizes probative value for the records of the register of a civil status.⁴⁷ It also gives the same probative value as the records in the register for the certificate of the registration issued according to the laws.

ii. Obligation to Declare Marriage

To register marriages or any vital event, information about the event is essential. Hence, the law shall clearly designate an informant for each type of vital event who shall be primarily responsible for providing the information required for registration.⁴⁸ Along with this, the law may designate alternative informants and

⁴⁰ The word ‘full’ is missing in the Civil Code.

⁴¹ Revised Family Code, Art. 30.

⁴² This is to refer to the three forms of conclusion of marriage: marriage concluded before officer of civil status, according to custom and religion.

⁴³ Civil Code, Art 97(1). The law further states that evidence contrary to this rule may not be adduced except upon court authorization (See Art 97(2-3)).

⁴⁴ Civil Code, Art 97(2)

⁴⁵ Civil Code, Art 98

⁴⁶ Civil Code, Art 98

⁴⁷ Vital Events Registration Proclamation, Art. 48.

⁴⁸ UN, Principles and Recommendations, *supra* note 1, P 79.

establish the order in which each of them must assume responsibilities.⁴⁹ The importance of the informant lies in the fact that the registrar can legally record a vital event only on the basis of a legally designated informant's declaration.⁵⁰

Given the three forms of conclusions of marriage, the registering organ may not have adequate information about the conclusion of particularly customary and religious marriages. To alleviate such problem, the law obliges certain persons to declare marriage to the officer of civil status. During the Civil Code, the *authority, i.e., religious institutions and customary organs (if any), who have celebrated the marriage*, the *spouses* and *their witnesses* were required to declare marriage.⁵¹ In addition, the officer of civil status had been required to draw records of marriage 'ex officio'.⁵² In such case, he shall summon the 'interested persons' to make them sign the record of marriage.⁵³ This is still true in the current registration laws.⁵⁴ Moreover, Article 22 (1) of the Vital Events Proclamation requires the declarants of a vital event to confirm, by signing, the validity of particulars entered in the register of civil status. The officer of civil status shall then finally approve the registration after ascertaining the completeness of the records.⁵⁵

Similar to the Civil Code, the existing family codes oblige the spouses to declare marriage.⁵⁶ They also oblige officers of civil status to draw up the record of marriage of his own motion whenever he becomes aware of the marriage.⁵⁷ Unlike the Civil Code, they do not consider witnesses and an authority that celebrated the marriage as declarant. Indeed, as already stated, the spouses and witnesses can be called to sign on the records of marriage.⁵⁸ In this regard, the Civil Code stated that the officer of civil status shall summon the '*interested persons*' to make them sign the record of marriage.⁵⁹ In this case, the phrase '*interested persons*' might have

⁴⁹*Ibid.*

⁵⁰*Ibid.*

⁵¹ Civil Code, Art. 119.

⁵² Civil Code, Art 120.

⁵³ Civil Code, Art 120(2)

⁵⁴ Revised Family Code, Art 29 (2).

⁵⁵ Vital Events Registration Proclamation, Art 22(2).

⁵⁶ Revised Family Code, Arts. 28 (1) and 29(1).

⁵⁷ Revised Family Code, Art 29 (1). Article 25 (6) also seems to require officer of civil status to register marriage when it is celebrated before such officer.

⁵⁸ Revised Family Code, Art 29 (2).

⁵⁹ Civil Code, Art 120 (2).

created problem to identify the interested persons.⁶⁰ Of course, the case of spouses could be undisputable. Apart from this, we may argue that the authority celebrating the marriage and witnesses are also interested persons as they were obliged to declare marriage.

At present, Article 31 of the Vital Events Registration Proclamation enumerates the persons who have the duty to declare marriage. The Proclamation called these persons ‘declarants’ and defines them, under Article 2 (4), as persons who have the responsibility to declare a vital event for registration. Despite this general definition, only two persons are required to declare marriage. In the first place, Article 31 (1) stipulates that the officer of civil status who observed the marriage ceremony shall immediately register it.⁶¹ This provision does not indeed go with the title of the Article which talks about ‘obligation to declare marriage’. It requires the officer of civil status to register marriage, and not merely to declare marriage for registration. Regarding the responsibility of the officer of civil status, the silence of the Proclamation on whether the officer of civil status shall register marriage *ex officio* where he becomes aware of the marriage may be misleading. At this moment, however, the relevant provision of the family codes which require the officer to draw up the records of marriage of his own motion whenever he becomes aware of the marriage can be invoked.⁶² There could be no ground to assert that the Proclamation repeals this provision. In fact, it may be contended that the officer may not carry out this duty when the spouses want to register their marriage before another officer of civil status. This is because, as will be discussed shortly, the law entitles the spouses to choose the place of registration of their marriage.

The other declarants are the spouses who shall present to an officer of civil status the evidence of religious or customary marriage for registration.⁶³ Under Article 33 of the Proclamation, religious institutions or elders have the duty to immediately provide the couples with ‘evidence of their marriage’ with the particulars indicated

⁶⁰ In general, there is no practical case to understand such and other provisions of the Civil Code because they have not been practically implemented.

⁶¹ This is also confirmed under article 62 (6) which requires the officer of civil status celebrating the marriage to issue the spouses certificate of marriage.

⁶² Revised Family Code, Art 29.

⁶³ Vital Events Registration Proclamation, Art.31(2), See also Art. 29 (1) of the RFC.

in the law.⁶⁴ It shall be noted, here, that this ‘*evidence of marriage*’ is different from ‘*certificate of registration of marriage*’ under Article 47 of the Proclamation. The latter is the certificate issued by the officer following registration of marriage.⁶⁵ The evidence of religious or customary marriage is sufficient to register the marriage and the law does not oblige the religious institution or elders to appear before the officer of civil status even for signature. However, the Directive further requires witnesses or a person who has attended the marriage ceremony to appear before the officer of civil status to put his/her signature.⁶⁶ But, it is not clear if these persons should appear up on their own initiation or summons, or whether their failure to appear attracts any legal liability.

Unlike in the Civil Code, witnesses of the spouses, religious institutions that celebrated religious marriage or elders who celebrated customary marriage are not required to declare marriage. Here, it could be vital to pin down that there are also other persons mentioned in the family codes who have certain roles in the celebration of certain marriage. The General Attorney can be one when it grants dispensation of age as per Article 7 of the RFC or when it allows marriage by representation under Article 12 of the same Code. In addition, parents in case of age, guardian and the court in case of marriage of a judicially interdicted person may have roles in the conclusion of a marriage. Moreover, representative of a spouse would take a role in the conclusion of marriage when the General Attorney allowed marriage by representation.⁶⁷

Despite these, the Vital Events Registration Proclamation imposes obligation on none of the above persons to declare marriage for registration. In this regard, Article 3 (2) of the Directive is interesting. This provision requires the guardian or custodian of an incapable person to whom a vital event is occurred to declare a vital event occurred to the incapable.⁶⁸ If this is the case, one may then wonder regarding who these incapable persons could be for the purpose of registration of marriage. We may think of at least two groups of persons who may remain

⁶⁴ The evidence shall show names, ages and principal residences of the couples; date and place of the marriage; and names and principal residences of the witnesses.

⁶⁵ Even the status of ‘evidence of marriage’ in relation to proof of marriage is not clear as the family codes give recognition to certificate of marriage and possession of status of marriage.

⁶⁶ The Vital Events Registration Directive, Art. 61(6).

⁶⁷ It can be seen that the directive is aware that divorce could be made through representation and the representative could be declarants.

⁶⁸ Vital Events Registration Directive, Art.3 (2). It also requires proof of incapacity shall be brought from court.

incapable even after concluding marriage. First, this could be an interdicted person since there is a possibility for such person to conclude marriage with the involvement of the court and the guardian.⁶⁹ Second, minors who have concluded marriage without getting age dispensation remain incapable as they are not automatically emancipated. As indicated, spouses below 18 years of age due to the age dispensation are not incapable. They shall, according to Article 311 of the RFC, rather be emancipated by the sole fact of the marriage. Consequently, they shall be deemed to have attained majority. In fact, Article 312(1) puts the possibility that a minor of 14 years of age or above could be emancipated upon a court decision (explicit emancipation). In effect, this is similar to the automatic emancipation, *i.e.*, the minor is considered to attained majority pursuant to Article 313 of the RFC.

Therefore, at least regarding marriage of judicially interdicted person, it can be said that the Directive adds another group of persons who shall declare the occurrence of a certain marriage. This may, however, be disputable since the higher laws list out the declarants in a seemingly exhaustive manner. In addition, the position of the Directive may be further challenged when it is seen in light of its implication on criminal liability (as discussed below) of these declarants.

Having the fact that the Vital Events Registration Proclamation considers only spouses as declarants in mind, it is now possible to raise some issues that worth further discussion. One among such issues is whether spouses who have concluded invalid marriage have the obligation to declare their marriage to an officer of civil status. To better understand the importance of this issue, it is critical to tell that declarants who fail to declare marriage will be criminally liable. According to Article 66 (1a) of the Vital Events Registration Proclamation, a person who fails to declare marriage shall be punishable with simple imprisonment not exceeding 6 months or with a fine from birr 500 to 5000. In addition, according to Article 66 (1b), a person who falsifies or conceals a fact in declaring a vital event shall be punishable with simple imprisonment from 1 to 5 years. The Ethiopian Criminal Code also criminalizes intentional failures to make a declaration to the competent authority to register marriage within the time limit fixed by law.⁷⁰

⁶⁹ Revised Family Code, Art. 15. A question may arise when the judicially interdicted person concluded 'invalid marriage'. It shall also be stated marriage of an interdicted person may not terminate the interdiction.

⁷⁰ Criminal Code, Art.434 (1).

Therefore, if we contend that all spouses, irrespective of the validity of their marriage, are declarants, it means a person who concludes the marriage in violation of age or consent will be criminally liable for failing to declare the marriage. It also means that a judicially interdicted person shall declare his/her marriage under pain of criminal liability.⁷¹ In this case, it seems that the Directive has taken a better position. As alluded to above, Article 3(2) of the Directive envisages that registration of vital events that occur to incapable persons shall be made through their representatives who are obliged to bring a court decision about the incapacity of the person.

Practically, spouses in bigamous marriage may not declare their bigamous marriage at all as bigamy itself is a crime.⁷² At this time, it is interesting to ask if such spouses are criminally liable for both concluding bigamous marriage and for failing to declare it. What is worst, the law regarding ‘declarants of marriage’ may be construed to impose criminal liability on a spouse (usually women) whose marriage is to be dissolved since it is bigamous. Of course, whether a bigamous marriage could be registered under the registration laws of Ethiopia itself could be subject of dispute. In respect of marriage, the registration law bears monogamy in its mind. This could be justified since bigamous marriage is not permitted in most of the family codes in Ethiopia. Exceptionally, the Family Code of Harari Regional States permits bigamy when it is concluded based on religion.⁷³ On the other hand, it is stated that no vital event can be registered more than once.⁷⁴ With this, the current registration law, given its nationwide application, does not adequately address the practice and the laws of all regions in the country. It is also hardly plausible to argue that the laws allow regions to accommodate such kind of extreme cases.

If the existing law intends to compel the spouses to declare their marriage regardless of its validity, it may therefore amount to be unfair or it may fail to create a good system of civil registration. To mitigate this problem, it is wise to expand the number of persons who shall have the responsibility to declare a certain

⁷¹ Indeed, the criminal liability of such persons including manners will be dealt with in accordance with the rules of Ethiopian criminal law. If they fulfill the conditions, they may be deemed criminally irresponsible. See Article 50 of the Criminal Code of Ethiopia. In this case, however, the directive relieves judicially interdicted persons from such criminal liability as they have no obligation to declare their marriage.

⁷² Criminal Code, Art. 650.

⁷³ Family Code of Harari Regional State.

⁷⁴ Vital Events Registration Proclamation, Art. 17 (2).

marriage for the purpose of its registration. The general recommendation is even to designate an institution as informant when a vital event occurs in the institution.⁷⁵ It is also held that religious officials solemnizing marriages can play a major role in respect of registration of marriage.⁷⁶ Therefore, religious institutions shall be required to transmit copies of their records of the marriage they have solemnized to the registering organ.⁷⁷ Besides, there is an agreement, in India for instance, that the religious organs should also send a certificate that every marriage included in the record was to the best of its knowledge and belief in accordance with the requirement of the marriage law applicable to parties.⁷⁸

In the past, it can be remembered that witnesses and celebrating authorities in Ethiopia were required to declare marriage for registration. At present, what may be of some interest in this regard is Article 61(6) of the Directive. It obliges witnesses or those persons who attended conclusion of customary or religious marriage to appear to sign the record of marriage. As it reads, it is however difficult to extend the meaning of this stipulation to mean that these persons are declarants. But, it could suggest that requiring celebrating institutions to declare marriage for registration cannot be unfair. As indicated above, such obligation is a recommended one to establish a functioning system of registration of vital events. It should also be noticed that religious institutions and elders can be interested parties in registration of marriages.

iii. Place and Time of Registration of Marriage

➤ Place of Registration of Marriage

The registration of a vital event can be by the place of occurrence or by the place of usual residence.⁷⁹ In any case, any vital events registration law shall be clear on the place of registration for all vital events to be registered. In the case of marriages and divorces, place of occurrence is the usual place of residence since

⁷⁵Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems, *supra* Note 11, P14.

⁷⁶ Law Commission of India, Laws on Registration of Marriage and Divorce –A Proposal for Consolidation and Reform, Report No. 211, 35 (2008), available at <http://www.lawcommissionofindia.nic.in> <accessed on January 11, 2019>

⁷⁷*Id.*, P 36.

⁷⁸*Ibid.*

⁷⁹ UN, Principles and Recommendations, *supra* note 1, P80.

place of previous residence of either or both of the parties is of limited interest.⁸⁰ Place of usual residence for marriages and divorce is also useful in studying geographical differentials in patterns of family formation and dissolution.⁸¹

Regarding place of conclusion of civil marriage, the RFC and other family laws adopt the rule in the Civil Code. The place is where one of the future spouses or one of the ascendants or close relatives of one of them has established residence by continuously living there for not less than six months prior to the date of the marriage.⁸² In fact, the conclusion of marriage in another place than mentioned in here does not affect the validity of the marriage as this can be inferred from Article 38 of the RFC.⁸³ It also makes sense to expect that the records of such marriage shall also be drawn up at the place where the marriage is celebrated. Similarly, Articles 25 (6)⁸⁴ and 28 (2)⁸⁵ of RFC imply that this is the place for registration of the marriage. Particularly for civil marriage, this is not doubtful since the law states that the celebrating officer of civil status ‘shall pronounce the spouses united in marriage and *shall issue a certificate of marriage to that effect*’.⁸⁶ This may not, however, be the case under the vital events proclamation.

Based on Article 32 of the Proclamation, the law recognizes more than one place for the registration of a marriage. In respect of conclusion of civil marriage, it is known that the laws do not give the option to select the place of conclusion of marriage. On the other hand, place is not material to conclude customary or religious marriage. What is material in such cases is rather the requirements set by the relevant customs or religions.

Coming to the place of marriage registration, the first place of registration may be the place where the spouses have jointly decided. Second, it may be the place where either of the couples had used to reside. Third, the principal residence of the

⁸⁰*Ibid.*

⁸¹*Id.*, P28.

⁸²Civil Code, Art 597; Revised Family Code, Art 22.

⁸³ The provision reads as: ‘The dissolution of marriage may not be ordered solely on the ground of incompetence of the officer of civil status who celebrated the marriage.

⁸⁴Upon fulfillment of the prescribed formalities under Art. 25 of the RFC, the officer of civil status shall pronounce them united in marriage and shall issue a certificate of marriage to that effect.

⁸⁵ The competent officer of civil status who recorded the marriage shall issue a certificate of marriage to the spouses.

⁸⁶ This is also stipulated under Art.62 (6) of the Directive.

parents or close relative⁸⁷ of either of the couples is also another place to register marriage. At this junction, it shall be clear a marriage can be registered only at one place as no vital event may be registered more than once.⁸⁸ Despite this, the law is not clear whether any priority is given to any of the above places. Due to this position of the law on place of registration, it is generally uncertain whether the officer of civil status that celebrated marriage can ‘.....issue a certificate of marriage...’as required under the family codes and the Directive.⁸⁹ Likewise, it may be impracticable for an officer of civil status who has the obligation to register marriage on his own motion. Moreover, the number of places of registration of marriage indicated above could offer the declarants to avoid registration of marriage if they like to do that. It also means that the spouses may choose a place, with which they have no connection at all, to register their marriage.

➤ Time of Registration of Marriage

Similar to the place of registration, the time allowed for registration shall be known to the declarants though there is no need to have a same period of time for all vital events as each vital event has its peculiar nature. However, the law shall require a reporting of a vital event as soon as possible to facilitate current and accurate registration.⁹⁰ With regard to time of registration, a marriage shall be registered within 30 days following the date of its occurrence unless there is sufficient cause for delay.⁹¹ The declarant shall produce evidence to justify the delay where the marriage is not registered within the above date.⁹² It is generally stated that a grace period of up to one year after the event has occurred may be allowed if there are extenuating circumstances.⁹³

⁸⁷ What degree of relationship could qualify to ‘close relatives’ itself can be contested.

⁸⁸ Vital Events Registration Proclamation, Art 17.

⁸⁹ Based on Art. 69 of the Directive, one may argue that the Directive gives recognitions to the options regarding place of registration. This article states that the officer of civil status may register the marriage as civil, customary or religious marriage based on the evidence produced by the spouses regarding the form in which they conclude their marriage. It means a Civil Marriage may not necessarily be registered by the officer of civil status who celebrates it.

⁹⁰ UN, Principles and Recommendations, *supra* note 1, P 81.

⁹¹ Vital Events registration Proclamation, Art. 18 (1).

⁹² Vital Events registration Proclamation, Art. 18 (3).

⁹³ UN, Principles and Recommendation, *supra* note 1, P81.

In Ethiopia, there has been no good practice of registering marriage and other vital events. Universal and compulsory civil registration in the country is relatively a recent phenomenon. As such, we may raise the issue of registration of marriages concluded before the current registration laws on the basis of place and time of registration of these marriages. In this regard, both the vital events proclamation and the directive contain important rules. First, the vital events registered and certificates issued on the basis of the existing laws or customary practices shall remain valid.⁹⁴ Second, they attempt to regulate the case of vital events which are not registered at all before the coming into effect of the vital events proclamation. Such vital events can be registered upon application of the interested party who shall bring supporting evidence.⁹⁵ This provision is further clarified under Article 60 (11) of the Directive. The directive is specifically about registration of customary and religious marriage concluded before the coming into effect of the Proclamation.⁹⁶ Accordingly, if the spouses have lost evidence to prove their marriage, they can bring 4 witnesses, 2 for each, to register their marriage. It further indicates that such registration shall be made in the place of their current principal residence.⁹⁷ In terms of proof required for registration of marriage, the law requires either document or witnesses. Since it may be impossible to get both of these, not to register based on personal declarations of the concerned parties may be against the general recommendation in this regard.⁹⁸

The other vital issues to be addressed in the law are late and delayed registration.⁹⁹ It is suggested that late and delayed registration shall be handled separately.¹⁰⁰

⁹⁴Vital Events Registration Proclamation, Art. 67 (2). As indicated, even before the Revised Family Code, there was practice of issuing certificates of birth, marriage and divorce though it was not required by law.

⁹⁵Vital Events Registration Proclamation, Art. 67 (4).

⁹⁶ This disregards the cases of civil marriage that were concluded before municipalities. It is impossible to assume that there could always be documents to prove civil marriage.

⁹⁷ Regarding place of registration of marriage, this provision of the directive follows a different approach. It is discussed that vital events registration proclamation provides 3 competing places for marriage registration. Unlike this, the directive allows the registration of customary or religious marriages concluded before the proclamation to be registered at the '*current principal residence of the parties*'.

⁹⁸Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems, *supra* note 11, P14. Rather than total rejection, it may be wise to authorize the officer of civil status to determine when registration should be accepted solely on the basis of information supplied by the informant.

⁹⁹ Late registration refers to registration of a vital event after the period required, but within a grace period. They are accepted without penalty. Delayed registration is a registration of vital event after the expiry of the grace period.

Nonetheless, the Ethiopian vital events registration law does not differentiate between the two. Failure to comply with the periods of registration shall also be sanctioned. In this regard, the Civil Code had sanctioned failure to comply with the periods of registration. Accordingly, it gave probatory value of simple information to the records of civil status drawn up after the expiry for the specified periods unless they are entered by virtue of a judgment.¹⁰¹

B. REGISTRATION OF DISSOLUTION OF MARRIAGE

Registration of dissolution of marriage in general and of divorce in particular was not required both under the Civil Code and under RFC. Despite this, issuance of certificates for divorces was provided for without proper registration established in national law.¹⁰² Indeed, a record of dissolution of marriage could be available when marriage dissolves due to court order for violation of essential conditions or divorce as court judgment could be available. But, such a record does not in any case contain all the particulars that a civil register of divorce shall normally contain. The current Vital Events Registration Proclamation has made registration of divorce mandatory and laid down rules in relation, *inter alia*, to time and place of registration of divorce, persons who have obligation to declare divorce, and records of divorce.

If we stick to Articles 34 to 37 and other provisions of the proclamation, only divorce is to be registered. The law does not require registration of dissolution of marriage in general. Causes of dissolution of marriage, except divorce, are not considered vital event. Stated otherwise, it is not a vital event when dissolution of marriage is attributed to either death of one of the spouses, declaration of absence by the court of one of the spouses or court order of dissolution due to violation of essential conditions of marriage.¹⁰³ As is mentioned in the beginning, Article 2 (1) does not consider dissolution of marriage in general, except divorce, as vital event.

Though very arguable, the Strategy and Action Plan (2013-2018) towards sustainable civil registration in Ethiopia provides “international concepts and definitions of important terms used in the document (the Strategy and Action Plan)

¹⁰⁰ UN, Principles and Recommendations, *supra* note 1, P 82, Strategy and Action Plan, *supra* note 3, P16.

¹⁰¹ Civil Code, Art. 63 (1).

¹⁰² Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems, *supra* note 11.

¹⁰³ Article 75 of the RFC stipulates these and divorce as causes of dissolution of marriage.

related to vital events registration and collection, production and dissemination of vital statistics.”¹⁰⁴ Among others, divorce is defined as “a *final legal dissolution of a marriage*, that is, that separation of husband and wife which confers on the parties the right to remarriage under, religious and/or other provisions.” Since Ethiopian family laws consider court order declaring dissolution of invalid marriage as a ground of ‘legal dissolution of a marriage’, it may tell, on its face, that dissolution of invalid marriage is a vital event. But, this is far from being true as divorce and dissolution of marriage because of non-fulfillment of essential conditions are different. The Directive, which largely guides the officers at grass root level, does not also require registration of dissolution of marriage in general.

Moreover, when a vital event is registered, the Directive requires such registration to be accompanied by the condition of marriage of the person. Whether he is married or unmarried, his marriage is dissolved due to death or divorce, or whether he lives in irregular union or not shall be indicated.¹⁰⁵ Besides, if a person, who wants to register his marriage, had divorced a previous marriage or if his previous marriage is dissolved due to death of his spouse, he shall adduce certificates to this effect.¹⁰⁶ Unlike the consideration for dissolution due to death, the registration laws do not give regard to dissolution of marriage due to non-fulfillment of essential conditions. On the other hand, the family codes do not provide any meaningful difference between the effects of divorce and dissolution of marriage because of a court order to dissolve an invalid marriage.¹⁰⁷ In the pervasive presence of marriages in violation of essential conditions (particularly early marriages and bigamous marriage) and problems thereof in Ethiopia, failure to consider dissolution of invalid marriages as vital events and not to register them could attract valid concerns.

i. Records of Divorce

The Civil Code and the current family codes have nothing to say on the records of divorce as they do not recognize registration of divorce. In practice, it could be noted that a divorce certificate to be issued by the officer of civil status of Addis Ababa City Government contained the name of the spouses, form and registration

¹⁰⁴ Strategy and Action Plan, *supra* note 3, P 4.

¹⁰⁵ Vital Events Registration Directive, Art. 6(12)

¹⁰⁶ Vital Events Registration Directive, Art. 61(3-4). This does not still give regard to the cases of *defacto* divorce.

¹⁰⁷ Oromia Regional State Family Code, Proc. No. 83/2004, Art.123.

number of the marriage, and the court that pronounced the divorce. From the certificate, two things may call attention. One is the fact that the certificate shows that marriage could be ‘dissolved’ in accordance with Article 663 of the Civil Code when the court orders for ‘dissolution’. The second thing is that part of the certificate which reads as “the Addis Ababa City Government has registered the ‘divorce’¹⁰⁸ and issued this certificate to the interested party pursuant to Article 60 (2) of the Civil Code.

The reference to the above provisions does not give us any appreciable meaning. In the first place, Article 663 generally mentions causes of dissolution of marriage which are still maintained in the current family laws. The certificate therefore wrongly equates ‘dissolution of marriage’ with ‘divorce’. Secondly, Article 60 (2) merely requires the officer of civil status to ensure the custody and conservation of civil registers. It does not prove that divorce in particular or dissolution of marriage in general is civil status that shall be registered. Generally, the certificate was poorly drafted. Be this as it may, it however shows us some of the particulars in the records of divorce.

As divorce shall be registered, the vital events registration proclamation and the directive specify the particulars to be entered in the records of divorce. Pursuant to Article 34 of the proclamation, the records shall contain the full name, date and place of birth, principal residence, citizenship, ethnic origin and religion of each divorcing partner. Regarding the vital event, the date and place of conclusion of the marriage, date of divorce, a reference to the decision of the court on the divorce shall be entered. In addition, the appropriate government organ may require inclusion of other information in the record. On the basis of this, the Vital Events Registration Agency requires inclusion of the ‘form of marriage’ in which the divorced marriage was concluded.¹⁰⁹ Finally, like other vital events, the name and signature of the officer of civil status, the seal of the administrative office and date of registration shall be shown in the record.¹¹⁰

¹⁰⁸ The Amharic version says ‘መፍረስ’ which is equivalent to dissolution though that is not the intention of the form.

¹⁰⁹ Vital Events Registration Directive, Art 69. In fact, this is not the only additional particular stated in the directive. For instance, Article 80 of the directive indicates that the reason of divorce may be indicated, but if it is stated in the judgment that pronounced the divorce.

¹¹⁰ Vital Events Registration Proclamation, Art 34(4).

ii. Obligation to Declare Divorce

Like registration of marriage, the law requires certain persons to declare divorce. The divorcing partners or one of them shall present the decision of the competent court on divorce to an officer of civil status for the purpose of registration.¹¹¹ This is required at least for two reasons. The major one is to determine that there is divorce. It is obvious that only the court is competent to decide on divorce in Ethiopia.¹¹² The second reason to get the judgment is to take down certain information from the judgment about the divorce.

Regarding declarants of divorce, the proclamation obliges only the divorcing partners or one of them to present the court decision of divorce for registration.¹¹³ The Civil Code is also not as helpful as it is to marriage for it does not require divorce registration. However, the directive states another declarant. Its Article 72(2) states that a 'special divorce representation' shall be presented if the declarant is a representative. But it does not seem to impose obligation on such special representative to declare divorce. It is rather allowing a divorce representative to declare divorce if he could bring the required representation. Indeed, it is necessary for the directive to be clear as there is criminal liability. Besides, the court pronouncing divorce has no obligation to report divorce to the registering authority. Its obligation is only to render the copies of its decision to the 'divorcing partners forthwith.'¹¹⁴ As said elsewhere above, this contradicts with the suggestion that an institution in which a vital event occurs shall be made an informant.¹¹⁵ Practically speaking too, there are jurisdictions that require courts passing a decree of divorce, nullity or dissolution to send a copy of each such decree for registration to the registering authority.¹¹⁶

On declarants, it is also said a person who is guardian or custodian of an incapable person to whom a vital event is required to declare a vital event occurred to the incapable.¹¹⁷ As to declarants for divorce, one example in this regard is stated under Article 370(1) of the Civil Code which stipulates that the consent of the guardian is

¹¹¹ Vital Events Registration Proclamation, Art 35.

¹¹² Revised Family Code, Art 117.

¹¹³ Vital Events Registration Proclamation, Arts.35, 18(1)

¹¹⁴ Vital Events Registration Proclamation, Art. 37.

¹¹⁵Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems, *supra* note11, P14.

¹¹⁶ Law Commission of India, Laws on Registration of Marriage and Divorce, *supra* note 76, P 31.

¹¹⁷Vital Events Registration Directive, Art. 3 (2).

required to request divorce of the judicially interdicted person. Another example could be where the court decides that an emancipated minor (due to marriage) should remain minor following dissolution of his/her marriage.¹¹⁸

iii. Place and Time of Registration of Divorce

The rule regarding place of registration of divorce seems simple. It is the nearest administrative office to the place where the divorce took place.¹¹⁹ Unlike the options in case of place of registration of marriage, the place for registration of divorce is the place of occurrence. In fact, the law seems to allow certain discretion to the declarants when it makes reference to the ‘nearest administrative office to the place where the divorce took place.’ It also seems the law presumes that the place of divorce is usually the competent court room that has pronounced it. And the nearest administrative office refers to officer of civil status at kebele levels.¹²⁰ As such, many kebeles may be considered as nearest administrative offices. The law does not oblige for registration of the divorce at the kebele where the declarants reside.

It is mentioned above that the period of registration of divorce is within 30 days following the date of its occurrence. Another issue that should be raised here is regarding the registration of divorces that happened before current civil registration laws. This matter is better regulated in relation to registration of marriage as the directive has a provision to this effect. Regarding divorce, however, the relevant provision is only Article 67(2) of the Vital Events Registration Proclamation which accepts vital events registered and certificates issued on the basis of the existing laws or customary practices.¹²¹ The law is silent as to the possibility and conditions of registration of divorces pronounced before the coming into effect of the current laws.

¹¹⁸ Revised Family Code, Art. 314 (1).

¹¹⁹ Vital Events Registration Proclamation, Art. 36.

¹²⁰ This is said because the Vital Events Registration and National Identity Card Proclamation (amendment) defines ‘administrative office’ as an office of regions’ lowest level of administrative hierarchy or vital event registration structure. See Art.2 (8).

¹²¹ As indicated, even before the Revised Family Code, there was practice of issuing certificates of birth, marriage and divorce though it was not required by law.

IV. CONCLUSION

This article analyzes the applicable laws on the registration of vital events in Ethiopia with emphasis on registration of marriage and its dissolution. By so doing, it uncovers some of the legal gaps that would detract the process of establishing a well-functioning civil registration system. It is generally identified that an effective legal framework on civil registration is of a recent origin. Though the Civil Code incorporated quite a number of provisions on registration of civil status, they had never come to implementation for the Civil Code itself suspended their application. The current system of civil registration across the country is mainly regulated by the Vital Events Registration Proclamation (and its amendment), Vital Events Registration Regulation and the implementing Directives. All these laws are federal laws denoting the matter of civil registration is left to the federal government. In some cases, these federal laws do not adequately consider the legal pluralism in the country since regions have the power to enact family laws.

This study has identified some specific problems in relation to registration of marriage and its dissolution. The laws do not take clear position on whether marriages in violation of essential conditions and their dissolution upon court order are vital events that shall be registered. It is also not clear if the spouses in relation to these events have an obligation to declare the conclusion or dissolution of these kinds of marriages. Furthermore, the lists of declarants in relation to marriage and divorce are not in line with generally recommended practices. They do not require institution in which the events happen to declare to the officer of civil status. Besides, the approach particularly regarding place of registration of marriage is odd when it is compared with the accepted practices. It would affect desirable level of registration of marriage in the country as it may create favorable environment to evade obligation to declare marriage.

The article further discloses that the Directive contains certain provisions (i.e., that attempt to define marriage, divorce, declarants etc.) that contradict the relevant higher laws. This means that certain actions, which could be carried out based on the directive, in the process of registration of marriage or divorce may be questionable. Indeed, there are significant provisions that fill the gaps in the Vital Events Registration Proclamation. However, it is fair if such important issues, like registration of vital events occurred before the existing laws, are addressed by the higher registration laws than the directive. Generally, it is a must to have a well-

designed legal framework to establish a system of vital events registration that could meet the stated objectives. The current registration laws shall be revisited to fill the gaps identified in this article. It may want to consider requiring institutions in which a vital event occurred as important declarants of conclusion of marriage or divorce. The law should also be revisited with a view to address the issues related to the time and place of registration of marriage and divorce on the basis of accepted practices and the need to have a good system of registration of these events.

THE EMERGENCE OF PRECEDENT OVER PRECEDENT AND ITS POTENTIAL CONFLICT WITH THE PRINCIPLE OF SELF-RULE IN ETHIOPIAN JUDICIAL FEDERALISM: THE CASE OF OROMIA COURTS

*Fedesa Mengesha**

ABSTRACT

This article is constructed based on a theoretical-deductive attempt to define the unconstitutionality of FDRE Supreme Court Cassation practices on the principle of separation of power, particularly its challenge to the autonomous power of state courts on their own exclusive matters. Especially, as it is well known, the interpretations of law by the Federal Supreme Court Cassation Division have binding effects on decisions of lower courts, including state courts. This was, for a long time, theoretically debated and contested for its unconstitutionality without fruitful change. However, whatever its constitutionality debates, the Federal Courts Establishment Proclamation Nos.25/1995 and 454/2013 are in action by making the Cassation Division decisions to have binding effect on state courts, whether the issues are state matters or not. Now, the most climax debatable issue is that the Oromia Regional State Courts Proclamation No.216/2019 has come up with a new version that makes decisions of the State Supreme Court Cassation Division to have legal binding effect on lower courts of the region solely on state matters.

Accordingly, when we see the two proclamations (Proc.No.454/2013 and Proc. No. 2016/2019), the concept of precedent over precedent is now emerged in addition to the most widely used term of cassation over cassation. Unless one can conclude that there is a federal law supremacy clause in our legal system, the two versions of the proclamations overlap each other and one makes the other nonsense. But, apart from the Federal Constitutional Supremacy clause,¹ the FDRE Constitution has established the two tiers of government with their respective autonomous government institutions to decide on their own matters, which are constitutionally guaranteed so far. However, save aside international treaties, as far

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¹FDRE Constitution, Art.9.

as another ordinary federal law is concerned, the Federal Courts Establishment Proclamation No.25/1996 Art.6 (2) has clearly established federal supremacy clause.

Concerning this area, there are different articles written in favor of or against the existence of cassation over cassation. The former approach claims that it is important to keep the uniformity of legal application all over the country and maintain constitutionality of decisions of courts of any level by checking its conformity with the FDRE Constitution. Accordingly, they argue for the existence of federal supremacy clause². But, others argued that there is only constitutional supremacy, not federal law supremacy. They confirmed that so far as there is constitutionally empowered another body, House of Federation, to save constitutional order and settle constitutionality issues, the Ethiopian courts are not entrusted to solve constitutionality issues at all. Concerning uniform application of laws, our current legal system is operating under the guise of the typology of dual court structure in which by its very nature hardly possible to think of uniformity of laws and their applications.

There are also other writers, like Mehari Redea who argued against the existence of cassation over cassation in Ethiopia.³ Accordingly, this article is constructed based on those arguments against the existence of cassation over cassation and constitutionality of the precedent effect of decisions of State Supreme Court Cassation Divisions, particularly the binding effect of Oromia State Cassation Division decisions. In addition, this article has seen not only the unconstitutionality of precedent over precedent, but also its challenging effect on the principle of federalism, and independence of state courts. Therefore, hopefully, this article will convince the reader(s) by forwarding sound arguments with critical analysis against theoretical and practical existence of precedent over precedent based on constitutions of the country.

²Baye Yimam and *etal* , Law and Politics Panel (Proceedings of XIVth International Conference for Ethiopian Studies, Addis Ababa University, Vol.3, 6-11 Nov.2000).

³Redea, Mehari , *Cassation over Cassation and Its Challenges in Ethiopia*, Mizan Law Review (2015), Vol. 9, No.1.

DEFINITION OF KEY TERMS

In this article, the key terms repeatedly used are cassation over cassation and precedence over precedence. Cassation over cassation implies that the decisions of state Supreme Court Cassation Division on state matters are subjected to review again by the Federal Supreme Court Cassation Division. While the term precedence over precedence implies that the decision of State Supreme Court Cassation Division may have binding effect on lower courts within their respective regional states and at the same time decision of the Federal Supreme Court Cassation division may reverse or vary this decision making it as binding over all corner of the country.

For the sake of this article, precedent over precedent concept is a new idea which comes into existence in recent times where the regional states tried to exercise their autonomy on their own matters without any interference of federal body by making decisions of their regional Supreme Court Cassation Division to have legally binding precedent effect on the lower courts of their own and judges of the region have the obligation to follow the decisions. For instance, a Proclamation to Re-define the Structure, Powers and Functions of the Oromia Regional State Courts empowers the Supreme Court Cassation Division to give decisions containing legally binding effect on the lower courts.⁴ By the same token, the Federal Courts Proclamation and Re amendment Proclamation clearly empowered

⁴A Proclamation to Re-define the Structure, Powers and Functions of the Oromia Regional State Courts Proclamation No. 216/2018, (Magalata Oromia, 27th Year No.7, Finfine), October 8, 2018 Art. 29.

the Federal Supreme Court Cassation Division to review decisions of the state Supreme Court Cassation Division rendered on the state matters and made its legal binding effect on the state courts as well. Accordingly, the precedence of decisions of State Supreme Court Cassation Division is going to be challenged by the decision of the Federal Supreme Court Cassation Division, which the writer used and wrapped up it with a phrase “*precedent over precedent*.”

INTRODUCTION

This article intends to scrutinize the problems associated with the existence of precedent over precedent in Ethiopia and its binding effect on the State Supreme Court Cassation Division decisions. It is obvious that the FDRE Constitution established a federal form of government with autonomous state units. The regional states, like the federal government, have their own legislative, executive, and judicial body so as to ensure the full-fledged self-government that includes the right to establish institutions of government in their respective territories⁵. In addition, the constitution has established independent and autonomous state courts, particularly stating that “the State Supreme Court has the highest and final judicial power over state matters”.⁶ Interestingly, the constitution has freed courts of any level from any interference of governmental body, including the Federal Cassation Division, by providing that judicial powers are not only vested in federal courts but also in state courts.⁷ However, the Federal Courts Proclamation and the Federal Courts Re-amendment Proclamation have made the Federal Supreme Court to have the highest and final judicial power over state matters by neglecting the constitutional provisions. Particularly, Proclamation No.25/1996 has established the ordinary federal law supremacy clause which is not constitutionally guaranteed so far. Accordingly, the issues of cassation over cassation has been emerged which in turn created the concept of precedent over precedent when the binding effects of decisions of State Courts Cassation Division are coming into picture.

Apart from these constitutional provisions, the Federal Courts Re-amendment Proclamation No.454/2005 has empowered the Federal Supreme Court Cassation Division to review the decisions of the State Supreme Court Cassation Division on state matters. By doing so, since the state Supreme Court has cassation power over

⁵FDRE Constitution, Art.39 (2) and 50(2).

⁶FDRE Constitution, Art.80 (2).

⁷FDRE Constitution, Art.79 (1 & 2)

state matters constitutionally, the two federal proclamations have established the principle of cassation over cassation. But, this practice is not in line with the experiences of federal dual court arrangements which directly misnomers the principle of self-rule in federal system.

Furthermore, the most dismaying problem is that in the presence of Oromia Courts Establishment Proclamation No.216/2018, the Federal Courts Proclamation has established precedence over precedence. This implies, in existence of the binding effect of decisions of State Supreme Court Cassation, the Federal Supreme Court Cassation Division is reviewing the binding decisions of the State Supreme Court Cassation Division.⁸ This directly distorts the principle of federalism by intervening into state matters through reviewing the legally binding interpretation given by State Supreme Court Cassation Division; on one hand, and ascends conflicts of binding decisions on the same issue between the two layers of court structure, on the other hand. Therefore, the following questions need to be critically analyzed:

- Does precedence over precedence have constitutional base?
- If decisions of the Federal Supreme Court Cassation Division and State Supreme Court Cassation Division may conflict on the same issue involving exclusive state matters, what will be the possible solution? Is there federal ordinary law supremacy clause in Ethiopia?

Especially, this article will analyze some theoretical and practical issues concerning the binding effect of interpretations of law rendered by the Federal Supreme Court Cassation Division on the decisions of Oromia State Supreme Court Cassation Division. For this, the article is organized into five sections. The first section presents the overall summary of the title by providing the general overview of structure of courts in federal form of governments, including Ethiopia. The second section presents the legal analysis of constitutionality of cassation over cassation in Ethiopian federalism. The third section presents the cassation power of State Supreme Courts and its legal effect. The fourth section provides the historical introduction of the concept of precedent into Ethiopian legal system. And the last,

⁸For instance, the Oromia Regional State Courts Proclamation, Arts. 26 and 29 stated that 'a decision of a Cassation Division, with at least five judges sitting, including the President and the Vice President, rendered by unanimity on a state matter, shall be binding on the courts of the region as regards to its legal interpretation'.

but not the least section focuses on the constitutionality of the precedent over precedent in Ethiopian legal system. Particularly, the binding decision of State Supreme Court Cassation Division along with the power of Federal Supreme Court Cassation Division are critically analyzed in light of the doctrine of ‘separation of powers, judicial overruling, and the encroachments on the independence of state courts will be analyzed to draw conclusions and to generate recommendations.

1. GENERAL OVERVIEW OF JUDICIAL FEDERALISM AND FEDERAL ARRANGEMENTS

In a federal form of government, the principle of division of powers between the central and regional states is a common phenomenon contemporarily practised in this 21st century. However, there are different approaches concerning the establishment of court structure in a federal form of government. Therefore, the high light of federal system, and approaches related to court structure in general and in Ethiopia is provided briefly as follows:

1.1. THE FEDERAL SYSTEM IN GENERAL

The term federalism is likely difficult to define precisely with unique terms. Nevertheless, many scholars have tried to define it differently based on division of powers between the two levels of government, namely: central (herein after called federal) government and regional states (sometimes referred to provinces). For example, William Riker defined it in such a way that federalism is “an association of states so organized that powers are divided between a general government, which in certain matters– for example, the making of treaties and the coining of money– is independent of the government of the associated states, and, on the other hand, state governments which in certain matters are, in their turn, independent of the general government. This involves, as a necessary consequence, that general and regional governments both operate directly upon the people; each citizen is subject to two governments”⁹. Accordingly, Riker has defined federalism based on its essential features of like in making some decisions, the central and constituents act independently of each other, the two sets of governments to rule over the same territory and people. While in contrast to Riker, other scholars like

⁹Asnake Kefale, *Federalism, Federations and Ethnic Conflict: Concepts and Theories, Federalism and Ethnic Conflict in Ethiopia: A Comparative Study of the Somali and Benishangul-Gumuz Regions*, 2009, P2.

Daniel Elazar extrapolate federalism as a covenant of partnership between the central government and its federated units.¹⁰ Elazar insisted that the word federalism was originally derived from the Latin word *foedus* which means alliances or leagues of states and compared it with the Jewish political tradition.¹¹

The most interesting is that many scholars have common agreement upon the basic feature of federalism-division of powers between the two or more orders of government. However, some may miscarry to define the difference between the ideological aspect of federalism and its institutional building blocks. Federalism is an ideological aspect of centralist, decentralist, and balance of unity and diversity¹², while federation is an institutional arrangement with sovereign power.¹³ It can be conceived that the Ethiopian federalism has a corresponding ideological aspiration of curbing the unjust ethnic relationships and theoretical ambition to live together. And also, the constitution made one national government at the center and the corresponding nine mostly ethnic based autonomous regions as building blocks of Ethiopian federal system with some possible numerical additions of federating units in the coming uncertain future,¹⁴ like the 2019 newly emerged Sidama Region which probably elevates the number of regions.

In addition, for rhetoric purpose, based on its basic features and functions, the two broad approaches of federalism are normative and empirical approaches. At normative level, the advocates of federalism associate federalism with peace, security, citizenship and democracy.¹⁵ While the belligerent groups claim that federalism creates the room for regional imbalances and boosts local majorities' supremacy over local minorities.¹⁶ In empirical approach studies all about division of powers between the central government and federating states is related to the federal systems functioning, causes and effect of original making of federation and its dissolution as well.¹⁷

¹⁰*Ibid.*

¹¹Abebe, Daniel, *Ethiopian Ethnic Federalism: A means to an End* (The University of Chicago Law School), October 13-14, 2017, Pp.1-21.

¹²Baye Yimam and *et al*, *supra* note 2, P.26.

¹³ *Ibid.*

¹⁴FDRE Constitution, Art. 46 (2) & 47 (2).

¹⁵Asnake, *supra* note 9, p. 25.

¹⁶Atnafu Taye, Bekalu, "Ethnic Federalism and Conflict in Ethiopia (Kotebe Metropolitan University, Addis Ababa), Pp.41–66.

¹⁷*Ibid.*

Furthermore, at legal and constitutional approach, a legal scholar *WHEARE* defined the federal principles as the scheme of allotting powers between the national and regional governments so that within their sphere they ought to co-ordinate even though they act independently of each other.¹⁸ But this approach is criticized by being rigid, legalistic and inflexible. Despite its pitfalls, the legal and constitutional approach has some contributions to the conceptual understanding of federalism. For instance, division of powers and establishment of distinctive features from unitary government, and also many of federal constitutions require rigid procedures for amendment. In addition, this approach has stressed for the establishment of an independent court responsible for constitutional dispute settlement.¹⁹ At the end of the day, this approach has come up with bicameralism as the basic feature of federalism.

1.2. THE ETHIOPIAN FEDERAL SYSTEM IN BRIEF

Even though the history of written constitution in Ethiopia traces back to the 1931 of monarchical constitution, concerning the federal system; the 1995 Federal Democratic Republic of Ethiopian Constitution is the first to introduce federal features explicitly. As mentioned before, the Constitution has established two tiers of government and divided authority between them.²⁰ In addition, even though each state has its own constitution, the federal constitution has a supremacy clause in which both levels of government sought to comply with it.²¹ And also all states have their own governing institutions. These governing institutions include the legislature, executive and judiciary body. The central (the so called federal) government and regional states have corresponding authority in some areas without a formal mechanism to resolve competing claims in the event of conflict.²² Actually, this conflict is a common phenomenon in a federal system, but absence of clear IGR (Inter-governmental Relationship) exacerbates the problem, which is not the concern of this article.

Furthermore, the Ethiopian Constitution has established predominantly a model of ethnic federalism with nine autonomous regional states each of which exercise

¹⁸Baye Yimam and *etal*, *supra* note 2, p.26.

¹⁹Asnake, *supra* note 9.

²⁰FDRE Constitution, Art. 50.

²¹FDRE Constitution, Art. 9 (4)

²²Afeshha, Nigussie, *The Federal-state Intergovernmental Relationship in Ethiopia: Institutional Framework and its Implication on State Autonomy*, Mizan Law Review (2015), Vol. 9, No.2.

substantial authority within their respective territories.²³ Accordingly, there are two kinds of division of powers namely: horizontal and vertical division of powers. Concerning the horizontal model, division of power is among the three branches of government, i.e., among the executive, the legislative and the judiciary branches, and each of them have separate and independent power and areas of responsibility (check and balance).²⁴ In federal principles, a clear separation of power between the tripartite systems is almost associated with presidential form of government whereas fusion of power is the integral feature of parliamentary system. The underlying difference is cultivated based on the formation of the three branches of government. In case where the three institutions are formed independently of each other, there is a clear separation of power and hardly possible to think about fusion of powers between them. The classical example is that of USA.²⁵ However, where the three branches get birth from the same womb; parliament, there is a fusion of power and three of them operate through integration of powers. The classical example is the UK parliamentary system.²⁶

Concerning the Ethiopian case, the FDRE Constitution has made provision to this effect stating that “the Federal Government and the States shall have legislative, executive and judicial powers”²⁷ and the details of their respective powers and formation of each institution are clearly provided under the Constitution. However, the Constitution has established a parliamentary form of government and members of the parliament (or state legislatures) are directly elected by the people, while the remaining two bodies (the executive and the judiciary) are established by and from members of the parliament directly or indirectly.²⁸ Accordingly, the constitution has established fusion of powers by adopting the parliamentary form of government and there is no clear separation of powers²⁹. For instance, the president and vice president of the Federal Supreme Court is recruited by Prime

²³FDRE Constitution, Arts.46 (2) & 47 (2).

²⁴FDRE Constitution, Art.50 (2)

²⁵CEPA/Committee of Experts on Public Administration, (Conference Prepared by Hao Bin, Deputy Director General, Department of International Cooperation, Ministry of Human Resources and Social Security, Unpublished, Eleventh Session Distribution of Powers Between Central Governments and Sub-National Governments, New York), 16-20 April 2011, Pp. 1-9

²⁶CEPA, Ibid.

²⁷FDRE Constitution, Art.50(2).

²⁸FDRE Constitution, Arts. 54(1), 73 & 81.

²⁹FDRE Constitution, Art. 81(1).

Minister and appointed by the parliament in which one can't deny some loyalty to the executive and the parliament.

On the other hand, vertical division of power is the main norm of the federal arrangements and deals with the distribution of powers of legislative, executive and judiciary between the two or more tiers of government.³⁰ However, countries of federal system follow different schemes of vertical division of powers. For instance, the Indian constitution has provided the enumeration of powers between the states and federal government. Accordingly, the constitution provided three entitled lists; namely: the union power lists, the federal exclusive powers and concurrent power lists and the residual powers left in the hands of the union.³¹ While the USA Constitution provided the center-state distribution of powers in which exclusive powers conveyed to the federal government and the residual powers are kept for the federating units. Probably, powers are also reserved to the union if supposed necessary. In contrast, the Canadian Constitution allocated exclusive powers to the federating units and conversely kept the residual powers to the central government.³² Furthermore, the German Basic Law is more or less similar to that of Indian Constitution with slight differences. In German, most of the federal laws are kept for the execution to the states.³³ The federating units make enforcing legislations in line with the laws of central government.³⁴

Coming to the Ethiopian case, it seems to be confusing with the schemes which the Constitution allowed to operate. On one hand, the Constitution seems to follow the scheme of enumerating exclusive powers of federal government and reserving residual powers to the states. On the other hand, it also provided a limited list of exclusive powers of the states.³⁵ In addition, the Constitution has also provided the concurrent jurisdiction of courts and concurrent powers of taxation.³⁶ Hence, by listing the powers of federal government and allocating residual powers to the states, it seems to follow the USA Constitution model, but it has also incorporated some features of Indian constitutional model by listing some powers of the states. In one way or another, the Ethiopian Constitution has established the federal

³⁰Asnake, *Supra* note 9, Pp.25-26.

³¹ *Ibid*

³²Asnake, *supra* note 9 P.26.

³³Asnake, *supra* note 9, P.25.

³⁴FDRE Constitution, Arts. 80 & 98.

³⁵FDRE Constitution, Art. 52(2).

³⁶FDRE Constitution, Arts. 80 & 98.

arrangements comprising of the central government with nine autonomous states having their own respective governing institutions: the legislative, executive and judicial organs both at regional and national levels.

Accordingly, the Constitution has tried to enumerate the powers of the two tiers of government, predominantly listing the powers of the federal government and keeping the reserved powers to the states. By doing so, the two tiers of government are expected to respect the powers of each other and duty not to intervene into the affairs of one another.³⁷ Notably, the same connotation should also work for judicial federalism and the Ethiopian Federal Supreme Court Cassation Division should not interfere into state affairs to review decisions of state courts rendered solely on state matters. In other words, courts of any level should be independent of any governmental body or official or any other sources. This indicates that the federal courts, including the Federal Supreme Court Cassation Division or the other federal officials, are not constitutionally allowed to intervene into the exclusive powers of the state courts and the vice versa is true.³⁸

1.3. JUDICIAL FEDERALISM IN GENERAL

Judicial federalism is usually based on the kind of federation adopted by a country. To this effect, the typology of federation has a paramount implication to establish strong and independent courts. But, to the common understanding of a federal system, there are three approaches in judicial federalism.³⁹ These are:-dual, integrated court and single court hierarchy system.

1.3.1. Dual Court System: in this system; the two tiers of government have their own hierarchy of courts, and judicial power is clearly defined and divided vertically. Accordingly, each level of government prefers to deal with issues arising from its own legislation or its own respective officials. However, cases involving parties from different federating units are likely to be the power of the central government.⁴⁰ Comparatively, the United States and Australia are classical examples. In USA, the central government court deals with the federal matters

³⁷FDRE Constitution, Art. 50 (8).

³⁸FDRE Constitution, Art. 79 (2).

³⁹Cheryl Saunders, Courts in Federal Countries, International IDE A Constitution Brief, March 2019, Pp.1-4,

⁴⁰Asnake, *supra* note 9, P. 3.

which are constitutionally enlisted as federal jurisdiction, while state courts primarily deal with state jurisdictional matters. Each level of government has the power to appoint its respective judges, as well as regulating and financing its own courts subject to its own constitution. In such case, the Federal Supreme Court can't hear appeals involving issues of facts or errors of law decided by state courts on state matters.⁴¹

1.3.2. Integrated Court System: this model is sometimes called shared court system. In this case, the types of legal issues are shared between the two tiers of government and leaves control of lower court to the states and the upper courts to the central government.⁴² Accordingly, all courts deal with relevant cases without distinction between the federal and state jurisdictional matters. We can take Germany, Canada and India as classical examples in using this approach with some slight differences.⁴³

1.3.3. Single Court Hierarchy System:- there is no division of courts power at all and the courts are single in structure from top to down. Both levels of governments have strong confidence on the single court structure and the court has the power to resolve all legal disputes irrespective of the sources of the laws and whoever the parties may be.⁴⁴ Hence, the entire courts fall within the central government competence subject to the constitutional mandates. For instance, in South Africa; there is one hierarchal court structure.⁴⁵

Concerning the Ethiopian legal system, theoretically, the FDRE Constitution has established a dual court structure with three-tiers of courts both at federal and state levels.⁴⁶ Accordingly, the Constitution has adopted the dual court approach in which each levels of government prefers to deal with issues arising from its own matters or its own respective officials. To this effect, the Federal Supreme Court is entrusted with the highest and final judicial power over federal matters and at the same time the state supreme courts have the highest and final judicial power over

⁴¹ Saunders, as cited in Asnake, supra note 9, Pp-3-4

⁴² *Id.*, p.4

⁴³ *Id.*, p.5.

⁴⁴ *Ibid.*

⁴⁵ Husein Ahamd, *Uniform Application of Law in Ethiopia: Effects of Cassation Decisions of the Federal Supreme Court*, African Journal of Legal Studies(2014), Vol.7, No. 7, P. 204.

⁴⁶ FDRE Constitution, Arts.80-81.

state matters.⁴⁷ However, the existent practice on factual basis shows the reverse scenario which will be discussed in the next section.

2. THE CONSTITUTIONALITY OF CASSATION OVER CASSATION IN ETHIOPIAN LEGAL SYSTEM

As the concept of cassation over cassation is a common phenomenon in contemporary Ethiopian legal system, theoretically for academic debate; one may join one of the two extreme contrasting positions either in favor of or against interpretation of laws and review of judgments of any courts in the corner of the country by Cassation Division of the Federal Supreme Court. Different journalists argue based on different scenarios. Some may argue that the existence of cassation over cassation maintains uniform application of laws in the country and enhances constitutional balance as well. They extensively boost their argument by quoting Art.80 (3a) of the FDRE Constitution which states “... *over any final court decision...*” claiming that it includes decisions of state courts over exclusive matters. However, others like Mehari Redea argue that the Constitution never allowed the Federal Supreme Court to intervene into state courts through review of judgments. In addition, they argue that it is not only unconstitutional practice, but also allowing all minor cases to be reviewed by the Federal Supreme Court Cassation Division which may increase burdensome to the bench thereby decreasing quality of decisions and it is not advisable resource wise.⁴⁸

The author also takes the position against the existence of cassation over cassation as there is no constitutional, legal and factual basis for it. Defending in favor of the existence of cassation over cassation is clearly manifested from the inability to understand the concept of dual nature federal system and the spirit of the Constitution as a whole. The Constitution obviously established autonomous regional states with full-fledged government institutions and the central government ought to respect the powers of the states entrusted to them by the Constitution. But, I ask one question for those who argue for the existence of cassation over cassation, from the very beginning, does federal system by its nature wonder for uniform application of laws on all issues revolving in every corner of a country? No, if so, it is not a federal form of government rather than a

⁴⁷FDRE Constitution, Art. 80(1 & 2).

⁴⁸Muradu Abdo, *Review of Decisions of State Courts over State Matters by the Federal Supreme Court*, Mizan Law Review (2007), Vol. 1, No.1, P. 65 & 73.

unitary form of government. But, by implication, the nature of judicial federalism that a country adopts may vary by the degree of uniformity of application of laws within one legal system under the same polity. For instance, the uniform application of laws is somewhat stronger in single hierarchal court judicial system than in integrated court system and hardly possible in a dual form of court structure. As discussed before, the Ethiopian legal system is operating under dual form of judicial federalism in which one may not deny different applications of different laws under the same polity. Notably, the FDRE Constitution has established the Federal Supreme Court which serves as the highest court of appeal in the federal judiciary and its cassation division to have power of cassation review on any final decision of federal courts or decisions of state courts on federal matters through delegation containing basic errors of law.⁴⁹

However, the Constitution doesn't list the powers of the two tiers of judicial systems based on federal or state matters. As a result, the Federal Courts Establishment Proclamation and its subsequent amending proclamation have tried to list the federal matters and further empowered the Federal Supreme Court Cassation Division to review any final decisions of state courts even the decisions containing the exclusive state matters.⁵⁰ But, there are many constitutionally problematic issues relating to these proclamations from the perspective of federalism. As per the Constitution, the Federal Supreme Court Cassation Division has the power to review over any final decisions of federal courts or over any final decisions of state courts on federal matters decided through the power of delegation. And also, Oromia Regional State Revised Constitution has established Supreme Court to have the highest and final judicial power over state matters having Cassation Division to review decisions of lower courts of the region involving basic errors of laws.⁵¹

At the end of the day, from the provisions of the Constitutions, it is vibrant that the Federal Supreme Court Cassation Division has solely the power to review cases decided by lower courts containing only federal matters, and not cases containing exclusive state matters. However, from the angle of the Federal Courts Proclamations, there is no doubt that the Federal Supreme Court Cassation

⁴⁹The FDRE Constitution, Art 78 (2 & 3).

⁵⁰Federal Courts Re-amendment Proclamation, No. 454/2005, Art. 2(1).

⁵¹The 2001 Oromia Regional State Revised Constitution, Art.64 (2a & b).

Division has the power of cassation over cassation and its decisions are legally binding on decisions of every lower courts of horizontal nature outside of one state to the rest of all other states and vertically binding on the lower courts within the limits of one regional state. This in turn directly counterfeits with the federal arrangements recognized in the Constitution. Therefore, Art.10 (3) of the Federal Courts Establishment Proclamation No.25/1996 and Art.2 (1) of the Federal Courts Re-establishment Proclamation No.454/2013 are unconstitutional since they authorize Federal Supreme Court Cassation Division to intervene into state matters.

Furthermore, the power of the Federal Supreme Court Cassation Division provided under Article 80(3a) of the FDRE Constitution should be interpreted in line with Article 80 (1) of the same. By the same token, concerning the power of the State Supreme Court Cassation Division, Article 80(3b) of the Constitution ought to be interpreted in line with Article 80 (2) of the same so that the spirit of the Constitution can be maintained. Another reason is the precedent effect of the decisions of Cassation Division of the State Supreme Courts could be another challenging. For instance, the Oromia Courts Establishment Proclamation No.216/2018 has empowered Cassation Division of the regional Supreme Court to give legally binding decisions on the courts of the region as regards to its legal interpretation.⁵²I strongly defend that this proclamation has a constitutional basis at least with regard to state matters. Because, the Constitution has already made the Regional Supreme Court to have the highest and final power over state matters under its Art.80 (2).

Nevertheless, practically, the Federal Supreme Court Cassation Division is also reviewing those regionally binding decisions which in turn will have precedent effect on lower courts of any level as per Proclamation No.454/2013. So, the question is how the Federal Cassation Division can make the regional proclamation ineffective through reviewing of single decision needs to be answered. It destructs the principles of constitutionally established federalism in the country. There is no doubt that the Caffee Oromia has the power to legislate on its own jurisdictional matters independently of the federal institutions. This is a constitutionally guaranteed power which the Federal Supreme Court Cassation Division is destructing by *defacto* power.

⁵²The Oromia Regional State Courts Proclamation, No.216/201, Art.29 (1)

3. THE CASSATION POWER OF REGIONAL STATE SUPREME COURT AND ITS EFFECT

When Articles 50 (1, 2) and 78 (1, 2, 3) of the FDRE Constitution are closely scrutinized, regional judiciaries are not only independent from other branches of regional government but also structurally independent from the federal courts arrangement. Accordingly, the Constitution has provided the three tiers of federal and state judicial system on their respective matters within their jurisdictions save aside the state delegation powers. Hence, as mentioned before, the State Supreme Court is vested with the final judicial authority over matters of state laws, including a cassation bench to review fundamental errors of laws made by lower courts on state matters.

In some regional states, like the Federal Supreme Court Cassation Division decisions, the decisions of State Supreme Court by the power of cassation have legal binding effect over lower courts within the limits of the state matters. For instance, the Oromia Regional State Courts Proclamation has provided that a decision of the regional Supreme Court Cassation Division shall be binding on lower courts of the region on that respective state matters provided that a case is decided by at least five judges including the President and Vice-president of the Supreme Court.⁵³ From this connotation, there is no doubt that decisions of the two supreme courts (the Federal and the State) cassation division may coincide over the same case having legal binding precedent effects on the same matter as there is cassation over cassation in practice. And then which decision of the two courts repeals or invalidates the other is another problematic issue (this will be discussed in the next section). The issue still persistently exists on the part of the regional states claiming that they have constitutional support not to be interfered by the Federal Supreme Court while the Federal Supreme Court defends itself as it is being empowered by the law (proclamation).

As the writer mentioned before, there is no constitutionally guaranteed federal laws' supremacy clause and the Federal Courts Establishment Proclamations are unconstitutional as per reviewing decisions of state courts on exclusive state matters are concerned. Therefore, the State Supreme Court has a constitutional and factual basis of power of cassation not to be reviewed by the Federal Supreme Court Cassation Division as far as state exclusive matter is concerned.

4. THE CONCEPT OF PRECEDENT AND ITS HISTORICAL DEVELOPMENT IN ETHIOPIA

The term precedent can be understood and defined in various forms as per the type of a legal system a country adopted. It is often named as "judge-made law, 'case law', 'judicial law', or in Latin '*stare decisis*'" which is used interchangeably by different scholars⁵⁴. Black's Law Dictionary also defines precedent as "a decided case that furnishes a basis for determining later cases involving similar facts or issues".⁵⁵ In addition, it defined that a precedent ... is a judicial decision which

⁵³The Oromia Regional State Courts Proclamation, No.216/2018, Art. 26 & 29.

⁵⁴Ahamd Tura, Husein, *supra* note 45, P227.

⁵⁵Bryan A.Garner (Editor in Chief), Black's Law Dictionary, 7th edition, (ST.PAUL, MINN, 1999).

contains in itself a principle. The essential principle is its authoritative element which is often called *ratio decidendi*. Accordingly, the decision is not only binding between the parties but also may have force of law as regards to succeeding cases at large.⁵⁶

However, save aside its legal principle, a given decision may be binding precedent or persuasive precedent or a declaratory or original precedent as the case provided. Declaratory precedent is simply applying an already established legal rule, while in original precedent, a court is about to invent and apply a new legal rule. However, as regard to binding precedent (mandatory precedent), the lower courts ought to follow the decision whatever its nature may be while persuasive precedent is likely free to follow or reject it with careful consideration.⁵⁷ A court is bound to follow a precedent provided that the jurisdiction or decision is directly related to a given case particularly where the precedent is similar to the case to be decided, it is said to be necessary to resolution of the case, the significance of the facts of the precedent case for the pending case, and no new fact is established in the pending case.⁵⁸

As regard to the binding force of precedent, Maurice Adams (in Belgian Reports) argues that the term “*precedential force*” is mostly used as a kind of catch-all phrase covering two – in his opinion – conceptually separate notions, i.e. court decisions as ‘precedents as such’ on the one hand, and what he proposes to call the ‘gravitational force’ of court decisions on the other.⁵⁹ More or less, the discrepancy is established between binding and persuasive precedent or as the civil law variant is described, the ‘light variant’. One may distinguish between the sociological and political aspect (where a precedent is binding) and the normative aspect (where a precedent is only persuasive). Furthermore, one may distinguish between formal and informal (or factual) precedents (from the institutional point of view), and constitutive and regulative precedents, from the substantive point of view. Another distinction is between vertical precedent – denoting that there exists a hierarchy between courts and horizontal courts, where courts of the same level influence one another”.⁶⁰ Notably, in English Law, the notion of ‘precedent’ in the common law

⁵⁶*Ibid.*

⁵⁷ *Ibid.*

⁵⁸ Husein, *supra* note 45.

⁵⁹ Ewoud Hondius, *Precedent and the Law*, European Journal of Comparative Law (1997), Netherlands Comparative Law Association, Vol. I, No.1. P18.

⁶⁰ *Ibid.*

stands for two different meanings:- in the broad sense, “precedent involves treating previous judicial decisions as authoritative statements of the law which can serve as good legal reasons for subsequent decisions. In the narrow sense, precedent (often described as *stare decisis*) requires judges in specific courts to treat certain previous decisions, especially of superior courts, as a binding reason”.⁶¹

Nonetheless, as some writers pointed out, the reference of precedent tendencies seem to be conflicting in civil and common law legal systems. Before 19th century, in continental countries, there was a system of precedents, but in 19th century at the time of codification, the primacy importance of precedent lost its reference. Nevertheless, because of the lethargy of legislation to govern the contemporary development of private law, the courts of civil law gradually regained some of their former positions with the help of legal literature.⁶² It is obvious that most scholars agreed on the importance of precedents to establish justification for equality and predictability. But, because of its rigidity and ability to enforce judges to follow even though they know that it is unjust, the introduction of a strict system of precedent (mandatory binding precedent) may be a paradox to the system of codification.⁶³ Therefore, it is advisable for civil law legal system to adopt persuasive precedents as contextualized by legal doctrine.⁶⁴ Otherwise, the binding precedent distorts the discretion enjoyed by the lower courts which in turn affects the decisional power and independence of judges.⁶⁵ In other words, the judges can't freely decide a certain case as they have the duty to make sure that all their decisions fit into the previously decided binding precedents or legal framework.⁶⁶ Therefore, to keep its advantageous issues and maintain judicial independence of lower courts, persuasive precedent is advisable and a balancing scheme in a codified legal system.

Coming to the Ethiopian case, even though it is hardly possible to illustrate the development of legal concepts in the country, some writers denote the existence of the concept of precedent until 1942 when the Emperor was considered as the fountain of justice and a ruling made by him could be cited in future cases as a law

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Husein, *supra* note 45., see also Ewoud Hindius, *supra* note 59

⁶⁴ Ewoud, *supra* note 59.

⁶⁵ Husein, *supra* note 45.

⁶⁶ *Ibid.*

in deciding cases of similar nature.⁶⁷ However, after 1942, due to codification of substantive and procedural laws, lower courts were not bound to follow the decisions of higher courts. Though there is no provision of the law which explicitly prohibits lower courts from following decisions rendered by the higher courts in deciding similar cases, an attempt to incorporate precedent in the legal system was rejected.⁶⁸

Nevertheless, afterwards, gradually some proclamations seem to re-incorporate the concept of precedent. For instance, Proclamation No. 195/1962 made the decisions of superior courts binding on all subordinate courts on matters of law, but not fully enjoyed as precedent in common law legal systems.⁶⁹ Similarly, the proclamation enacted during the Transitional Government of Ethiopia (i.e., Proc. No. 40/1993) under Article 24(4) stated, "... an interpretation of law made by a division of the Central Supreme Court constructed by no less than five judges shall be binding. Furthermore, currently the Federal Courts Re-establishment Proclamation No. 454/2005, under its Article 2(1) provides that "an interpretation of law by the Federal Supreme Court rendered by the Cassation Division with no less than five judges shall be binding on the federal as well as regional courts at all levels." In addition, the Oromia Regional State Courts Establishment Proclamation No.216/2018, under its Article 29 (1), which is the core analysis of this article, also made the decision of a Cassation Division, with at least five judges sitting including the President and the Vice President of Supreme Court, rendered by unanimity on a state matter, shall be binding on the courts of the region. From this point, we can understand that all the aforementioned proclamations have introduced the common law concept of precedent into the Ethiopian legal system with some slight differences.

But, none of them binds lower courts as to the facts of the case rather than as regards to its legal interpretation. In addition, the binding effect of the precedent seem to be applied to all levels of courts including the Cassation Division itself setting aside the power to amend or vary the binding decision whenever necessary.⁷⁰

⁶⁷Ewoud, *supra* note 59.

⁶⁸*Ibid.*

⁶⁹*Ibid.*

⁷⁰ Federal Courts Re-amendment Proclamation No. 454/2005, Art. 29.

Currently, what makes hullabaloo is the existence of autonomous regional states and the binding force of the Federal Supreme Court Cassation Division decisions on lower courts of any region on any matter, whether it is state matter or not. Surprisingly, as it is understood from the above mentioned concepts and the Ethiopian proclamations, including the Oromia State Courts Proclamation, the concept of precedent is introduced in Ethiopian legal system not with its persuasion prognosis, but as binding (mandatory) precedent. Had it been introduced with the nature of persuading precedent, the regional lower courts judges would have been free to use or reject the Federal Supreme Court Cassation Division binding decisions concerning state exclusive matters. But, now every judge of every level is not at liberty either to follow or not follow the *stare decisis*. Otherwise, judges rendering judgment away from the binding decision will be responsible on the ground of breaking explicit provision of laws.⁷¹ This, in turn, demolishes the independence of the judges and deteriorates the principle of self-rule of states on their own matters. This will be analyzed critically in the following section.

5. THE CONSTITUTIONALITY OF PRECEDENT OVER PRECEDENT IN ETHIOPIAN LEGAL SYSTEM

As provided before, the FDRE Constitution has established a dual form of court structure at the two tiers of government in which their respective courts decide over their exclusive matters without any intervention. Accordingly, both levels of courts are competent enough to act within their jurisdictions without interfering into one another's judicial powers. However, the Federal Courts Re-amendment Proclamation empowers the Federal Supreme Court (herein after called Cassation Division) to review final decisions of a state supreme court⁷² which is binding on the state courts. This is not a legitimate practice in light of the doctrine of division of powers and it is a kind of interfering into state matters. And also, as mentioned before, the constitution is interpreted in the way that the Federal Supreme Court has a power of cassation over any final court decision containing basic errors of law including application from the decisions of cassations of state Supreme courts which gives rise to the emergence of cassation over cassation.⁷³ But, in my

⁷¹Federal Courts Re-amendment Proclamation No. 454/2005, Art.34.

⁷²Federal Courts Re-amendment Proclamation No. 454/2005, Art. 2 (1).

⁷³John Kincaid, Courts in Federal Countries Federalists (Kincaid, University, Toronto Buffalo London, 1946), P2017.

opinion, in any federal system of the world, one may not find the experience of cassation over cassation and the Ethiopian practice seems to be odd and confusing to be assigned into one of the approaches of federal system (as pointed before).

The most dismaying issue is that there is no wrong to the articulation of the constitution and the provision is clear enough to establish dual court structures at the two-tiers of the government by empowering them on their respective matters without interfering into one another's jurisdictional matters. However, the laws (the proclamations)⁷⁴ and the practice⁷⁵ are not operating in the spirit of the Constitution which affects the doctrine of separation of powers and encroaches on the regional states' autonomous power as well. On the ground, it is not clear why the constitution is interpreted in such a way that the decisions of the Federal Supreme Court Cassation Division have a supremacy clause over the exclusive state matters. Had the Federal Supreme Court Cassation Division decision has supremacy clause; the Constitution would not have established a dual court structure by making the State Supreme Court to have the highest and final judicial power over state matters. Therefore, the proclamation⁷⁶ is established in a contradiction with the spirit of the constitution.

Furthermore, the proclamation is unconstitutional because of the fact that it empowers the Federal Supreme Court Cassation Division decisions decided by not less than five judges to have a binding precedent effect on state matters. This violates the doctrine of separation of powers established by the Constitution.⁷⁷ The most serious bottlenecks are the exclusive state powers, especially on family matters; where the states proclaimed according to their cultural and social lives of

⁷⁴Federal Courts Re-amendment Proclamation No. 454/2005, Art2 (1): stated that 'interpretation of a law by the Federal Supreme Court rendered by the Cassation Division with not less than five judges shall be binding on federal as well as regional council at all levels'. The underlined words contravene the spirit of constitution. Because the constitution has put the supreme courts of the two levels of government on the same position concerning their respective matters, FDRE Constitution Art.80 (3 a & b).

⁷⁵The FDRE Supreme Court Cassation Division decisions: W/ro Zenebech Bekele Vs. AtoYonasTsegaye (File No.54258), Vol. 11, Nov.2/2003 E C, P33; W/ro KalkidanYohenew Vs. Ato AbissaYadeta (File No.127714), Vol.21, March 26/2009 EC, P275; Calume Mul'ata Vs. Chalashi Kalbessa (File No.138286), Vol.22, September 23/2010 EC, P314; W/ro Yeshe Teshome Vs. Ato Mesfin Hayilu (File No.95680), Vol.17, September 26/2007, P281 are cases in point. All these and many others are solely state matters, particularly decided on the family law of Oromia National Regional State.

⁷⁶Federal Courts Re-amendment Proclamation No. 454/2005, Art. 2(1).

⁷⁷FDRE Constitution, Art. 50 (1 & 7).

the territorial regions are subjected to review by the Federal Supreme Court Cassation Division.

For instance, Oromia Regional State has its own family law⁷⁸ which is established according to the Oromo culture and tradition, while the Federal Government has its own Revised Family Law⁷⁹ which is established according to the life standards of residents of Addis Ababa and Dire Dawa Cities. But, the Federal Supreme Court Cassation Division is reviewing the cassation decision of Oromia Regional State Supreme Court Cassation Division on family matters. For example, the case between W/roYeshi Teshoma and Ato Mesfin Hayilu⁸⁰, the case between Chalume Mulata and Chalashi Kalbessa,⁸¹ the case between Ato Balaxe Negash and W/ro Ijigayo Lakew and others⁸² are all family matters of the region finally decided by the Oromia Supreme Court Cassation Division and again reviewed by the Federal Supreme Court Cassation Division. Unfortunately, these cases are actually confirmed by the Federal Cassation Division, even though there is a high probability of reversing other cases of similar nature.

Accordingly, those decisions of the Federal Supreme Court Cassation Division have binding effect on the lower courts of any level of federating states. However, on one hand, this is absolutely against the principles of division of powers in the federal system. On the other hand, it amounts to making the matter of one state to be the matter of all the other federating states. As per Art.6 (2) of Proclamation No.25/1996, where the Oromia Family Law is inconsistent with the Federal Revised Family Code, the Federal Cassation Division ought to apply the Federal Revised Family Code on state matters. But, there is no doubt that the Federal Revised Family Code is applicable only in Finfinne City and Dirre Dawwa town. In the presence of state family law, applying the Federal Revised Family Code as the supreme law over state law through single interpretation of laws by the Federal Supreme Court Cassation Division will have no constitutional and factual basis.

⁷⁸Oromia Family Code, Proclamation No.83/2004.

⁷⁹The Federal Revised Family Code, Proclamation No. 213/2000.

⁸⁰Yeshi Teshoma Vs. Ato Mesfin Hayilu, FDRE Supreme Court Cassation Division Decision, File No.95680 , Vol.17, P280

⁸¹Chalume Mulata Vs. Chalashi Kalbessa, FDRE Supreme Court Cassation Division Decision, File No.138286, Vol.22, P314

⁸²Balaxe Negash Vs. W/ro Ijigayo Lakew, FDRE Supreme Court Cassation Division Decision, File No.137853, Vol.22, P341

Surprisingly, in recent phenomenon, the decisions of Oromia Supreme Court Cassation Division have binding effect on the region's lower courts concerning state matters, including the above mentioned real cases. By doing so, the Oromia Supreme Court Cassation Division can render judgment of legal nature just like legislations made by *Caffee*⁸³ and ought to be followed by judges of the region. Hence, by implication, the Federal Supreme Court Cassation Division is invalidating laws of the region, which is unequivocally contradicting the provision of the FDRE Constitution establishing division of powers between the two levels of government. This directly indicates that the Federal Supreme Court Cassation Division is still not adapted itself to the current Ethiopian federal system. It seems to be triggered and influenced by the unitary system of the country lapsed before two decades which seeks to exercise hegemonic and centralized power over all cases in the country.

Therefore, the author argued that the emergence of precedent over precedent is the result of cassation over cassation which is not construed on basis of the Constitution. For that reason, the Federal Courts Proclamation No.25/1996 and 454/2005 as well as the practices of the Supreme Court Cassation Division decisions are unconstitutional, and all these are the mere trigger to govern the affairs of regional states without constitutional basis. However, by making decisions of regional Cassation Division to have binding effect of interpretation on lower courts of the region, the Oromia Regional State Courts Proclamation No.216/2018 has a constitutional basis. Otherwise, in the presence of precedent over precedent, judges of the lower courts of Oromia Regional State are going to be confused with the precedence of the two powerful decisions given at the two tiers of government having independent and autonomous judicial powers on the same issues.

To make it more clear, the Federal Courts Re-amendment Proclamation provided that "interpretation of a law by the Federal Supreme Court rendered by the Cassation Division with not less than five judges shall be binding on federal as well as regional levels".⁸⁴ By the same spirit; for example, a Proclamation to Re-define the Structure, Powers and Functions of Oromia Regional State Courts has

⁸³*Caffee* is a word of Afaan Oromoo, which means legislating body of the Oromia Regional State like the federal government Parliament.

⁸⁴Federal Courts Proclamation, No. 25/1996, Art. 2 (1).

provided that ‘a decision of a Cassation Division, with at least five judges sitting including the President and the Vice-president, rendered by unanimity on a state matter, shall be binding on the courts of the region as regards to its legal interpretation’.⁸⁵ From the two proclamations, one can understand that there is *precedence over precedence* not only cassation over cassation.

Accordingly, the decisions of the two Supreme Courts may ram each other on the same case. To this effect, where the Oromia Regional State Supreme Court has decided on certain cases containing exclusive state matters with precedence effect on the lower courts of the region, the lower courts deem to follow it while still it is not final decision as going to be reviewed by Federal Supreme Court Cassation Division. And then, the Federal Supreme Court Cassation Division may overrule the case and reverse or annul the case decided by the region having legal binding effect. By so doing, the two legislations (Proclamations No.25/1996 and 216/2019) are contradicting to each other by empowering the two levels of Supreme Courts to render legally binding decisions on the same issue. On such occasion, probably, the Federal Supreme Court is in a position to reverse or annul the Oromia Regional State Supreme Court Cassation Division decision having precedent effect since application is made from the Regional Supreme Court Cassation Division decision presuming that the Federal Supreme Court Cassation Division is the highest court of the whole country.

However, the Constitution never made the Federal Supreme Court to have the highest judicial power over the whole parts of the country rather than it established the court to have the highest judicial power solely over federal matters. In addition, the Constitution has clearly established the state supreme court to have the highest and final judicial power over state matters.⁸⁶ Hereafter, by making the Supreme Court as the highest court in the region as well as making the decisions of cassation division to have precedent effect on lower courts of the region exclusively on state matters, the Oromia Regional State Courts Proclamation No. 216/2018 has a constitutional basis. Nonetheless, the Federal Courts Establishment Proclamation No. 25/1996 and the Re-amendment Proclamation No 454/ 2005 are not constitutional laws as far as the legal binding effect of Federal Cassation Division on state matter is concerned. This is because of the fact that the former

⁸⁵Oromia Court Proclamation No No.216/2018, Art.29(1)

⁸⁶FDRE Constitution, Art. 80 (1).

federal proclamation has established cassation over cassation while the latter subsequent amending proclamation has established precedent over precedent. As a result, both are not provided within the spirit of the constitution so far as state exclusive matters are concerned. Likewise, precedent over precedent distorts the principle of separation of powers in the federal system of the country. I swear, in any form of federal systems of the world experiences, that one may not find such kind of dual court structure where the Federal Supreme Court interferes into the exclusive state matters. Therefore, such kind of interference is not only unconstitutional but also it amounts to violation of independence of state courts not to rule freely over their own exclusive matters.

Outstandingly, one should not be confused that the state courts may not apply and interpret the federal laws. In such case, it is true and not dubious that the state courts decisions are subjected to the federal Supreme Court judicial review. Some may wonder that revision of State Supreme Cassation Division decisions by Federal Supreme Court may be a solution to state cases in conflict with constitutional provisions and also it is the best way to bring uniformity of laws in the country. But, for the writer, this is not a sound argument because of the fact that constitutional reviewing in Ethiopia is not entrusted to ordinary courts, but to a third body; the so called House of Federation.⁸⁷ In addition, the uniform application of law pre-supposes the unitary form of government or the federal system that follows the single court structure approach or integrated court structure, as mentioned before. However, the Ethiopian Constitution has not established the unitary form of government nor the single or integrated court structure; rather a dual form of court structure. So, by implication, the Constitution itself demanded to have different forms of laws within the same legal system and under the same polity by dividing powers between the federal and regional states and also enables the two tiers of government to have their own court structure deciding on their exclusive matters.⁸⁸

⁸⁷FDRE Constitution, Art. 62.

⁸⁸FDRE Constitution, Arts. 47, 50 (2) and 80 (1 & 2). From these provisions, any body can understand that the two levels of government have the duty to cooperate by respecting the power of one another without interference and at the same time regional government institutions should be placed at liberty to act independently of intervention from federal government institutions.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1. CONCLUSIONS

In general, in federal form of governments, there are three approaches concerning the structural establishment of courts. These are: dual, single and integrated form of court structure. Among the three approaches, the FDRE Constitution has clearly established a dual form of court structure in which courts of the two tiers of government act independently of each other without interfering into one another's jurisdictional power. They have full autonomous power on their respective matters. Accordingly, at regional level, the State Supreme Court is the highest and final court on state matters. By the same token, the Federal Supreme Court is the highest court on federal matters, not on all cases of the whole country. However, apart from these constitutional provisions, the Federal Courts Proclamations No.25/1996 and 454/2005 have empowered the Federal Supreme Court Cassation Division to review the decisions of the State Supreme Court Cassation Division. By doing so, since the State Supreme Court has cassation power over state matters constitutionally, the two federal proclamations have established the principle of cassation over cassation.

But, this practice is not in line with the experiences of federal dual court arrangements as it directly affects the principle of self-rule. Furthermore, the most dismaying problem is associated with the federal courts proclamation which established another debatable issue of precedent over precedent. This is because of the fact that the Oromia state courts establishment proclamation has made the decisions of state Supreme Court Cassation Division to have legal binding effect on the lower courts of its territorial jurisdiction. To make it clear, a Proclamation to Re-define the Structure, Powers and Functions of the Oromia Regional State Courts Proclamation No.216/2018 has empowered Supreme Court Cassation Division of the region to render decision which is binding on the lower courts involving state exclusive matters. Similarly, the Federal Courts Re-Establishment Proclamation No.454/2005 has empowered the Federal Supreme Court Cassation Division to give binding decisions on all cases irrespective of the federal or state matter that have precedent effect on lower courts of the whole country.

Accordingly, by logical analysis a new version "precedent over precedent" is emerged. However, this directly distorts the principle of federalism, and it is also

an act of violation of the independence of regional courts to freely overrule the state exclusive matters within their jurisdiction. It also ascends different conflicts between the two layers of court structures based on the autonomous power given to the states by the Constitution to decide on their own matters freely. As a result, the Oromia Regional State Courts Proclamation No.216/2018 is a constitutional law while the Federal Courts Proclamations No.25/1996 and 454/2005 are unconstitutional ones as far as reviewing of decisions rendered by the regional Courts Cassation Division having legally binding effect on lower courts of the region on state exclusive matters is concerned.

6.2. RECOMMENDATIONS

Based on the analysis and findings concerning the federal system and the need to regulate picture of court structure in the eyes of the FDRE Constitution, the author has made the following recommendations:

- In federal form of government, there is no doubt that the legislating body has the primary *duty to check the constitutionality of every law before legislating it by using different* techniques and systems. Consequently, any law to be enacted should be primarily checked content wise whether it boosts or encroaches on the principles of the Constitution, particularly whether the law to be enacted is in accordance with the principles of self-rule established by the Constitution. By so doing, a spirit of the law should be in line with the federal arrangements of self-ruling and care for the autonomous power of federating states to overrule their own exclusive matters without interference of the federal body. The FDRE Constitution under Article 80 (1 and 2) made the Federal Supreme Court the highest court over federal matters, not on state matters and at the same time it established the State Supreme Court has the highest court over state matters. Furthermore, courts of any level shall be free from any interference of influence of any governmental body, government official or from any other source under Article 79 (2) of same. However, as clearly analyzed in this article, the Federal Courts Proclamation No.25/1996 under its Article 10 and the Federal Courts Re-amendment Proclamation No.454/2005 under its Article 2(1) have been articulated by empowering the Federal Supreme Court Cassation Division to have the highest judicial power over all corner of the country, including exclusive state matters. However, this traditional practice distracts the federal principle of division of power.

Therefore, the concerned body should amend the provision of the two proclamations in the way not to intervene into state matters. Otherwise, if the two proclamations are left without amendment, it will amount to agreeing with the unconstitutional proclamations.

- As per Article 9 of the FDRE Constitution, the Constitution is supreme law of the land. In that sense, a decision of any organ of a state or a public official which contravenes the Constitution shall be of no effect. This Constitution has established autonomous states with their own legislative, executive and judicial powers so as to ensure the principle of self-determination on their own matters within their respective territory. In addition, the Constitution has established dual forms of court structures by making the Regional Supreme Court the highest and final judicial power over state matters to overrule without interference from federal government under its Articles 78, 79 and 80. However, based on the above mentioned existing proclamations, the Federal Supreme Court is reviewing decisions of Regional Supreme Court Cassation Division by intervening into the state exclusive matters which is unconstitutional.

Therefore, even though the legislating body fails to amend the above mentioned proclamations, I strongly recommend the Federal Supreme Court Cassation Division not to intervene into state exclusive matters and limit its power to federal matters. The Court has a constitutional positive defense not to review decisions rendered by State Supreme Court Cassation Division. Unless the Cassation Division of the Federal Supreme Court stops reviewing the state exclusive matters, it does not only violate federal principles but also amount to repealing the laws proclaimed by state legislative body. For instance, the Oromia Regional State Courts Proclamation No.216/2018 empowers the State Supreme Court Cassation Division to render decisions on the state exclusive matters that have legal binding effect on the lower courts of the region. Accordingly, when the Federal Supreme Court continuous to review such binding decisions, it is nothing but an act of repealing not only the precedent decision but also the proclamation proclaimed by *Caffee* of the region thereby distracting the federal principle of self-ruling.

A CRITICAL ASSESSMENT ON PROVISIONS OF THE FEDERAL CONSTITUTION OF ETHIOPIA WITH REGARD TO FEDERAL-REGIONAL GOVERNMENTS RELATIONSHIP ON LAND LAW

*Habib Jemal **

ABSTRACT

The Federal Democratic Republic of Ethiopian Constitution has stipulated that the Nations, Nationalities and Peoples of Ethiopia are owners of land, which is one of the invaluable resources for the exercise of sovereign and self-determination rights of the people, who are also the building bricks of the federation under the Constitution. The Constitution demands the existence of land policy that respect and enforce the self-determination right of the people over the land resource. The resource is a subject matter over which both federal and regional governments have power under the Constitution. However, it does not provide a clear division of power between them. The purpose of this article is to analyze the land law-making relationship between the two levels of government in light of the Constitution. The researcher has employed a qualitative approach that is mainly doctrinal legal research. Accordingly, the FDRE Constitution does not require all Regional States to administer land resources based on a single and uniform land policy of the Federal Government. A central land legislation making process, under the monopoly of the Federal Government, is far from the spirit of the Constitution. The Constitution requires the presence of a decentralized land policy process that reflects the peculiar land policy interest of each Nation, Nationalities and Peoples. Unlike the practice, the FDRE Constitution demands the formulation and implementation of land policy that is the result of harmonious coordination between the Federal Government and the Regional States. Thus, the Federal Government is not the only source of land law in Ethiopian federal system as land lawmaking is a concurrent power under the Constitution.

Key Terms: *FDRE Constitution, Land Resource, Federal Government, Regional States, Land Administration, Rural Land Law, and Urban Land Law.*

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I. INTRODUCTION

Many jurisdictions do not regulate land issues as the subject matter of their constitution.¹ The land resource has an invaluable place for the socio-economic and political life of Ethiopians. This has made the Federal Democratic Republic of Ethiopia Constitution (FDRE Constitution hereinafter) to be much more sensitive on the issue of land resources. Accordingly, the Constitution has declared that Ethiopian Nations, Nationalities and Peoples (NNP hereinafter) are owners of both urban and rural land.² This fundamental declaration of the Constitution requires the formulation and implementation of land policy which ultimately make NNP principal economic beneficiaries of land resource.

The Constitution requires a land policy which respects and enforces “NNP land” to NNP. It also imposes a duty on both Federal and Regional Governments to formulate and implement a land policy that ensures the benefits of all Ethiopians from land resources.³ Land resource is a subject matter over which both Federal and Regional Governments can exercise power, as provided under Art 51 (6) and Art 52 (2) of the FDRE Constitution. The former provision stipulates that the Federal Government enacts the law on the utilization and conservation of the land resource. The latter provision, on the other hand, stipulates that the Regional States administer land in accordance with federal law. Hence, the scope of regional state land administration power and the degree they should administer land in accordance with federal law under the Constitution is the core issue.

The objective of this article is to evaluate the relationship between the Federal and Regional Governments concerning land law in light of the FDRE Constitution. To this end, the author has employed a qualitative approach, which is mainly doctrinal legal research that analyzes the Ethiopian legal framework on land rights. To expose the nature and scope of the rights in Ethiopia, the relevant FDRE laws as a secondary data have been collected and analyzed. These include the FDRE Constitution, Federal Land Proclamations, and land policy documents. Besides, for explicating the theories behind reliance was made on literature. Finally, the author has analyzed all relevant laws and other authoritative documents.

¹Daniel Weldegebriel, Land Rights in Ethiopia: Ownership, Equity, and Liberty in Land Use Rights (Research Paper presented on FIG Working Week Conference, Italy , Rome, 6-10 May 2012), P 5.

²FDRE Constitution, Art 40 (3)

³ FDRE Constitution, Art. 9 cum Art. 89.

II. FEDERAL GOVERNMENT'S LEGISLATIVE POWER AS TO LAND RESOURCE

FDRE Constitution has made land resource as a subject-matter over which both levels of government can exercise power under Art 51 (6) and Art 52 (2). The former provision of the Constitution stipulates the Federal Government enacts law on the utilization and conservation of the land resource. The latter stipulates that the Regional States administer land in accordance with federal law. These two different provisions are concerned with one single subject matter i.e. land resources and provide interrelated powers for the two tiers of government. The power is "land administration" and "land lawmaking."

The core issue of this section is whether there is constitutional ground to consider land lawmaking power as the exclusive power of the federal government or not. To provide an answer to the question, it is important to assess whether the Constitution bans the regional states from enacting land laws or not. Under this section, the meaning of the federal government's land law-making power will be addressed. In the following two sub-sections, this issue will be addressed in light of the general approach of the Constitution, and the relational and scope of Federal Government power. In the next section, the issue of the Regional Government's land law-making power will be addressed.

A. THE IMPLICATION OF POWER ALLOCATION APPROACH UNDER THE FDRE CONSTITUTION

Federal constitutions allocate power between central and constitute units based on two major approaches. The first approach is called *dual federalism* that is followed by the older federations like the USA, Australia, and Canada.⁴ The dual approach underlines the principle that each level of government retains the executive responsibility in those matters in which it exercises the legislative power.⁵ In addition, both the legislative and the executive powers concerning a given subject matter lie with the same level of government. This method works with the assumption that the two levels of authority retain autonomy concerning their respective powers.

⁴Solomon Negussie, Ethiopia's Fiscal Federalism: A Constitutional Overview (Ethiopian Constitutional Law Series, Vol. III, Law Faculty AAU, 2010).

⁵ *Ibid.*

The second approach results in the division of labor where the legislative power is reserved for one of the tiers of government and its administration to the other. The approach involves a strong relationship between the Federal Government and the states. The best illustration for this method of allocating executive powers is the practice in Germany where the Federal Government is primarily concerned with policy initiation, formulation, and legislation, while the states are mainly responsible for implementation and administration. As a result, German federalism is described as functional federalism.⁶

On one hand, in Ethiopian federation, Art 50 (2) of the FDRE Constitution provides that both Federal and Regional Governments have the legislative and executive powers on matters that fall under the respective jurisdictions. Each tier of government shall respect the powers of the other as per Article 50 (8). To this effect, the powers and functions of the Federal Government and the states are listed under Articles 51 and 52 of the Constitution, respectively. In addition to Article 51, the scope of the legislative and the executive powers of the Federal Government are indicated under Articles 55, 74 and 77.

On the other hand, Regional States are endowed by the Constitution with legislative, executive and judicial powers. States have the power to establish their administrative levels which they consider necessary. The State Council is the highest organ of state authority and elects the regional president who is the Head of the state administration (the highest state executive organ). States hold residual power in addition to the brief account of powers stated under the Constitution (Article 52). They are also empowered to draft, adopt and amend state constitutions. From the above provisions of the FDRE Constitution, it is clear that it follows the USA model of a dual structure; which is by reserving the executive responsibility to each level of government on matters in which they exercise the legislative power.

Articles 51 (6) and 52 (2) of the Constitution has made land resource as a subject matter over which both levels of government can exercise power. It requires the Regional States to administer land in accordance with federal law. But, it is not safe to conclude that the division formula of the Constitution as to land resource follows the functional model. The two models are general and simply imply the constitutional approaches for the division of legislative and executive powers. This

⁶ *Ibid.*

is affirmed by another scholar who states the applicability of one approach cannot exclude the other and recent federations are tending to design their constitutions in between the two approaches.⁷

Besides, the principle formula employed to divide power between the Federal and Regional Governments under the FDRE Constitution is a dual model. And the idea of implementing federal land policies via regional state institutions is far from the power division principle of the Constitution. In support of this, one scholar has underlined the reason for adopting the dual approach under the FDRE Constitution to be the high emphasis given by the Constitutional Assembly for the values on self-rule.⁸

Based on the above line of arguments and reasoning, it would be safe to conclude that the dual formula of power allocation under the FDRE Constitution has no exception concerning land resources between federal and regional governments. Thus, there is no constitutional ground that makes land lawmaking power as the exclusive power of the federal government or that ban the regional states from enacting land laws.

B. RATIONAL AND SCOPE OF FEDERAL GOVERNMENT POWER

The FDRE Constitution is the result of a bargain among NNP, who are sovereign and have the bearers of the right to land. The economic significance of land resources for Ethiopian NNP is invaluable and incalculable. This is why the Constitution has considered land to be one of fundamental resource for the exercise of NNP self-determination rights. This right becomes impracticable unless the land resource is properly conserved and utilized. To change into practice such NNP sensitive land policy of the constitution, it is essential to have an effective legal framework, which enforces the rule of law on land resources.

Putting differently, the rationale behind Federal Government land legislative intervention under the Constitution is not needed for having a uniform land policy in Ethiopia. Rather, the Federal Government is made responsible under the Constitution to make legislative intervention which ensures the existence of an

⁷ Solomon, *Supra* note 4

⁸ Assefa Fiseha, Ethiopia's Experiment in Accommodating Diversity: 20 Years' Balance Sheet, *Regional & Federal Studies* (2012), 22:4, 435-473, P446.

effective land administration framework for the conservation and utilization of land resources for each of NNP. Hence, despite the Constitution subject the Regional States to administer land in accordance with federal law, this wouldn't mean that land law-making power is a federal matter.

The Constitution has required federal intervention to introduce some means of uniformity. The ultimate end of this uniformity is to conserve and utilize land resources for the economic and political benefit of NNP. The purpose of legislative intervention by the Federal Government on land matters, which is a subject matter assigned to states under the Constitution, should not be confined to achieve uniformity of land law and policy in all Regional States. The place has given under the Constitution to protect and promote the interest of NNP in terms of land ownership, land right and federalism supports decentralization land policy.

Besides, under the Constitution, there is no mechanism enabling to reflect and represent the interest of NNP up on federal government policymaking. This is possible in other federations via the Second Chamber. In the Ethiopian federation, the House of Federation (the Second Chamber) has not shared legislative power with the House of Peoples Representative (the First Chamber). It is also important to mention that NNP is the bearers of sovereign power under the Constitution. The constitution supports land policy or law-making process which reflects the peculiar interest of each of NNP. This requires a making process that gives wide involvement of government which is closer to each of NNP.

The Constitution is interested in an institutional framework that enhances NNP democratic participation, facilitates effective policy development and delivery. The role of federal land law under the Constitution is to enable land resources is utilized and conserved for the benefit of each of NNP found in the nine Regional States. The scope of Federal Government land lawmaking should not extend beyond ensuring that landholders, the NNP and Ethiopian citizens are secure in their occupation, they are not dispossessed without due process and compensation, and so on. The scope of federal land law cannot provide limitations or introduce changes that affect the relationship of NNP with the land.

Finally, it is important to mention that the idea of implementing federal land policies via regional state institutions is incompatible with the dual principle of the power division formula of the Constitution. Consequently, the phrase that demands the Regional States to administer land in accordance with federal law under Article

52 (2) neither provides monopoly land lawmaking power to Federal Government nor imposes an obligation on all regions to administer land only based on laws passed by The Federal Government. The Constitution has no intention to ban or to narrow policy-making space Regional Governments concerning land resources. The power of the Federal Government is only to pass general on land conservation and utilization that cannot restrict to respond and make practicable the peculiar interests, rights, and ownership of NNP on land resources. In short, FDRE Constitution has not given exclusive land lawmaking power to Federal Government.

III. REGIONAL GOVERNMENT'S LEGISLATIVE POWER AS TO LAND RESOURCE

Article 52 (2) (b) of the FDRE Constitution provides that land resources are administered by the Regional States. The Constitution uses the term administer in different provisions. To understand the significance and meaning of the term under the above proviso, it is necessary to highlight the use of the term under the other provisions of the Constitution and its implication in practice. Hence, before looking for the meaning and scope of this power based on the Constitution, it is important to clarify the conceptual meaning of the term land administration. Then, constitutionality or legal aspect of land administration is considered.

A. DEFINITION OF LAND ADMINISTRATION

Land is a fundamental input into agricultural production and is directly linked to food security and livelihood. The land is also a primary source of collateral for obtaining credit from institutional and informal providers, and the security of tenure provides a foundation for economic development.⁹ Scholars assume that people must relate to land in some way and the relationships tend to get more and more organized as they evolve. Based on this assumption land administration is conceptualized as the study of how people organize land which includes the way

⁹ Tony Burns, Land Administration Reform: Indicators of Success and Future Challenges (The International Bank for Reconstruction and Development/The World Bank, USA, Washington, DC 2, 2007), P6.

people think about land, the institutions and agencies people build, and the processes these institutions and agencies manage.¹⁰

Land administration is also considered as the basis for conceptualizing rights, restrictions, and responsibilities related to people, policies and places.¹¹ Land administration is concerned with the social, legal, economic and technical framework within which land managers and administrators must operate.¹² Land administration systems, therefore, need high-level political support and recognition, and land administration activities are, not just about technical or administrative processes.¹³ The activities are political and reflect the accepted social concepts concerning people, rights, and land objects concerning land tenure, land markets, land taxation, land-use control, land development, and environmental management.¹⁴

From the above literature, it can be concluded that the scope of the term land administration is a wide concept. Land administration informs the ‘how’, the ‘what’, the ‘who’, the ‘when’ and the ‘where’ of land tenure, land use, land value, and land development.¹⁵ Land administration is defined as the activities that relate to organizing land tenure, land value, land use, and land development.¹⁶ This definition of land administration encompasses the determination of policy, legal, tenure, administrative, technical, and capacity development elements on land resources. This definition is concordant with the more recent definition provided in the international standard for the land administration standard, which is also known as the Land Administration Domain Model (LADM).¹⁷

¹⁰Ian Williamson Stig Enemark Jude Wallace Abbas Rajabifard, *Land Administration for Sustainable Development* (Esri Press, 380 New York Street, Redlands, California U.S.A, 2010).

¹¹Stig Enemark, *Land Administration Systems- Managing Rights, Restrictions and Responsibilities in the Land* (Paper Presented on the International Federation of Surveyors: Map World Forum, Hyderabad, India, 2009), Pp10-13 .

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵United Nations, *Framework for Effective Land Administration*, Committee of Experts on Global Geospatial Information Management (UN-GGIM), (2019) P 10.

¹⁶ Ian Williamson Stig Enemark, *Supra* note 10.

¹⁷ISO 19152, *Geographic Information Land Administration Domain Model* (Edition 1, International Standards Organization, Geneva, Switzerland, 2012).

B. THE MEANING UNDER THE CONSTITUTION

Article 52 (2) (b) of the FDRE Constitution provides that land resources are administered by the Regional States. The Constitution uses the term administer in different provisions. To understand the significance and meaning of the term under the above proviso, it is reasonable to highlight the use of the term under the other provisions of the Constitution and its implication in practice. For example, the Constitution employs the term ‘administer’ while listing and describing some of the power of the Federal Government under Art. 51.

Accordingly, Article 51 (6), (7), (10), (13), and (18), respectively vest power to the Federal Government to *administer* national defense and public security forces as well as a federal police force; *administer* the National Bank, print and borrow money, mint coins, regulate foreign exchange and money in circulation, *administer* the Federal Government’s budget, *administer* and expand all federally funded institutions that provide services to two or more states, and *administer* all matters relating to immigration, the granting of passports, entry into and exit from the country, refugees and asylum.

The Constitution has assigned all of these matters to the Federal Government, by using umbrella term- administer. The Constitution made all decision making on any aspect of such matters far from the Regional States, and in practice, it is only the Federal Government that has jurisdiction to deal with them independently. Administration of these matters requires the formulation of policies and strategies, as well as the institutional and legal framework. In practice, the Federal Government has passed legislation and established institutions to properly and effectively determine and direct the necessary policies the federal institutions follow while administering the above matters. The Constitution also underscored under Art. 55 the need for legislation to administer all matters assigned to Federal jurisdiction.

Similarly, the use of the term “*administer*” under the Constitution and the federal practice imply the presence of wide room for the entity empowered to administer to make deal with the subject matter. In addition, there is no reason to interpret less favorably and differently the meaning of the term *administer* under Article 52 (2) (b) of the Constitution. The Regional States administer land resources “in accordance with federal law does not mean that land resource is a subject matter that falls under the jurisdiction of the federal government. This can be also

supported based on an inference made from Article 51 (11) of the Constitution, which exceptionally assigns natural resource-related jurisdiction of the Federal Government. This provision limits the jurisdiction of the Federal Government only to determine and administer the utilization of the waters or rivers and lakes linking two or more states or crossing the boundaries of the national territorial jurisdiction.

The same can be understood from Article 49 of the Constitution which states the special interest of the State of Oromia in Addis Ababa, regarding the utilization of natural resources. This indirectly confirms the intention of the Constitution to vest legislative power at the hand of each regional state to determine land resource use policy in their boundary. Further, the Federal Government has no power under the Constitution concerning the determination of regional state revenue from the land; since the power to levy and impose a land tax is given for the Regional States under Art 97 (2) and (6).

Finally, the element used to define the term NNP under the Constitution support the relevancy of Regional States legislative role concerning land resource. This can be inferred from the definition of NNP under Article 39 of the Constitution. This provision defines NNP as a group of people who settled in the contingent territory with natural resources including land which is also owned by them. Proper enforcement of the NNP land right requires the regional legal framework enforces rule of law by taking into account the peculiar economic, social, cultural and political aspiration of each of the NNP. All land situated within the respective state boundaries are vested to NNP and their political institutions have the power to enact a law that deals with it. The land law-making power of the Federal Government is necessary to make practicable the peculiar interests, rights, and ownership of NNP on land resources.

The Federal Government cannot address all details and it is a regional state which can adopt feasible subsidiary land legislation to implement federal laws considering the prevailing facts in the region.¹⁸ Consequently, the phrase that demands the Regional States to administer land in accordance with federal law under Article 52 (2) neither provides monopoly land lawmaking power to Federal Government nor imposes an obligation on all Regions to administer land only based on laws passed by Federal Government. In sum, from the reading of Article 52 (2), (b) and 51 (6) of the FDRE Constitution, Regional Governments have

¹⁸ *Ibid*

meaningful and wide power on land law. In addition to this, there are other constitutional dimensions and policies which support the need for land policy decentralization or regional land policy/law. This issue is addressed in the next section.

IV. PRIMACY OF THE REGIONAL GOVERNMENT'S LEGISLATIVE POWER AS TO LAND RESOURCE

In comparison with the Federal Government, the FDRE Constitution provides wide space to the Regional States on the formulation of land policy. The Constitution is not interested to make all regional states administer land based on a single land policy passed by the Federal Government. This assertion is by linking the land administration power of the regional states with two key land resource-related factors of the Constitution. The first factor requires us to assume land policymaking under the umbrella of economic policymaking power. The second requires us to assume a look at land lawmaking power as an important component of NNP right. In the following sub-sections, an attempt is made to look at these two issues.

A. DEVELOPMENT RELATED POLICY FORMULATION AUTONOMY OF REGIONAL GOVERNMENTS

The role of land in the process of development is invaluable. The issue of the land resource should be the starting point in any meaningful process of policy development and reform. Today, the accepted theoretical framework for all land administration is the delivery of sustainable development – the triple bottom line of economic, social, and environmental development, together with the fourth requirement of good governance.¹⁹ Land administration is the basis for conceptualizing rights, restrictions, and responsibilities related to people, policies and places.²⁰

The land policy has a strong link with economic policy since the land resource is one important variable for shaping an economic policy of a country. Consequently,

¹⁹Property rights are normally concerned with ownership and tenure whereas restrictions usually control use and activities on land. Responsibilities relate more to a social, ethical commitment or attitude to environmental sustainability and good husbandry (Stig Enemark, *Supra* note 11).

²⁰Property rights are normally concerned with ownership and tenure whereas restrictions usually control use and activities on land. Responsibilities relate more to a social, ethical commitment or attitude to environmental sustainability and good husbandry (*Ibid*).

it is essential to admit the absence of strong reason to treat the land resource as an irrelevant subject matter for the formulation of economic policy. Article 52 (2) (c) of the FDRE Constitution provides regional states power to formulate and implement their respective economic and development policy. There is no clue under the FDRE Constitution that limits us not to look at land policy-making power under the umbrella of economic policymaking power. Because, the land resource has significant factors that determine the type of development (both urban and rural) as well as for the distribution of income and wealth, for the rate of economic growth, and the incidence of poverty.²¹ The influence of land policy on the development of Ethiopia is also recognized.²²

Hence, it is sound to recognize the significance of land resources to influence and shape the nature of the regional economic policy of Ethiopia. The regional states cannot properly exercise their economic policymaking power unless they take into account land issues upon the formulation of their respective economic and developmental policy. Because the land resource is one important input which likely to influence and shape the kind and the nature of regional state economic policy. In effect, it is unreasonable to consider land policymaking as a remote subject matter of regional economic policymaking power. Article 52 (2) (c) of FDRE is one important ground in support of regional states' power to formulate land policy.

Besides, there is no principle- exception relationship- between Article 51(5) and Article 52 (2) (b), and Art 52 (2) (c) of the FDRE Constitution. These provisions stipulate the land policy-making power of the Federal Government, and the economic policymaking power of regional states respectively. There is reasonable ground to consider the land policy as an important component of economic policy, on which the regional states have constitutional power under article 52 (2) (c) of the FDRE Constitution. Also, it is important to underscore the absence of a hierarchy of norms among different clauses provided under the FDRE Constitution. In effect, there is no ground to consider land lawmaking power as the exclusive federal power; based on Article 51(5) of the FDRE Constitution and at the expense of Article 52 (2) (c).

²¹Lorenzo Cotula *et al*, Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues, (FAO workshop, June 2003, Ghana, Accra).

²²Getnet Alemu and Mehrab Malek, Implications of Land Policies for Rural-Urban Linkages and Rural Transformation in Ethiopia (Working Paper, 2, No. 15, Food Policy Research Institute, Addis Ababa, 2010), P10.

The FDRE Constitution, under Article 52(2) (c) suggests that the regional states are endowed not merely with administrative power. The Constitution places primary responsibility on the Federal Government to determine major policy directions and standards. It cannot exhaustively and exclusively legislate on all matters fall under the umbrella of economic and developmental policymaking. It is not an exaggeration to consider land resources as an element of economic and development policymaking. The regional states have Constitutional ground to play a meaningful legislative role concerning land resource since the proper determination of regional economic and development policy need their legislative/ policy-making involvement land resource. The same conclusion can be made from the following constitutional grounds.

B. THE NEED TO INSTITUTIONALIZE PEOPLE'S LAND RIGHT

FDRE Constitution has considered land to be one fundamental resource for the exercise of NNP self-determination rights. The Constitution has provided both substantive and procedural limitations which indirectly guide and determine land resource-related powers and relationship of both governments. On one hand, the Constitution provides substantive limitations; namely, NNP land ownership right under Article 40, NNP right of self-determination under Article 39, and NNP right to development under Article 44. On the other hand, there are procedural limitations under the Constitution that amplify NNP's say on land resource namely, the principle of accountability and transparency under Article 12, and the procedure of public consultation under Articles 44 and 89.

The power of both the federal and regional governments concerning land resources cannot be ascertained properly by disregarding the above assumption and limitations of the Constitution. A total and cumulative reading of the above limitations reveals the significance of both Federal and Regional Government intervention on land policymaking. Although the Constitution stipulates land should be administered in accordance with federal law, this wouldn't mean that the Federal Government can strip the say of NNP concerning land resources. The Constitution does not allow the enactment of a land law, which ignores the spatial and socio-cultural distinctions of NNP.

The Constitution is interested to have a land policy which accommodates the possible distinctions among each of Ethiopian NNP interest on land resource. That is why the Constitution, instead of the Federal Government, has preferred and vested to the regional states the power to administer land and other natural resources. This preference has been also strengthened under the provision of the Constitution which vests the power to the regional states on economic policy formulation and implementation. The Constitution is in favor of federal legislative intervention on land resources, which is legitimate and general, as well as not ignores possible distinctions of interest among NNP. Thus, Federal Government land law and policy intervention have to leave meaningful policymaking space for the Regional States, enabling them to plan and allocate land resources; which protect and sustain the economic interest of NNP.

C. THE LIMITATION OF FEDERAL LAW MAKING INSTITUTIONAL FRAMEWORK

The FDRE Constitution has established two chambers parliament; namely, the House of People's Representative and the House of Federation. The composition and power of the latter House (the HoF) is expected to represent regional states. The members of the House of Federation are composed based on a majoritarian principle which is contrary to the composition principle of other federal states such as the U.S.A, Switzerland, Canada, and others. These federations employ the composition formula which is principled on equality states whereby each of the members of the federation (the constituent units of the federations) have equal seat in the Senate.

Most federal constitutions have also shared legislative power between two chambers, i.e., the House of People's Representatives and the senate. Contrary to this, the federal law making process is not bi-cameral as the House of Federation is a non-legislative organ under the FDRE Constitution. Hence, there is no institutional framework that enables all regional states to make meaningful participation in the process of Federal Government land policymaking.

The Constitution also has no provision which requires the establishment of an institution that might serve as a land policy coordinating body (allow the involvement of regional states) at the national level. However, the involvement of NNP, who are owners of land resources, who are sovereign and eligible to exercise

self-determination rights up on land policy-making is unquestionable under the Constitution. Hence, the absence of clear constitutional provision for the establishment of NNP sensitive land policy coordination institutions doesn't mean that the land policy making process should be monopolized by the Federal Government.

The Constitution supports land policy formulation institutions, which promotes active and formal involvement of representatives of NNP. In this regard, the key question is to identify or choose an institution that has the utmost support to represent NNP under the FDRE Constitution. The main institutions under consideration are like HPR, HoF, CoM, Regional Council, and Regional Executive. Regional states are the most relevant organ which represent NNP and participate in the land policy-making process at the federal level. Their relevancy, for example, can be inferred as, ethnic criteria, which is formally recognized under the Constitution as NNP to be the principal formula that the nine regional states are established.

Besides, the fact that the Constitution is a bargain between NNP and concerning matters which are not negotiated and articulated under the Constitution are given to the regional states, which is the residual power. Article 50 (3) of the Constitution also recognizes the same. It stipulates that the State Council is the highest organ of state authority. It is responsible for the People of the State, i.e., the NNP.

Finally, the high preference of regional states to represent NNP than Federal Government also inferred from the FDRE Constitution which recognizes NNP as the authors of the Constitution, the owners of land resource, and the holders of sovereign power, and the holders of self-determination rights; allow delegation of Federal Government power to Regional Government. The prohibitions of a reverse delegation from Regional Government to Federal and other governments amplify the relevancy of regional states to represent NNP in any affair, which includes their interest in the land resource. Hence, the limitation of the federal land making process justifies regional states' meaningful involvement in land policy/ lawmaking.

V. COMPARISON OF SOME FEDERAL LAND LEGISLATIONS OF ETHIOPIA

Since the 1990s the Federal Government of Ethiopia has enacted different federal land laws that have been influencing the scope of regional states' land policy/law making scope. The federal land legislations have two distinct classes of laws that govern rural land and urban land. The legislations are Rural Land Proclamation No 89/1997 and Rural Land Proclamation No 456/2005, and Urban Land Proclamation No. 80/1993, Urban Land Proclamation No 272/ 2002, and Urban Land Proclamation No 721/2011.

There are also other federal legislations which influence the land policy space of regional states like the Expropriation Proclamation, Urban Planning Proclamation, Industrial Parks Proclamation, Industrial Parks Regulation, and Urban Landholding Registration Proclamation. But, these specific legislations are not the subjects of comparison under this article, as they are enacted to govern specific administrative, technical and strategic issues. They are not more concerned with wide policy issues which can be considered as constitutional rights and powers as to land resource. On the other hand, the above mentioned federal government land legislations are more relevant for this article. The article is more concerned with constitutional issues on the relationship between Federal and Regional Government and the comparison is targeted to clarify the principles, nature, and scope of the federal legislation and its implication on the power of regional states as to land administration and land policy.

The main purpose of the comparison is to understand the extent of the regional states and Federal Government role on land policy and law-making. The comparison is essential to clarify the practical meaning of the phrase "land administration in accordance with federal law" which is stipulated under Article 52 (2) of the Constitution. Besides, there is a significant time difference between the enactments of the selected federal legislation. This is important to compare and understand the relationship between Federal and Regional Governments legislative power concerning land resource by taking into account the evolution of the federal systems and political reforms. The selected legislations are also wide in terms of their scope of application, content, and places as they are enacted to govern the major policy aspects of both urban and rural land resource exist in all regional states. Therefore, the selected legislations are relevant provisions to understand the

meaning of land administration in accordance with federal law. In the following two sub-sections, the author compares the rural land and the urban land laws.

A. FEDERAL RURAL LAND PROCLAMATIONS

In Ethiopia, since the introduction of the federal system, rural land administration of the pattern of regional states has been regulated based on the two federal rural land proclamations. These are Proclamation No. 89/1997 (which is already repealed), and Proclamation No 456/2005. These two federal land legislations have a significant difference in the scope of regional states' rural land law-making power. First, this can be inferred from the definition provided under federal rural land legislations for the term land administration. Accordingly, the first federal rural land proclamation,²³ defined the term “Land Administration” as *the assignment of holding rights and the execution of distribution of holdings*. Under the current federal rural land proclamation²⁴, the term “Land Administration” is defined as *a process whereby rural landholding security is provided, land use planning is implemented, disputes between rural landholders are resolved and the rights and obligations of any rural landholder are enforced, and information on farm plots and grazing landholders are gathered, analyzed and supplied to users*.

The first federal rural land proclamation even if provides a short and precise definition for the term land administration, it recognizes the existence of a wide role at the hand of the regional states. Since the proclamation has considered the regional states land administration roles to include a determination of policies on the manner of assignment of rural landholding rights and the execution of distribution of rural landholdings. On the contrary, the current proclamation has provided a specific and narrow definition for the term. By doing so, this proclamation narrowed the role of regional states on the land administration that has systematically excluded determination assignment of holding rights and the execution of distribution of holdings from the concept of land administration.

Hence, under the current rural land proclamation, land administration's role of regional states as a process, after the substantive matters and policies on the manner of assigning rural land is determined by the Federal Government. Under

²³ Rural Land Administration Proclamation of the Federal Government of Ethiopia, Proc. No 89/1997, Art 2(6)

²⁴Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, Proc. No, 456/2005

the first proclamation, the land administration role of the regional states is not only the procedure or process role to be played but also the determination assignment of holding rights and the execution of the distribution of holdings. Thus, unlike the first rural land proclamation, the current one is enacted based on an assumption that the regional states have no/ low involvement on the determination of land policy, which systematically widens the role of the Federal Government on the determination of regional land policy.

There is also a substantial difference between the proclamations in terms of their structural arrangement and contents. The structure of the first federal rural land proclamation has encompassed 8 general provisions; the current one, however, encompasses 21 detailed provisions. From this, it can be inferred that the first rural land proclamation had recognized a wide regional state legislative role, and very much limited Federal Government legislative role. The content of the first rural land proclamation is also enacted based on the principle that the intervention of Federal Government legislation is very much undesirable. This is inferred from Article 5 and Article 6 of the first federal rural land proclamation.

Accordingly, Article 5 of the proclamation which is titled as “Conditions of Land Administration”, stipulates under its sub- article (1) the regional states shall administer rural land in accordance with the general provisions of the proclamation. Sub-article (2) requires each Regional Council to enact a law on land administration for purposes of implementation of sub-article (1) of Article 5. The next provision sub- article (3) stipulates land administration law of a region to be in conformity with the provisions of laws on environmental protection and shall observe the federal land utilization policies. Finally, under sub-article (4) the land administration law of a region to confirm the equal rights of women in respect of the use, administration of land.

Article 6 of the proclamation which is entitled as “Contents of a Land Administration Law” allows the regional councils to enact land legislation, by respecting the following conditions. As per Article 6 (1), the regional land law should ensure free assignment of holding rights both to peasants and nomads, without differentiation of the sexes; as well as secure against eviction and displacement from holdings on any grounds other than total or partial distribution of holdings affected according to decision by the Regional Council. As per Article 6 (6), the regional law should provide demarcation of land for house-building, grazing, forests, social services, and such other communal use shall be carried out

in accordance with the particular conditions of the locality and through communal participation. Most importantly, Article 6 (12) of the proclamation allows the regional states to enact provisions, which are not inconsistent with the federal proclamation, for other general or particular matters as found necessary under the peculiar circumstances of the locality.

Thus, Article 5 and Article 6 of the first rural proclamation support the legislative role of the regional states concerning land resource and administration. The proclamation has simply provided general guidelines on the conditions and contents of regional land administration. In other words, under the first rural land proclamation, the land policy-making role of the Federal Government was very much limited. The very assumption under the proclamation was the intervention of the Federal Government is undesirable. The previous proclamation had provided wide say to regional states to determine the appropriate land policy and execute the same in context to their region.

On the contrary, the Federal Government has enacted the current proclamation having detailed provisions. This proclamation is enacted by reversing the assumption taken under the previous proclamation, which had given wide recognition on the regional state land policy-making role. The Federal Ministry of Agriculture and Rural Development is in charge to initiate the development of new rural land policy ideas, and the amendment of the existing policy, as necessary; under Art 16 of the current proclamation. The Federal Ministry is also responsible to implement the rural land use and administration policies of the Proclamation.

Article 6 (6) and (12) of the first proclamation have recognized the policy-making power of the regional states. On the contrary, under the current rural land proclamation, the regional states have no legislative and policy-making room, to accommodate their peculiarity at the regional level. Even if Article 17 of the proclamation provides power to each regional council to enact rural land administration and land use law, they have no power to deviate from the land policy of the Federal Government as provided in detail under the proclamation. At worst, Article 17 of the proclamation “recognizes” Regional Councils to enact “rural land law” which consists of *detailed provisions necessary to implement the federal Proclamation*.

B. FEDERAL URBAN LAND PROCLAMATIONS

The first Urban Land Proclamation No. 80/1993 was passed before the inception of the FDRE Constitution; by the Transitional Government of Ethiopia.²⁵ The Proclamation has introduced a new urban land policy in Ethiopia which is an urban land lease policy. Proclamation No. 272/2002 repealed the Transitional Government urban land proclamation.²⁶ Under its preamble, the proclamation states lease will be the cardinal and exclusive urban land-holding system. As provided under Article 3, the scope of the proclamation applies to an urban land held by the permit system, or by the lease-hold system. As an exception to the scope of application of lease system, the proclamation under Article 3 (2) provides legislative space to the regional states to decide as to the time, manner and conditions for the applicability of lease system.

The current urban land proclamation is Federal Urban Land Proclamation No. 721/2011.²⁷ The proclamation, under Art 5 induces all of the nine regional states of Ethiopia to implement a lease system on urban land exists within their respective boundary without exception. The proclamation provides detailed provisions concerning the procedure of land administration via lease system including the lease price, lease period, and other issues concerning urban land. The proclamation is also considered the principal method of fixing lease price via “tender” under Article 7, which is a modality of transferring lease of urban land to a bid winner fulfilling the competition requirements issued based on the rule of market competition of urban land tenure as defined under Article 2(9) of the same.

Similarly, Article 33 of the current proclamation requires the regional states to administer land, based on the lease system and lease policy formulated by the federal legislator, which is provided in detail under the proclamation. The proclamation also allows the direct involvement of Federal Government Executive organs both on the formulation and implementation of the lease policy. Accordingly, under Article 32 Ministry of Construction and Urban Development has the power to follow up and ensure the implementation of the lease system in all

²⁵Urban Lands Lease Holding Proclamation, Proclamation No. 80/1993, *Negarit Gazeta* of the Transitional Government of Ethiopia, Year 53, No. 40.

²⁶Re-Enactment of Urban Lands Lease Holding Proclamation, Proclamation No 272/2002, *Negarit Gazeta*, Year 8, No 19.

²⁷ Urban Lands Lease Holding Proclamation, Proclamation No 721/2011, *Negarit Gazeta*, Year 8, No 19.

regions. The Ministry is also in charge to prepare model regulations, directives, and manuals for the implementation of the lease system.

From the above, it is clear that the federal urban land legislation before 2011 is principled on the absence of Federal Government monopoly on the determination of urban land policy. Such practice had allowed regions to select and implement appropriate urban land policy by taking into consideration their respective interest on land at the regional or local level. On the contrary, Proclamation No. 721/2011 has encompassed several detailed and mandatory provisions on the application of the lease policy and system on all urban land in Ethiopia.

VI. CONCLUSION

The land law under the FDRE Constitution allows for diversity and also uniformity of law and policy. Ironically, the current Ethiopian land administration programs are highly affected by federal land policies and laws. Federal land proclamations have already covered and determined land policies, based on which the law expected the regions to administer the land. The proclamations provide the manner and procedure of land access for investors, citizens; and land rights guarantee for investors, and holders. The list of requirements and procedures are also provided, which guide regional state on land administration *viz.*, land transfer, consolidation, tender, negotiations and so on. Surprisingly, the proclamations have also allowed the intervention of federal executive organs (namely, Ministry of Agriculture, Investment, and Construction and Urban Development); both on the formulation and implementation of land policy in all regions of the Ethiopian federation.

Such heavy central bias present in the federal land legislation/policymaking practice has created imbalances between the Federal Government and regional state concerning land administration. This is the encroachment of regional states' autonomy on land resources guaranteed by the FDRE Constitution. Land policy interest of each of NNP, who are landowners and sovereign, is institutionalized better at a regional level. There is no way to institutionalize NNP land policy interest upon federal land policy/law-making process/. The HoF, even if it has been assumed as representatives of NNP, it does not represent each of the NNP. At worst, the HoF has no legislative role.

Regional states shoulder the utmost responsibility to protect and respect the land resource policy interest of NNP. This is the reason why the FDRE Constitution

provided land administration power to the regional states. However, without their involvement in land policymaking, the right to exercise self-government and the right of NNP to self-determination is valueless and doubtful. By the same token, in absence of such power, the regional states cannot properly formulate and implement regional economic and development policies. As the land resource is one microeconomic factor, which significantly influences and shape regional economic and developmental policy options.

Hence, land law/policy-making involvement of regional states is indispensable; to accommodate the distinct interest of NNP. And, in Ethiopia land administration should not be guided by the interest of the Federal Government. Rather the federal land law/land policy has to leave meaningful decision-making space for the regional states. The Federal Government should also not ignore the stipulation of the Constitution which explicitly stipulates the possibility of a delegation of powers from the Federal Government to the regional states, not vice versa. Ironically, in practice, the HPR has passed uniform and inflexible federally dominated urban and rural land legislation/policy by ignoring constitutionally recognized rights of NNP and procedure of delegation.

VII. RECOMMENDATIONS

The author provides the following recommendations. First, the provision of the existing federal urban and rural land proclamations which already determined land policy in a detailed manner should be revised. The provisions of the proclamations that provide wide power to institutions of the Federal Government on the determination of land policy should be amended. The amendment should give meaningful decision-making space to each of the regional states. The amendment should also oblige the government to consult the section of society to identify land policy options in each region.

Second, it is essential to establish an inter-governmental relation (IGR) Institution which serves as a forum for negotiation between federal and regional governments on land policymaking. To this end, primarily there should be a political consensus on the significance of establishing formal and democratic IGR institutions, in safeguarding and promoting the land rights and interest of NNP under the Constitution. The objective of the institution should be principled on the accommodation of the specific land policy interests and policy options of each of

the nine regional states. The procedure of the institution should allow each regional state to make formal and independent land policy negotiations with the Federal Government.

Third, the government should enact procedural legislation that ensures the land policy formulation process of Ethiopia with meaningful participation of NNP. The objective of the legislation should be principled on accommodating the different views of each of NNP. Thus, the procedural rule should allow each NNP of Ethiopia to reflect their voices concerning land policy options at regional, zonal, local levels. The procedural rule should enable active and informed participation of NNP who pursue their lives in urban centers/municipalities/ or towns.

Fourth, it is necessary to conduct a preliminary study that investigates the view of the public and identifies key variables to make the consultation on land policy options. The study should understand the economic as well as the political views of NNP on the policy. The study should be conducted individually for towns/cities by an independent body.

Finally, if the Federal Government is unable or unwilling to make amendment that implements the above recommendations and suggestions regional states have to challenge the Constitutionality of the federal land laws before the House of Federation.

REVIEW OF FINAL CRIMINAL JUDGEMENTS IN ETHIOPIA AND THE QUEST FOR REMEDIES

*Tesfaye Boreasa**

ABSTRACT

The right to life, liberty and security of individuals are protected under international and regional treaties and under the FDRE Constitution as well. Most of the treaties guaranteeing for these rights are ratified by Ethiopia. These rights are not absolute as they can be limited and deprived to enforce criminal law in the form of criminal responsibility. The course of criminal proceeding shall fulfill and realize the basic tenets of fair trial guarantee to minimize miscarriage of justice that would result and not to convict innocent involved in the process instead of the real culprits. Cognizant of the fact, human beings are not error proof and practical administration of criminal justice is influenced by different factors; wrongful conviction of innocents is inevitable. Furthermore, the proper realization of fair trial rights and safeguards cannot immune the system from making mistakes. But, it reduces the risk of convicting innocent individuals. Hence, wrongful conviction cannot be avoided. Wrongful conviction is the greatest injustice done to individuals for the crime they did not commit. Its potential to shake confidence of the public cannot be undermined. Though the issue was internationally recognized and backed by legal framework; the problem of wrongful convictions is not recognized in the Ethiopian criminal justice system. This article has disclosed some of the wrongful conviction cases in which innocents were imprisoned for many years for the crime they did not commit in the Ethiopian context. Despite the existence of the problem in the Ethiopian criminal justice system, there is no legal framework which allows for review of a final conviction after discovery of new evidence. The right to claim for compensations as a result of damage caused to the individuals by state machinery is also not regulated. So, it is the focus of this piece to appraise factors contributing for the occurrence of wrongful convictions on one dimension and to scrutinize the legal lacunae with regard to post-conviction remedies for persons wrongly convicted in Ethiopia on another dimension.

Key Words: *Wrongful Convictions, Human Rights, Miscarriage of Justice, Review of Criminal Judgment, Post- conviction Remedies, Compensations*

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1. INTRODUCTION

As human rights the right to life, liberty and security of persons are protected under international, regional treaties and under the FDRE Constitution as well. Most of the treaties guaranteeing for these rights are ratified by Ethiopia. Hence, they will form the integral part of the law of Ethiopia. These rights are not absolute as they can be limited and deprived to enforce criminal law in the form criminal responsibility. But, the process of depriving for the right to life and liberty shall pass via due process of law. The course of criminal proceeding shall fulfill and realize the basic tenets of fair trial guarantee to abate miscarriage of justice that would result innocent involved in the process instead of the real culprits.¹ Numerous international, regional as well as national human rights instruments have incorporated the right to remedy for the breach of human rights.² The mere guarantee of human rights is worthless without ensuring the right to remedy in the course of violation of these rights. Hence, when rights exist there must be a remedy as obligations to be borne by individuals or institutions in case of breach.

The objective of criminal law under every legal system is to keep the peace and order of public at large by punishing and rehabilitating wrong doers after utilizing systematic procedural and evidential methods to identify the criminals among the communities.³ Despite the difference in the trial process of criminal cases from state to state; every legal system endeavor to elicit and discover the truth by identifying the true perpetrators of the crime.⁴ Apart from criminal investigation techniques, persons accused of crime are endowed with the right to due process in the process of criminal proceedings to guarantee the rights to life and liberty of individuals protected under international, regional treaties and in domestic constitution.⁵ The right to due process of law is the right to be treated fairly, efficiently in the course of administering criminal justice.⁶ The mechanisms

¹ Victims' Right to a Remedy and Reparation: The New United Nations Principles and Guidelines, available at: <http://www.corteidh.or.cr/tablas/r26214.pdf> <Accessed on April 12, 2015>.

² Arts 8 of UDHR; 2 of ICCPR; 6 of ICEARD; 14 of CAT; 39 of CRC; 24 of ICPAD; 13 of ECHR and 7 of ACHR.

³ Daniel Layne, Compensation for Miscarriage of Justice, Internet Journal of Criminology 2010, P3. Available at www.internetjournalofcriminology.com <Accessed on September 10, 2014>.

⁴ Marvin Zalman, Criminal Justice System Reform and Wrongful Conviction: A Research Agenda Wayne State University, Detroit, MI, 2006, P477.

⁵ Jeffrey Manns, Liberty Takings: A Framework For Compensating Pre-trial Detainees (Harvard Law School, John M. Olin, Centre for Law, Economics and Business, 2005), P5.

⁶ *Ibid*

developed to protect the right of accused persons are the right to fair trial, presumption of innocence, equality of arms, fair and public hearing, independence and impartiality of the judiciary to mention few.⁷ The proper application of these safeguards in accordance with established legal principles and procedures is to generate fair administration of justice by convicting the guilty ones and acquitting the innocent individuals.⁸

The recognition of the right to life and liberty by itself does not mean that the right bearers are protected. Rather, the existence and enjoyment of these rights can be well-defined in case where they are contested and claimed in case of breaches. The criminal justice system can be regarded as fair and functional if it is capable of identifying and determining guilt and innocence of individuals accused of crime.⁹ The practical enforcement of these rights by criminal justice organs shall be compatible with the spirit of the international instruments and other constitutional rights principle. In the delivery of criminal justice, accused persons are presumed innocent through the trial process and it is the duty of the prosecution organ to prove beyond reasonable doubt that the accused person has committed the alleged crime he was charged for.¹⁰

The consequence of criminal liability can be serious that might entail in loss of life, liberty and freedoms. Hence the standard proof of beyond reasonable doubts is widely accepted in common law legal systems to render guilty verdict to avoid the risk of convicting innocent individuals.¹¹ A criminal law philosophical maxim widely quoted is the Blackstonian proverb: “Let hundred criminals run away than convicting one innocent person” is also an indicator that wrongful conviction of innocent persons is condemned from the early period of criminal justice.¹² The maxim tells us that acquittal of the guilty persons can be tolerated by the society where as conviction of the innocent may not be acceptable by any standard.

⁷ Michael Naughton, How the Presumption of Innocence Renders the Innocent Vulnerable to Wrongful Convictions, 2011, P 41.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ H. Patrick Furman, Wrongful Convictions and the Accuracy of the Criminal Justice System (Reproduced by permission. Colorado Bar Association, 32 The Colorado Lawyer 11, 2003)), P11.

¹² Keith A, Findley, Wrongful Convictions: Encyclopaedia of Psychology and Law, 2007, Sage Publications, available at http://www.sageereference.com/psychologylaw/Article_n353.html <Accessed on September 15, 2014>.

Wrongful convictions of innocent persons will not serve any purpose of the criminal law. Despite the existence of these legal safeguards to protect the rights of individuals accused of crime; as it will be discussed in this article, the practice shows that innocents are wrongly convicted for crime that they did not commit. Theoretically, criminal justice delivery is expected to convict the offenders and acquit the innocents. But, in practice, there are many subjective factors that influence the course of the process. Sometimes justice may be blind due to the fact that there are different stake holders in the system. Particularly, the involvement of human beings in the process who are fallible can bring their own experience and biases which greatly influence the outcome of the cases.¹³

Generally, human beings are not error proof and practical administration of criminal justice is influenced by different factors; so wrongful conviction of innocents is inevitable. Furthermore, the proper realization of fair trial rights and safeguards cannot immune the system from making mistakes. But, it reduces the risk of convicting innocent individuals. Hence, wrongful conviction cannot be avoided. Wrongful conviction is the greatest injustice done to individuals for the crime they did not commit. It results in an immeasurable breach of their civil, political and socio-economic rights. Its potential to shake confidence of the public against the criminal justice system itself is also paramount.

The existence of wrongful convictions was recognized in other jurisdictions long years ago.¹⁴ Furthermore; in recent period the accuracy of the criminal justice system has been questioned by revelations, mostly generated by new DNA investigative techniques of innocent people in prisons including those on death row phenomenon.¹⁵ Of course, there are countries in which innocents were charged and convicted and served the sentence in terms of life in the form of death penalty, life imprisonments for the crime they did not commit.¹⁶ No matter how a given state criminal justice is strong enough; wrongful convictions of innocents are sure to

¹³ Susan A. Bandes, *Protecting the Innocent as the Primary Value of the Criminal Justice System* (University of Michigan Press, 2008), P413.

¹⁴ Bruce A. MacFarlane, *Wrongful Convictions: The Effect of Tunnel Vision and Predisposing Circumstances in the Criminal Justice System*, 2006, P3; See also "Convicting the Innocent: A Triple Failure of the Justice System" (2006) 31 *Manitoba Law Journal* 403.

¹⁵ Naughton, *Supra* note 7, P11.

¹⁶ Miranda Jolicoeur, *International Perspectives on Wrongful Convictions: Workshop Report*, September 2010.

occur.¹⁷ The recurrent existence of the problem of wrongly convicting innocent had been recognized in both Common Law and Civil Law legal systems which had also ensued in designing the mechanism to review the already occurred erroneous convictions.¹⁸

Irrespective of their economical and standard of criminal justice, all states face the problem of convicting innocent individuals. But, in most states, the problem is duly recognized and certain legal mechanisms were developed to resolve wrongful conviction of innocents from prison.¹⁹ Similarly; the situation of wrongful convictions in the Ethiopian context has also revealed that there are court decisions which indicate the existence of wrongfully convicting innocent individuals. Therefore, existence of different safeguards to protect the rights of arrested and accused persons in the process did not secure the rights of innocent individuals from deprivation of their liberty and loss of their socio-economic rights. In those cases studied by the writer, it was revealed that innocents were imprisoned for many years without committing crimes charged and convicted for. They were deprived of their liberty for long years.²⁰ Those sampled cases can be taken as a benchmark to indicate that there could be many erroneous convictions of individuals for the crime they did not commit.

The problem that the Ethiopian criminal justice is facing and the experience that had already been developed to resolve the problem of wrongful convictions in other jurisdictions to the same problem will enable to formulate the solution for the breach of innocent individuals' rights. Hence, it requires permanent remedy to address and lessen wrongful convictions and incarcerations.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Art. 84 (1) of the ICC Statute; Art. 25 of the Rwanda Statute; Art. 26 of the Yugoslavia Statute; Art 4 (2) of Protocol 7 to the European Convention Guideline 11 section 55(b) of the Principles on Legal Aid; Art. 2 (3) of the ICCPR; Art. 25 of the American Convention; Art.7 of the African Charter; Art.23 of the Arab Charter; Art.13 of the European Convention; Art. 48 of the African Court of Human Rights Protocol.

²⁰ Federal Public Prosecutor vs. Shume Regassa, Federal High Court Criminal File No 65177, Shume had served four years, NugusuTegelu was pardoned after serving 19 years in prison, and Undil had served years, whereas MengeshaTilahun and his friend had served for more than one year.

2. REVIEW OF FINAL CRIMINAL JUDGMENTS IN ETHIOPIA

Once an accused is convicted for committing a certain crime, the court will impose sentence which can be in form of fine, compulsory work and imprisonment which shall be enforced by prison administrations until reversed by courts.²¹ After the exhaustion of all available appeal stages, the 1961 Ethiopian Criminal Procedure is silent on the possibility of review of criminal judgments after final decision is given as the last resort upon the discovery of newly obtained facts that was not presented at trial which can clearly prove the innocence of the already convicted persons. No other subsidiary legislation does provide for a mechanism to seek a review of the case.

The phrase final decision in the Ethiopian context can be taken as the judgment which can no more be reviewed by appeal because either it has exhausted all appeal stages or due to lapse of appeal period at any level courts.²² So, as far as issue of the fact is concerned, decisions rendered by Federal and State Supreme Court by regular division will become final.²³ A given decision becomes final decision once it is decided by Federal Supreme Court Cassation Division or any decision that was decided by courts at any level both by federal and regional courts from which the period to take appeal is barred.

Both substantive and procedural safeguards employed in the administration of criminal justice are expected to further strengthen as safety valves to prevent and minimize the problem of wrongful convictions.²⁴ The judiciary plays fundamental role in both respecting and protecting rights of persons accused of crime particularly of those innocents.²⁵ The Practical problems that courts are facing are the standard of proof and evaluation of evidence produced to prove the guilt of the accused by the prosecutors.²⁶ There is disparity among courts and from case to

²¹Criminal Procedure Code of Ethiopia, Proclamation 185/1961, Art. 149 (5) (Hereinafter ECPC).

²²Article 10 of Proclamation No 25/96 provides that Federal Supreme Court has the Power of Cassation over the final decisions of the Federal High Court rendered in its appellate jurisdiction; final decisions of the regular division of the Federal Supreme Court and final decisions of the Regional Supreme Court rendered as a regular division or in its appellate jurisdiction.

²³ *Ibid.*

²⁴ ICCPR, Arts.9 and 14.

²⁵ ICCPR, Art. 14 (3) (e, d, f).

²⁶ Interview with Filiphos Ayinalem on March 12, 2015, former judge at Federal High Court; currently, an advocate at Federal Courts.

case in applying the standard of proof to pronounce guilty verdicts.²⁷ The admissibility of evidence is also another problem in deciding criminal matters.²⁸

Whatever the strong structural system of a given criminal justice system; it was proved that wrongful convictions will happen since institutions are run by human beings who are not error proof.²⁹ Moreover, the possible reasons for the existence of the problem are interrelated and multi directional.³⁰ Hence, the problems require permanent solution to reduce the causes for erroneous convictions and work on detecting miscarriage of justice in the whole process.

Wrongful conviction cases occurred in Ethiopia reveal that many innocents were imprisoned for years from one to eighteen years without committing any crime on their part but served these years as a result of wrongful convictions passed against them by court of law.³¹ It was mandatory for them to serve the sentence imposed against them even though they are innocent of the crime. It seems that it was accepted that a final decision is unchallengeable despite the existence of new evidence which can rebut the final decision and the judgment cannot be subjected to review.³² Even though the concept of reviewing final criminal judgment was developed in other legal systems, it is unknown why the Ethiopian criminal procedure failed to accommodate such concept. To the contrary, the 1965 Ethiopian Civil Procedure Code, which was enacted at the same time provides for review of judgments upon the discovery of new evidences.³³

To argue strictly, review of judgment is neither allowed nor prohibited in the Ethiopian criminal justice system. It is possible to apply criminal law rules of

²⁷Interview with Ato Ali Mohammed, on April 20, 2015; Former judge at Federal Supreme Court Cassation Division; currently working as an advocate.

²⁸Interview with Filiphos Ayinalem on March 12 2015, Former judge at Federal High Court; currently an advocate.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹Mengasha Tilahun *et.al* vs. Oromia Public Prosecutor, West Arsi High Court, Criminal File No 10695, Shume Regassa vs. Federal Public Prosecutor, File No 52049, See also Gezahagn Tefera vs. Federal Public Prosecutor, Criminal File No 120/2000, Federal Supreme Court, See also B. Gould, J & Leo, R.A. *One Hundred Years Later: Wrongful Convictions after A Century of Research*. Journal of Criminal Law and Criminology, 100 (3), (2010), Pp 825-832

³² Ali Mohammed , *Supra* note 27

³³ ECPC, Art 6

interpretation that an act which is not prohibited is taken as admitted.³⁴ But, the claim for review is not recognized in our case.³⁵ Cases under writer's survey that will be discussed later reveal that the court had been rejecting the claim for review of final criminal judgments. But, courts are required to apply and base on domestic laws as well as international treaties in giving decisions.³⁶ In addition, Article 9 (4) of the FDRE Constitution provides that international treaties adopted and ratified are part of the law of the land thereby imposing the duty on the Ethiopian courts to refer these laws while interpreting laws.³⁷ Irrespective of the standard used by the court if once new evidence which genuinely proves the innocence of the convicted person is found, those persons who were wrongly convicted do have a constitutional right to have access to justice.³⁸ The existence of new evidences which disprove the previous conviction will enable them to have the right to access to justice by establishing a cause of action to bring their claim to the court of law.³⁹ The FDRE Constitution provides for the right to access to justice and innocent individuals deprived of their liberty via court process that they can raise the right to access to justice so that their case will be subjected to review to determine the existence of miscarriage of justice in the process.⁴⁰

There are also further obligations on the court to interpret the human rights provisions of the constitution in terms of international jurisprudence developed on review of judgment.⁴¹ Therefore, basing such way of interpretation, Ethiopian courts are required to entertain claims for review of judgments upon the discovery of new evidences. But in practice, mainly due to the legal lacunae governing the issue in the system, the claims were not considered. All states parties to the ICCPR and Ethiopia have the duty to take measures for the full realizations of the rights

³⁴Ali Mohammed, *Supra* note 27

³⁵ Federal Supreme Court had rejected the application submitted by Federal Public Prosecutor, Shume Regassa Vs. Federal Public Prosecutor, File No 52049; See also Gezahagn Tefera Vs. Federal Public Prosecutor, Criminal File No 120/2000, Federal Supreme Court, *Supra* note 31.

³⁶ Proclamation No.25/96, Art.3 (1); Proclamation No 25/96, Art 10 provides that Federal Supreme Court has the Power of Cassation over the final decisions of the Federal High Court rendered in its appellate jurisdiction; final decisions of the regular division of the Federal Supreme Court and final decisions of the Regional Supreme Court rendered as a regular division or in its appellate jurisdiction.

³⁷ FDRE Constitution, Art 13 (2), 78.

³⁸ FDRE Constitution, Art.37.

³⁹ FDRE Constitution, Art.37.

⁴⁰ FDRE Constitution, Art.37.

⁴¹ FDRE Constitution, Art.13 (1).

guaranteed in the Covenant.⁴² But in the Ethiopian context; no legal basis developed to claim for review of the case which can be viewed as Ethiopia's failure to meet the obligations imposed under international treaty.

The last resort is to claim before regional and international treaties which are not accessible in many aspects. The mechanism to challenge final conviction verdict given by Ethiopian courts might be lodging an individual complaint before African Commission on Human and Peoples' rights which can deliver a decision as a recommendation.⁴³ The African union had adopted a protocol establishing African Court of Human and People's Rights since 1998.⁴⁴ But, Ethiopia did not yet ratify the protocol so that the Ethiopian citizens might take their cases to the court to prove their innocence by reversing the decision of the Ethiopian courts.⁴⁵

In similar way, the UN Human Right Committee had also established for the protection and promotion of the rights in the ICCPR to which Ethiopia is a party.⁴⁶ Even though ratification of the treaty is among one of the indicators of states' commitment to promote and protect human rights, a mere ratification is worthless without a step to enforce and work for the better realization of these rights. Optional Protocol No.1 which enables the citizens of member states' to take individual communications on the violation of their rights protected in the covenant is not yet ratified by Ethiopia.⁴⁷ So; Ethiopians who have become the victim of miscarriage of justice and wrongful convictions cannot bring their case to

⁴² Article 2 (3) (b) of ICCPR provides that each State Party to the present Covenant undertakes to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy, See also Article 14 (6) of the Convention "when a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."

⁴³ ACHPR, Arts. 55 and 58 (1).

⁴⁴ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Adopted on 10 June 1998 Entered into force on 25 January 2004).

⁴⁵ *Id*, Art. 5 on access to courts which accept communications from individuals and NGOs.

⁴⁶ ICCPR, Arts. 28 and 40.

⁴⁷ Optional Protocol to the International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 Dec 1966, Art. 1.

be reviewed by the committee of human rights.⁴⁸ As a result, the HRC cannot have a say on the enforcement of the ICCPR by Ethiopian courts except by way of report that will be submitted by the government for supervision.⁴⁹ So, it is possible to put that the system in Ethiopia prohibits the treaty bodies at African level particularly African Court of Human and Peoples' Rights and Human Rights Committee of the ICCPR to provide sufficient and adequate interpretation on the enforcement of civil and political rights by the Ethiopian judiciary and measures taken by states in their obligation to respect, protect and promote the rights confined in these treaties.

In general, the current Ethiopian criminal justice system does not provide for the review of criminal judgments in the presence of newly discovered evidences as a remedy for persons wrongly convicted for crimes they have not committed. Such nonexistence of mechanisms for retrial of wrongful conviction cases could be regarded as the absence of effective remedy under the Ethiopian criminal justice system.⁵⁰ Therefore, it is possible to state that the Ethiopian system is not open to review wrongful convictions cases at domestic, regional and international institutions as well. The absence of such legal frame work under the Ethiopian law had been challenging to review wrongful convictions occurred in Ethiopia. Hence, these issues require an urgent response from the legislature in providing a mechanism to review cases of wrongful convictions whenever they happened.

3. THE PRACTICE OF CORRECTING WRONGFUL CONVICTIONS IN ETHIOPIA

As it can be observed from revealed wrongful conviction cases to be discussed under this section, the writer had disclosed about wrongful conviction cases that had already occurred under the Ethiopian criminal justice system. Almost in all cases discussed, the convictions pronounced against those individuals had resulted in loss of their liberty irrespective of the length of the time they served. The absence of any procedural mechanism to review cases of wrongful convictions based on newly discovered evidences will greatly challenge the claim of innocence

⁴⁸ *Id*, Art.2 provides that subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

⁴⁹ ICCPR, Art. 40.

⁵⁰ ICCPR, Art 2(3).

by wrongly convicted persons. Even though there is no any legal framework which governs claims of innocence in the Ethiopian context, those individuals wrongly convicted will not keep silent. After wrongly convicted persons had become hopeless to protect their liberty by the formal procedures, they resort to secure their freedom by claiming pardon. They try their best to get out of prison. Hence, the wrongly convicted persons usually apply for pardon indicating that they are not guilty of the crime where as some had applied for pardon procedure admitting that they had committed and served the sentence to regain their liberty at any cost.⁵¹ Most of wrongful conviction cases that were discovered in Ethiopia were revealed accidentally.⁵²

The existence of the problem in the system will develop certain solution as an experience in dealing with the issue. Since there are wrongful convictions that had happened in our criminal justice system, it is quite important to examine the practice that had been used to reverse wrongful conviction cases. The method of reversal as well as the appropriateness of the remedy provided will be analyzed next briefly.

In Shume Regassa Vs. Federal Public Prosecutor File No 52049, Federal High Court, Shume was charged for an aggravated homicide at the Federal High Court and sentenced to life imprisonment. He took an appeal to the Federal Supreme Court and was finally sentenced to ten years imprisonment. He had applied for pardon indicating that he is innocent of the crime convicted for. In addition to his application for pardon, Federal Public Prosecutor also wrote a letter to Pardon Board declaring that Shume Regassa was wrongly convicted for the crime of homicide he did not commit.⁵³ The prosecutor had requested the Board to reconsider his case establishing a reasonable doubt about his conviction so that he will be proved innocent that might be a means to get him out of prison.⁵⁴ The prosecutor had also explained in this application that they were unsuccessful in proving the innocence of the person as their claim for retrial was rejected by the

⁵¹Interview with Mr.Assefa Kesito, former Minister of FDRE Ministry of Justice (Currently renamed as an Attorney General by Proclamation No. 943/2016) on April 15, 2015.

⁵²*Ibid.*

⁵³ A letter requesting for pardon on behalf of Shume Regassa by Federal Public Prosecutor dated 27/04/2004 E.C.

⁵⁴ *Ibid.*

Federal Supreme Court and sought for the solution to the case so that they proceed to charge the real offender of the crime.

After considering both applications requested by the victim and the prosecutor, the Pardon Board had forwarded that Shume shall be pardoned based up on Article 18 of proclamation No. 395/1996.⁵⁵ As per the recommendation of the Board, the then head of state had declared Shume that he had pardoned for the crime convicted for considering that the sentence he had already served is sufficient.⁵⁶ The certificate of pardon given to him provides that he was granted pardon basing his application to be released by pardon.

In Debela Taye and his co-convicted case, they were charged for violating Article 523 of the 1957 Ethiopian Penal Code for committing a crime of homicide against the deceased called Tefera Dibesa on July 29, 1987. After examination of the evidences brought to prove the case, the court evaluated that the circumstantial witnesses called by the prosecutor had proved that the murder was committed the accused individuals though it is not clearly proved the reason of murder and pronounced them guilty of the murder and sentenced them to twelve years imprisonment. After their convictions for the crime, the public started to criticize the decisions of the court as a gossip that the decision was invalid to punish the accused persons. The community had openly condemned their conviction declaring that Debela Taye and his co-accused had not killed the deceased and the crime was committed by other persons (interview with the judge presided over the case). Such discredit of the judgment by community coerced the police to re-investigate the case.

The re-investigation had come up with the discovery of new facts that was not produced at the trial of Debela Taye *et.al*, by which they were finally convicted for. They also indicated that Debela and his co-convicted were erroneously imprisoned for his case though they are innocent of the crime. The prosecutor had brought another charge (similar case) to the High Court of Ilu Aba Bora on Criminal File No 417/93 on May 01, 1993 after six years since the commission of the crime. The same facts used in the previous charge were mentioned in the new

⁵⁵ Proclamation No. 395/96 which currently is repealed by Proclamation No 840/2014, Federal Negarit Gazette 20th Year No 68, AddisAbaba, 21st August 2014.

⁵⁶ Shume, *Supra* note 20.

charge except for the difference in the accused. Confession and eye witnesses were used as evidence in the charge.⁵⁷ After hearing the trial, the court had proved that these accused had murdered Tefera Dibesa and found them guilty of homicide for which Debela and his co accused were previously convicted for. They were sentenced to 15 years imprisonment.⁵⁸ As it can be observed from the transcript of the court the prosecutor had brought two charges accusing different persons to have independently killed the same deceased, Tefera Dibesa.⁵⁹

Even though they were not successful in proving their innocence those previously convicted persons had been claiming that they were free of the crime convicted for. Their voice was not heard by any one entertaining the case. However, after the disclosure of the new fact that they were innocent the absence of the legal mechanism to review a finally decided case after the discovery of new facts had been a great challenge to the criminal justice organs particularly to the High Court of Ilu Aba Bora but failed to exonerate persons wrongly convicted of the case. Hence, they have continued to serve the sentence imposed on them until they were later pardoned by the President of Oromia National Regional State in 1994 and they requested the then Oromia Regional Justice Bureau pardon office to be released. After considering their wrongful conviction, they were later pardoned by Oromia Regional State President after they had served for more than seven years in prison.⁶⁰

Similarly, in case of Nugusu Tegelu who had applied for pardon after 18 years of stay in Ziway prison administration; the Board had also pardoned after recognizing that he was wrongly convicted as a result of perjury. Nugusu Tegelu was charged for committing homicide for violating Article 523 of the then Penal Code on 22 October, 1980. He was convicted for murdering the deceased and sentenced to life imprisonment on 29 January, 1980. The case was also confirmed by the then Supreme Court.⁶¹ Even though he had been arguing that he had been convicted for

⁵⁷Criminal Files No 266/90 and 417/93 at High Court of Ilu Aba Bora indicate the same victim and both charge do indicate that the crime were committed independently by those accused in both charges.

⁵⁸A new charge brought against real offenders of the crime for which Debela and his co accused were convicted for, Criminal File No 417/93, Ilu Aba bora High Court.

⁵⁹*Id.* 57, see contents of both charges indicated in the judgments.

⁶⁰The 2001 Oromia Regional State Revised Constitution, Arts.57 (3) (I).

⁶¹Nugusu Tegelu Fereja Vs. Public Prosecutor, former Butajira Awuradja High Court, Criminal File No 976/80

the crime based on the false testimony given by the public prosecutor witnesses, he failed to prove his innocence. Almost on the final period when he is going to serve the whole sentence imposed against him, he had applied for pardon in 1999 to be released from prison.⁶² Despite his claim for the pardon, he had insisted on to deny that he is guilty of the crime and indicated his application that he is not guilty of the crime even after spending 19 years in prison. Furthermore, in his application he had also indicated that the real offender is Getahun Kinato, who had also admitted that he had committed the murder and paid compensation to the family of the deceased in the form of “Guma”.⁶³

Additionally, he had also expressed that the witnesses who had previously testified against him admitted that they were falsely testified against him before the local elders. After indicating these cases he had claimed Ministry of Justice to conduct for re-investigation of the case. After considering his application, the Ministry of Justice had ordered Federal Police Commission to re-investigate the case in collaboration with SNNPRS Region Police Commission. The police brought both the real offender and those witnesses who had falsely testified against the applicant.

The re-investigation of the case had concluded that Nugusu Tegelu is really innocent of the crime and wrongly convicted as a result of false testimony given by prosecutor’s witnesses.

After it was discovered that Nugusu was wrongly convicted by false testimony, Ministry of Justice had requested Federal Supreme Court to conduct a re-trial of the case to prove innocence of the victim. However, the court had rejected the claim for review of judgment basing that there is no legal mechanism which support the claim to review finally decided cases.

Finally, this man was pardoned to be released from prison as there is no other procedure on the 11th June, 1999 after 19 years in prison. It is very shocking to serve this amount of period for a crime committed by other as a result of erroneous conviction passed by court of law.

⁶² Application submitted to Pardon Board at Ministry of Justice by Nugusu Tegelu claiming for pardon.

⁶³ *Ibid.*

The other case was Undil Shiferew's one, which is a popular wrongful convictions case in the SNNP criminal justice.⁶⁴ After the final conviction of the individual it was later discovered that the real doers of the homicide were others and Undil Shiferew was wrongly convicted based on false testimony. This case was also brought to the attention of the Region's State Council for solution which mandated Justice Bureau to provide a solution for the exoneration of the individual from wrongful imprisonment.⁶⁵ As per the deliberation of the council; Justice Bureau had requested the Region's Supreme Court to conduct a retrial of the case to examine the claim of innocence and the Court had reviewed the case and exonerated him from the crime wrongly convicted for.⁶⁶

The other case of Mengesha Tilahun *et al* Vs. Oromia Public Prosecutor was finally decided by the court to be acquitted as the new evidences which warrant their innocence were found in time when the case had been pending.⁶⁷ Had it not been for the presence of the individual alleged to be died appeared in the interim period, their conviction might be probably high and it may cost them to spent extra years in prison. The decision given by the SNNP Supreme Court on the case of Undil, it might be regarded as a land mark decision in the Ethiopian criminal justice since it lays a ground for other courts that it is possible to review a finally decided case by a retrial process on the discovery of new evidence that had not been brought at the previous trial.⁶⁸ The State Supreme Court had reviewed the case upon referral made by the State Council on the basis of the discovery of new evidence that the individual in the case was convicted for the act committed by another person. After considering the conviction of the witnesses for perjury against the victim and the real offender who has committed the crime; the court had acquitted the victim by reviewing the already decided case. The case has a potential to break the attitude that a final decision cannot be subjected to review.

To the contrary, Federal Supreme Court had repeatedly rejected the claim for retrial of the cases arguing that there is no legal procedure under Ethiopian law which allows for review of cases despite the fact that there were sufficient and

⁶⁴Assefa, *Supra* note 51.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷Mengesha *et al*, *Supra* note 31.

⁶⁸Benchi Maji zone Public Prosecutor Vs.Undil Shiferew, Benchi Maji Area High Court, Criminal File No 03000.

convincing evidences produced for the retrial process.⁶⁹ However, criminal procedure is a means to an end for the criminal law and the courts should interpret the procedure in such a way that meets the purpose of the criminal law. Ethiopia is a party to the ICCPR which allows for the retrial for wrongful convictions under Article 14(6) and this agreement will be considered as one of the integral part of our law based on Article 9 (4) of the FDRE Constitution. It is also stated under Article 3 of the Federal Courts Establishment Proclamation 25/96 that the federal courts have jurisdictions on cases arising under constitutions, federal laws, and international treaties, parties specified in the federal laws and places specified in the federal law or constitutions. From this principle, it is quite clear that the federal courts should also base international treaties ratified by Ethiopia if the issue at hand requires. The reasoning given by the Federal Supreme Court that bases on the absence of the law which allows for the retrial of the cases doesn't seem to hold a water since there is no law which prohibits for the retrial of similar cases. It is obvious in criminal law that an act not prohibited is allowed. Therefore, as to the writer's view in cases where concrete evidences and reality of the case proved that innocents were found convicted of the crime they did not commit, our courts should base existing principles of the law and resolve claims for the retrial proceeding based upon newly discovered evidences.

In dealing with wrongful convictions that had already occurred in the Ethiopian criminal justice, it can be possible to state that there were persons who might be released after serving full sentence imposed upon them due to the absence of legal procedures that enable them to prove their innocence.⁷⁰ Whereas, there are persons who were wrongly convicted and forced to spent many of their age in the prison administration who later released away through pardon procedure designed for different purpose as a solution for the miscarriage of justice that happen in the system.

⁶⁹Shume, *Supra* note 20.

⁷⁰Gezehegn Tefera Vs. Federal Public Prosecutor Federal Supreme Court, Criminal File No 120/ 2000.

4. APPROPRIATENESS OF PARDON AS REMEDY FOR WRONGFUL CONVICTIONS

The examination of the cases under the writer's survey had revealed that the possible remedy provided for wrongful convictions under the Ethiopian case is pardon procedure though pardon presupposes one's guilt and conviction.⁷¹ Three of the cases used to reveal the existence of wrongful conviction in Ethiopia were resolved by the mechanism of pardon. It seems that pardon proclamation is taken as a solution to provide a remedy for persons wrongly convicted.⁷² Why pardon is used as a method to release persons wrongly convicted? Is that appropriate to subject innocents to claim pardon from the government?

One of the powers of the Ethiopian Head of State is to grant pardon.⁷³ The main objective of granting pardon to person convicted by final decision is to ensure the interest of the public and the offenders after it is ascertained that they have repented for their actions.⁷⁴ Once an application for seeking pardon is lodged at the Board, there are conditions that shall be taken into consideration to grant pardon.⁷⁵ The petitioner's confession and repentance, his effort to reconcile with the victim or his family and compensate them, or his ability and willingness to settle the compensation with the victim is among the basic requirement that shall be fulfilled to consider the application for pardon.⁷⁶

Pardon shall be granted only for persons who admit that they had committed the crime convicted for and repented for their action.⁷⁷ Unless applicants seeking pardon admit for the crime convicted for, they cannot be qualified for the pardon and they will be automatically excluded from the process. Hence, a pardon shall not be granted for a person who is wrongly convicted and innocent of the crime convicted for according to the pardon proclamation. Rather, the government shall request such a person an excuse for the harm he suffered as a result of state machinery.

⁷¹Simeneh Kiros, *Notes on the Ideal process in the Ethiopian Criminal Procedure*, Mizan Law Review (2007) Vo.1, No 1, P153.

⁷² Pardon Proclamation, Proc. No. 840/2014, *Supra* note 55.

⁷³FDRE Constitution, Art.71 (7).

⁷⁴Pardon Proclamation, Proc. No 840/2014, Art. 3.

⁷⁵ Pardon Proclamation, Proc. No 840/2014, Art. 20.

⁷⁶ Pardon Proclamation, Proc. No 840/2014, Art 20(5).

⁷⁷ Pardon Proclamation, Proc. No 840/2014, Art. 3.

Furthermore; the effect of granting pardon does not serve the interest of the person wrongly convicted. Because once persons are found guilty of the crime charged for, such conviction will form criminal records against them. Such record of the person convicted can only be removed by the court.⁷⁸ A person with criminal record can apply for reinstatement based on Articles 218 and 219 of the Ethiopian Criminal Procedure Code.⁷⁹ The Criminal Code also lists the grounds to be reinstated his criminal record.⁸⁰ Once reinstated the criminal record will be removed and presumption of innocence will be regained. In relation to wrongful convictions a pardon cannot remove the criminal record of the individual though the entire sentence imposed against them will be ineffective.⁸¹ However, the effect of pardon cannot relieve the innocent wrongly convicted from bearing civil liability emanating from the criminal liability.⁸² Since the criminal record cannot be removed by a mere granting of pardon; such record can also be produced against such innocent as an aggravating circumstance for crimes that he might subsequently responsible for.⁸³

Therefore, pardon cannot be a proper remedy for wrongful convictions as the very objective of pardon does not cover innocents and the effect of pardon by itself cannot clear the criminal record of the person wrongly convicted. Even morally it is an inappropriate remedy to subject an innocent individual to claim for pardon. It is the government who shall request the innocent wrongly convicted for an apology if that can be a remedy.

Apart from pardon individuals who are either convicted or under prosecution can also be granted amnesty of their acts as indicated under Article 230 of the New Criminal Code. Persons who are qualified for amnesty are not clearly provided by

⁷⁸ New FDRE Criminal Code, Art.233.

⁷⁹ Ethiopian Criminal Procedure Cde Art.218 (1) Where a convicted person or his legal representative is of opinion that the requirements of Arts. 243 and 244 Penal Code are satisfied, he may apply for reinstatement to the court having passed the sentence the cancellation of which is sought. Article 219 (2) Where the application is allowed, the provisions of Art. 245 Penal Code shall apply and the court shall order the entry of the sentence which it has cancelled to be deleted from the reinstated person's police record.

⁸⁰Article 235(2) of New Criminal Code provides that since reinstatement cancels the sentence, it shall produce the following effects: (2) the sentence shall be deleted from the judgment register and for the future be presumed to be non-existent.

⁸¹ Pardon proclamation, Supra Note 55, Art. 22 (1).

⁸² *Id.*, Art.22 (2).

⁸³ The New Criminal Code, Art.84 (1) (c).

the Code. The Code provides that amnesty shall be granted to certain crimes or certain classes of criminals. Since amnesty can clear all records in case there is conviction it might be assumed as another solution for wrongful convictions. The subjects of amnesty are certain type of crimes and certain criminals and it does not seem to include individual cases of wrongful convictions. The acts required for amnesty are broader than pardon. Still there is no detail law which provides for procedure of amnesty like in case pardon. Any ways, both pardon and amnesty cannot be appropriate remedies as they both subject individuals to request for the discretionary power of government.

Concerning the claims which had been rejected by courts, the writer believes that the prosecutor should have brought those cases to the attention of the Federal Supreme Court Cassation Division so that the Division should pass a judgment basing the newly discovered evidence and international treaties which can also have the binding effect on all courts found at all levels.⁸⁴ Until now, the Federal Supreme Court Cassation volumes do not reveal any ruling on the possibility of review of final criminal judgments upon discovery of new evidences though there are cases of wrongful convictions where claims of review were repeatedly rejected by regular Federal Supreme Court.⁸⁵ The manner of evaluation of evidence in passing judgment can constitute for fundamental error of law and in cases where conviction verdict is pronounced against innocent accused though the alleged victim is alive or proved that he was murdered by others; the cassation division can reverse the verdict on the basing evaluation of standard of proof. Had the Cassation Division delivered any ruling on the possibility of review basing international treaties to which Ethiopia is a party and the existing principles of the law, it would have served as precedent on the subsequent cases to be decided by courts which will also solve the problem of exonerating persons wrongly convicted by saving innocent not claim pardon for the acts done by others. Though there are such legal remedies to review erroneous conviction cases, it is unfair to subject innocent persons to claim pardon from the government.

⁸⁴ Proclamation No 454/2005, Art. 2 (1).

⁸⁵Shume, *Supra* note 20, See also GezehegnTefera vs. Federal Public Prosecutor, Federal Supreme Court, Criminal File No 120/2000 in which Gezehegn Tefera had served for five years as his claim for retrial was rejected by Federal Supreme Court (Criminal File No 120/ 2000).

5. RECENT TRENDS ON REVIEW OF WRONGFUL CONVICTIONS IN ETHIOPIA

Ethiopia had enacted its first Criminal Justice Policy for the first time in 2003.⁸⁶ Still now no eloquent instrument is designed to govern issues of wrongful convictions in Ethiopia. But, this policy had come up with the right to claim review upon certain requirements. The inclusion of the concept in this policy is a big step towards formulating review of criminal judgments in our system. It is also hopeful solution to legalize the issue by signifying for the possibility of review of wrongful conviction cases in Ethiopia. Plea bargaining is also among the newly introduced concept in the policy.⁸⁷ The aim of the Criminal Policy is to provide comprehensive concept that should be included in prospective laws. It is a pioneer document to recognize the problem of wrongful conviction and urging to provide remedy to the problem in Ethiopia. The Criminal Policy clearly recognized the possibility of review of a final criminal conviction upon the discovery of new evidence to prove the innocence of the person convicted by final decision. It also indicates that the concepts comprehended will be included in the pertinent laws.

Federal Supreme Court had rejected the claim for retrial of Shume's case which had based on the Criminal Policy. As to the writer, even though the policy will not have a binding effect on courts, it is clear that it shows the intention of the subsequent law (ongoing Draft Criminal Procedure) on the Ethiopian criminal justice and the court should have considered the case for review.⁸⁸ In addition to the concepts introduced in the Criminal Policy, the Draft Criminal Procedure of Ethiopia has also come up with more solution to the problem of wrongful conviction.⁸⁹ The concept included in such Draft Code seems the result of the Criminal Policy. The Draft Code provides that the objective of reviewing a final decision is to correct judgments which are pronounced against innocent individuals by miscarriage of justice so that those innocents shall not be punished.⁹⁰ There should be judicial pro-activism for the enforcement of human rights. A mere absence of the procedure shall not be a ground to deny review of wrongful

⁸⁶Council of Ministers of the FDRE, The Criminal Justice Administration Policy of 2011 (Here in after Criminal Policy).

⁸⁷ The Criminal Justice Administration Policy, Section 4.5.4.

⁸⁸Ministry of Justice Criminal Policy (2003 E.C); Draft Criminal Procedure Code, (Unpublished, Amharic).

⁸⁹Ibid.

⁹⁰ Draft Criminal Procedure Code, Art. 466.

convictions. Even though such concept is incorporated in the Draft Criminal Procedure there is a fear that this draft law will be probably approved as it is. It has been proposed many years before and until this paper is submitted for publication, the parliament did not approve the Draft Criminal Procedure Code.

As the Criminal Policy envisages any convicted person by a final decision can apply for the retrial of the case, after obtaining convincing evidence that shows his innocence.⁹¹ Such an application can be lodged by the convicted person, legal representative, family or by the public prosecutor.⁹² Sub-article 2 of this provision states for the type of newly discovered evidences that might be admitted to review the case. The evidences should have the potential to reverse the previous conviction had they been brought before. Of course, the Code had listed for the type of evidences which warrant for the retrial of the case.⁹³ These are: relevant evidences which can acquit the convicted person, truth discovered by scientific method, if a judge entertained the case is convicted for the breach of his official duties, if the person acquitted from the case is genuinely confessed outside the court that he had committed the crime or the evidences which had warranted the previous conviction are later found forgery or obtained by mischief (*Translation mine*).

The introduction of such mechanism is really a good hope for the persons wrongly convicted and to the system in general. The code had exhaustive list of evidences that can be admitted to conduct the retrial. However, there are numerous types of evidence that enable to review the case. Of course, it is possible to include these evidences under the type of evidence which provides for relevant evidences that can prove innocence of the person convicted. The concept included in the Criminal Policy with this regard is hopeful that it intended for the possibility of review of judgment after discovery of new evidences that are capable to disprove the previous conviction.

The application for review is lodged at the court which had finally entertained the case⁹⁴ and after examination of the case, it can either reverse or refer to other court

⁹¹ *Id*, Art.467 (1).

⁹² *Ibid*.

⁹³ *Id*, Art. 467 (2) (a-c).

⁹⁴ *Id*, Art. 467 (3).

for review.⁹⁵ No time limit is also provided to bring the application.⁹⁶ Similarly, the National Human Right Action Plan prepared for the first time upon the recommendations of the UPR⁹⁷ also includes the concept of review of wrongful conviction in the Ethiopian context.⁹⁸ It simply provides that a mechanism of reviewing wrongful convictions after discovery of new evidence shall be included in the pertinent laws. The action plan is a document that aimed to monitor the enforcement of human rights nationwide and it is another indication for the recognition of the problem of wrongful convictions in our country.

6. THE RIGHT TO COMPENSATION FOR WRONGFUL CONVICTIONS IN ETHIOPIA

Wrongfully convicted individuals have suffered severe harm as a consequence of their imprisonment. They lose their jobs and their good reputations and unable to earn income while incarcerated. As it has been discussed wrongful conviction survivors were deprived of liberty, sometimes for years, and have suffered detrimental psychological consequences. Under existing law, if not all, most of the individuals who are freed after being found innocent of the crimes for which they were convicted are unable to obtain any compensation or other sources for the losses they sustained from the state. The institutions that are responsible for the payment of such compensation are not clear under the Ethiopian context. This is mainly due to the inadequacy of legal framework which specifically governs compensation for the victims of wrongful conviction in the Ethiopian criminal justice.

The FDRE Constitution provides for the protection of private property and guarantees for the right to commensurate compensation for the property in case of expropriation for the public purpose.⁹⁹ The rationale behind providing

⁹⁵ *Id*, Art. 469.

⁹⁶ *Ibid*.

⁹⁷ UPR Recommendation on Ethiopia No 3 forwarded from Canada and accepted by the government of Ethiopia available at Universal Periodic Review Information Website at <http://www.upr-infor.org> <Visited on March 12, 2015>.

⁹⁸ The Federal Democratic Republic of Ethiopia: National Human Rights Action Plan, 2013-2015, Draft UN Official Translation, P47.

⁹⁹ Article 40(8) of the FDRE Constitution provides that without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.

compensation by the government to the property of individual expropriated is that the property is taken for the interest of the public purpose. Public prosecutors and stake holders in the process enforce criminal law to keep peace and order of the public in general. Such process results in punishing the alleged wrongdoers by imprisonment which is the cost that the convicted person will pay in the name of the general public.

When a property is taken by the government to build a new highway, the owner is constitutionally guaranteed fair market value compensation, whatever the amount might be. But, when an innocent person is wrongly convicted by the criminal justice system, he or she is not guaranteed for compensation when the mistake is discovered afterward, despite the scars of long years of incarceration. If a person is paid compensation when his property is taken by the government there is no reason why a person whose liberty is wrongly deprived will not be prohibited compensation. Individuals can produce means of sustaining his life and family whenever they are free and at liberty using their labor or profession. Hence, the person wrongfully convicted will serve the sentence imposed against the wrongly convicted as a result of charge brought by the public prosecutor for the benefit of the public interest though there might be fault on the part of the professionals. Crimes that entail rigorous imprisonment are up on compliant ones which involve about the interest of the public and when innocents are convicted for those serious crimes it will be against the very objective of the criminal code, that is, keeping peace and security of the public at large. So, there should be mechanism to resolve similar issues in the criminal justice system.

All criminal justice organs act on behalf of the state and the action of these organs might result in damage to the civilians or institutions in course of achieving their mandates. The damage caused by state agents shall be borne by the state itself. Wrongful conviction of innocents might happen due to the fault of these agents and the government shall bear the liability by providing compensation to the victims. The ICCPR provides the right to claim compensation for unlawful arrest and unlawful detentions.¹⁰⁰ Likewise the Covenant guarantees for the right to compensations for persons wrongly convicted.¹⁰¹ The FDRE Constitution is silent on cases of unlawful arrest, unlawful detention and on the right to compensation

¹⁰⁰ ICCPR, Art 9(5)

¹⁰¹ ICCPR, Art 14(6).

for the victims of wrongful conviction. However, it is protected in many international instruments and constitutions of different states. So, why does the FDRE Constitution fail to provide compensation for persons who are wrongly convicted on one hand and as a result of unlawful arrests and illegitimate detentions as well? The right to compensations for unlawful arrest and detentions was debated among the drafters the FDRE Constitution. Finally, it was rejected by majority vote who argued that only those rights which can be realized shall be included in the Constitution.¹⁰²

Though the Constitution does not provide for the right to compensation for wrongful convictions, it has already in built a golden provision which enable us to interpret the rights and gaps in the Constitution.¹⁰³ The Constitution also provides that international treaties are part and parcel of the law of the land and Ethiopia had ratified the ICCPR which forms part of the law of the country.¹⁰⁴ Since the ICCPR clearly govern the right to compensation as a result of wrongful conviction, it establishes the same right for the Ethiopian citizens to claim for compensation for erroneous convictions.¹⁰⁵ The previous existing laws did not include the right to compensation, except the Civil Code which provides for liability of the state emanating from the fault of its employees.¹⁰⁶ The Civil Code does not state wrongful convictions as cause of action but there might be a fault on the part of criminal justice organs in cases of wrongful convictions. Sub-articles under article 2126 and 2128 of the 1960 Ethiopian Civil Code provide that civil servants or government employee will be held liable for damages they cause to another by their faults and the state is liable for professional faults done by its employee. In such cases as far as the existence of fault is proved, it is possible to claim the compensations from the part of the government on the basis of tort law. Tort law does not incorporate remedy for cases of wrongful convictions unless it is applied by analogy.

¹⁰² Minutes of the Constitutional Commission, Human and Democratic Rights, Tiraz 2.

¹⁰³FDRE Constitution, Art. 13 (2).

¹⁰⁴ FDRE Constitution, Art 9(4).

¹⁰⁵ ICCPR, Art 14(6).

¹⁰⁶ Article 2126 of the Civil Code provides that any civil servant or government employee shall make good any damage he causes to another by his fault. (2) Where the fault is a professional fault, the victim may claim compensation from the State, provided that the State may subsequently claim from the servant or employee at fault, see also Art. 2040 ,2032, 2042(3) 2090 of the same Code.

Institutionally, the Ethiopian courts are duty bound to enforce the Constitution in deciding on violation of individuals' human rights. Courts are required to render their decisions basing the international treaties in addition to the domestic laws.¹⁰⁷ Therefore, Ethiopian courts can only fill the remedies for the rights gap by directly applying the above provisions of the Covenant as grounds for the enforceability of the right. Hence, it is possible to claim for compensation for wrongful conviction before the courts. The ICCPR¹⁰⁸ which provides for the right to compensations for wrongful convictions is ratified by Ethiopia and such law is also part of the Ethiopian law since the FDRE Constitution dictates that all international treaties ratified by Ethiopia will form part of the law of the land.¹⁰⁹ Courts are also duty bound to enforce rights protected in international treaties and in the Constitution.¹¹⁰

In addition to these mentioned bases to claim remedy, the Criminal Policy had also further strengthened by incorporating the right to compensation for wrongful convictions.¹¹¹ Section 4.8.2 of the policy provides that;

“If a person who, in a final judgment has been convicted of a crime and subjected to a death sentence, imprisonment, or a fine, is later found actually innocent by a court which has jurisdiction to review final judgments, the person, their heirs, or their spouse is entitled to a commensurate compensation of moral and material damage suffered due to the decision which subjected the person to the sentence.” (Translation mine)

The Criminal Policy provides that all persons who were convicted and punished for the crime but later proved innocent deserve compensation for the damage they suffered. According to the policy, acquittal upon the retrial process will enable to claim compensation from the government.¹¹² As it was contemplated in the Criminal Policy; the Draft Criminal Procedure Code had also included the right to

¹⁰⁷ Supra note 22 Article 3(1) provides that Federal Courts shall have jurisdiction over cases arising under the Constitution, Federal Laws and International Treaties ; parties specified in Federal Laws and places specified in the Constitution or in Federal Laws.

¹⁰⁸ ICCPR, Art.14(6) .

¹⁰⁹ FDRE Constitution, Art. 9 (4).

¹¹⁰ Proclamation 25/96, Supra note 22, Art.3 (1).

¹¹¹ Criminal Policy, Supra note 88, Section 4.8.2.

¹¹² Ibid.

claim compensation for wrongful convictions.¹¹³ It states that if the court conducted the retrial has reversed or amended the previous decision such court shall order the government for the payment of both moral and pecuniary compensation to be paid for the victim.¹¹⁴ It also provides that the compensation paid shall be commensurate and paid to the descendants, spouse of family in case the victim is not alive as a result of execution by death sentence.¹¹⁵ Apology to the family is also provided as one form of remedy in case of executions.¹¹⁶

The inclusion of the right in the Draft is appreciable. But, the provision does not make clear which part of the government organ is responsible for the compensation since it simply says government. It is not indicated in the Draft for the particular organ responsible to provide and effect the payment for the compensation Ministry of Justice, Police Commission, Finance or what else? The amount and method of assessment of compensations are not regulated in the Draft Code. There shall be proper assessment of the compensation to be paid. If it can remedy the damage, the compensation shall be proportional to the damage suffered. In addition; it does not seem that the descendants or spouse of the victim whom person had naturally died after serving sentence can claim for compensation since Article 470(2) of the Draft Criminal Procedure Code presupposes that a person is executed as a result of death sentence. These issues were not addressed in the Draft and they will form among the critical issues to be raised in enforcing the right in practice. There shall be clarity on the manner of effecting the payment and Draft Code itself or subsequent regulation should come up with detailed method of providing the remedy.

7. ROLE OF ETHIOPIAN HUMAN RIGHTS COMMISSION TO REMEDY WRONGFUL CONVICTIONS

Apart from courts there are also National Human Rights Instruments like the Ethiopian Human Rights Commission¹¹⁷ and the Office of the Ombudsman¹¹⁸ which are established specifically to play major roles in the protection of human

¹¹³Draft Criminal Procedure Code, *Supra* Note 88, Art.470.

¹¹⁴ Draft Criminal Procedure Code, Art. 470 (1).

¹¹⁵ Draft Criminal Procedure Code, Art.470 (2).

¹¹⁶ Draft Criminal Procedure Code, Art. 470(3).

¹¹⁷ Ethiopian Human Rights Commission Establishment Proclamation, Proc. No. 210/2000

¹¹⁸ A Proclamation to Provide for the Establishment of the Institution of the Ethiopian Ombudsman, Proc. No 211/2000.

rights which are also established by the Constitution.¹¹⁹ With regard to providing remedy for wrongful conviction, the role of Ethiopian human rights commission is limited to the amicable resolution of the grievance.¹²⁰ Unlike the Ugandan and Indian Human Rights Commission which can grant compensations for infringement of human rights, ordering the release of a detained person, payment of compensation, the EHRC does not have the mandate to grant compensatory remedies against breach of the right to physical liberty as a result of wrongful convictions.¹²¹

The case brought before the Ethiopian Human Right Commission for claiming compensation by Beyene Bellisa Amuma is an indicative of the powerlessness of the commission to grant compensation. In this case, a complainant indicated that he was wrongly imprisoned for four years (1990- 1993) suspected of terrorism crime in 1990 and he was finally acquitted by Federal High Court on 02/09/1993.¹²² This might not be the best case to explain the reality. But, it is just to show that there were many similar cases brought to the attention of the Commission and left without remedies. He was an employee at Ethiopian Telecommunication Corporation at time of his arrest and in the course of time they had terminated him from work.¹²³ After he was acquitted by the court, he had brought a suit based tort law before court against Telecommunication Corporation to be reinstated him after paying him the four years' salary he lost including the benefits and carriers he should have got. But, his claim was rejected by court and finally he brought a case claiming for compensations. The court had rejected the claim for compensation based on the reason that the plaintiff was not imprisoned for the interests related with Telecommunication Corporation that they are not responsible to pay compensation.¹²⁴

¹¹⁹ FDRE Constitution, Art.55 (14,15)

¹²⁰ Proclamation 210/2000, *supra* note 117, Article 26(1) provides that the Human Right Commission shall make all the efforts. It can summon to settle, amicably, a complaint brought before it.

¹²¹ LoneLindHolt, Lindesnes, Birgit; Yigen, Kristine (eds.), National Human Rights Institutions: Articles and Working Papers, Danish Centre for Human Rights, 2001, P.28. see also Section 53(2) of the Ugandan Constitution.

¹²² Federal Public Prosecutor vs. Beyene Bellisa Amuma, Federal High Court, Criminal File 238/90

¹²³ Compliant submitted to EHRC by Ato Beyene Bellisa to EHRC on May 17/2007.

¹²⁴ *Ibid.*

The Ethiopian Human Right Commission had also notified the complainant that there is no legal framework under the Ethiopian Criminal Procedure or in other legislations that makes government organs responsible for such acts and finally rejected his claim indicating the Commission cannot provide for remedies requested.¹²⁵ Hence, the EHRC cannot provide for remedies either in ordering for release or compensation for the erroneously convicted and remedy for wrongful conviction can be enforced before the courts of law and that required to be supported with adequate legal framework.

8. CONCLUSION

This paper has attempted primarily to investigate the existence of wrongful convictions and the remedies available to resolve the problem in the Ethiopian context. Wrongful convictions of innocent individuals have been one of the criminal justice systems problems from the earliest days. It has resulted in execution of many innocent individuals apart from the rigorous imprisonment served by uncountable figures of persons. The problem was however fully recognized subsequent to Edward Borchard and his successor's work that had exposed the prevalence of the problem in different jurisdictions, though the occurrence may vary from state to state. In addition to these studies the advancement of DNA technology had revealed the severity of the problem by exonerating persons who were executed posthumously and others who were under death row phenomenon which enabled states not to deny the occurrence of the problem.

The effects of wrongful convictions can result in either loss of life or deprivation of liberty of innocent individuals. It prohibits exercise of their civil, political, as well as socio economic rights. The family of the wrongfully convicted individual also unjustly suffers: wife without husband and vice versa, children without father, mother and father without son. It also lets the real offender escape justice and may continue committing other crimes which will also shake the public confidence in the criminal justice itself for its failure to identify the real offenders. There are international, regional and national responses on mechanisms to review and remedy the problem. International covenant on civil and political rights, international criminal court statutes including statutes for the Rwandan and

¹²⁵A Letter written to Ato Beyene Bellisa Amuma from Ethiopian Human Rights Commission on August 17/1999.

Yugoslavia provide and allow for review of criminal judgment after final decisions are rendered upon the discovery of new evidence.

The ECHR and African Court of Human and Peoples' Rights protocol are among the regional instruments which allow for the right to review of criminal judgments after final decisions basing newly obtained evidence potential to reverse the previous convictions. Similarly, the comparative studies in USA, UK, Canada, Germany and France reveal that the problem of convicting innocents wrongly is recognized as main challenges in their criminal justice. There are procedural mechanisms in those countries which permit for review of criminal convictions upon discovery of new evidence that had not been part of the previous trial as post-conviction proceeding. Likewise review of judgment the right to claim compensation for both pecuniary and non-pecuniary costs is also guaranteed in above mentioned instruments and domestic laws of states under focus. Of course the mechanisms to claim compensation vary from state to state; but all provides for the right to an enforceable compensation.

The FDRE Constitution provides for the right to life and liberty and security of persons that had already protected under the international and regional treaties particularly by the ICCPR to which Ethiopia is a party. Despite their protection, those rights are not absolute as they can be limited for the sake of criminal responsibility which shall be via due process of law. The proceedings that had fulfilled all the elements of fair trial rights of the accused persons is theoretically expected to deliver fair decisions; that is, convicting the real offenders and acquitting the innocents. The law shall only punish the individuals who have really committed the crime. But, laws in codes and laws in practice are different. The practical enforcement of laws pass through numerous challenges as there are multiple of organs involved in the process. The measures taken during the investigation stage greatly affects the process. Standard of competence ; reforms developed to strengthen the justice system; ethics required from the justice organs and the provisions of adequate fund are among the main criteria that enable to realize fair, efficient and effective criminal justice system.

As it has been observed in other jurisdictions, where there are sophisticated criminal justice systems and technologically advanced; the prevalence of miscarriage of justice particularly wrongful convictions has been revealed as

prevalent and acute problem. Despite wrongfully convicting innocents is internationally recognized; the situation in Ethiopia is not yet recognized. When the situation comes to Ethiopia where there is lack of resource; technology is not advanced and standard of competence and ethics required are concerned in comparison with those developed criminal justice systems; the incidence of wrongful convictions in our case may get worse to express logically.

In depicting the situation of wrongful convictions in Ethiopia, the writer has come up with case studies of selected court decisions which reveal the scenario of wrongful convictions under the Ethiopian criminal justice system. The analyses of five wrongful conviction cases were made to reveal the existence of erroneous convictions in our system. The cases were selected from different parts of the country to show the existence of the problem in nationwide. The disclosure of these cases can be taken as the representative of other undetected cases for the existence of the problem in Ethiopia. Unfortunately, all case exposed were homicide cases and individuals were sentenced to serve from one to nineteen years of imprisonment. They were unable to prove the erroneous nature of their convictions by appellate procedures.

The cause that had necessitated for the occurrences of these erroneous convictions are mainly false witnesses testimonies, inadequate investigation, and evaluation of evidence for criminal, incompetence of organs. But, the most common cause that had been revealed in all cases under the study was false testimony. In addition to case studies examination of the legal safeguards against wrongful convictions had been used to reveal the susceptibility of the system to wrongful convictions. Despite the fact that cases discussed in this paper are all related to homicide in which there is no shift of burden of proof, it is proved that individuals were convicted for the crime they did not commit. If this happen in crimes in which burden of proof is not shifted, it is logical to presume what will happen in other crimes in which the burden of proof might be shifted to the accused persons. So, the ongoing move to shift burden of proof to the accused in certain crimes and the standard of criminal proof including poor right to indigent representations in Ethiopia can be taken as factors that can contribute for the occurrence of wrongful convictions. It was not possible to communicate the victims of wrongful convictions by the writer to assess the impact of the conviction against them as it was difficult to get their address. But, the impacts of wrongful convictions are

clear and that might not be different from the already identified effects by previous researches. So, the impacts of wrongful convictions are detrimental to the convicted persons themselves; their families; to the public at large and to the system itself by shaking the trust and credibility among the society due to their failure to identify innocents and offenders.

As the case studies examined to show the situation of wrongful convictions in Ethiopia; the Ethiopian criminal justice system had failed to handle the problem. The system has not accommodated clear legal mechanisms which enable victims of wrongful convictions to claim review of judgments wrongly passed against them. Victims of wrongful convictions were subjected either to serve the sentence or pardoned by the government as they had really committed the crime. Repeated claim for review of judgment before courts were also rejected due to the absence of legal procedure which allows for review of criminal judgments upon the discovery of new evidence which was not produced at the previous trial and potential to reverse the conviction. So, the system cannot allow for persons wrongly convicted and the absence of legal procedure had subjected victims of wrongful convictions to seek and plead apology from the government for the fault done against them.

9. RECOMMENDATIONS

To reduce and handle the instances of wrongful convictions, I recommend the following as remarks.

There shall be clear and adequate legal mechanisms by which individuals wrongly convicted can claim for review erroneous judgment passed against them so that they will regain their liberty by reversing the decisions. The right to claim compensation as a result of the damage caused by wrongful imprisonment shall also be clearly regulated by the law which allows the victims to bring an enforceable right to compensations. So, the writer boldly recommends to the legislature to enact laws which allow for the right to bring claim for review of criminal judgment by persons wrongly convicted after the discovery of newly discovered evidence and the right to seek for compensations as the result of such convictions which had caused imprisonment or executions. The on-going but delayed Draft Criminal Procedure which has inbuilt remedies for wrongful convictions shall be approved by the House of People's Representative.

Considering the fact that causes of wrongful convictions start to happen during the investigation stages; investigating police officers shall improve their investigative skill and methods to identify the actual offenders of the crime. They shall employ technical and biological evidence which are more persuasive than the widely used tactical evidence. Though it bases on the resource of the country, an attempt to introduce DNA will ensure for better quality of investigation report. It is better to reduce over use of eye witnesses' testimonies which can have the risk of false testimony based on certain interests. They shall also respect rights of arrested and accused persons and refrain from obtaining confession by coercion. There shall be criminal responsibility against officers for their misconduct and misbehaviour in addition to administrative measures available.

The criminal justice system shall be equipped with more competent and ethical professionals (police, prosecutors and judges) who are capable to identify factors contributing for the occurrence of wrongful convictions and prevent miscarriages of justice in the process of dispensing criminal justice. The system shall work to avoid the risk of wrongful convictions from the outset by respecting rights of persons accused and implementing the standards to safeguard innocents involved in the proceedings.

The government shall provide adequate training for criminal justice organs on wrongful convictions: its causes, impacts, and remedies for the breach of human rights in general and to the cases of wrongful convictions.

Public Prosecutors shall play their role in respecting and protecting the rights of the accused and ascertaining the truth in criminal proceedings. The prosecutor shall prove the commission of the crime basing on genuine and credible evidence before framing charge. They shall prove their charge beyond reasonable doubts before courts.

Federal Attorney General, Regional Attorney Generals, Police and other stakeholders shall raise awareness among the community about crime of perjury and its severe consequence against the individual and against who testify by false. The community shall be taught so that they will cooperate and participate in preventing crime of perjury. There shall be continuous criminal responsibility against individuals who falsely testify.

Judges shall convict accused if and only if the commission of the crime is proved beyond reasonable doubts by the evidence produced by the prosecutor. Standard of proof beyond reasonable doubts shall be applied by judges in deciding on convictions and all stakeholders in the criminal justice system including courts shall work to prevent false testimony and other evidence produced.

The government shall provide for legal representations for indigents at state cost for all crimes that result in serious deprivation of liberty from interrogation up to final appeal level. They shall establish for structure of defence attorneys at all level of courts entertaining criminal matters to provide the service in case needed.

Courts shall realize their duties to enforce the rights guaranteed in the constitutions and they should apply international treaties by interpretive rule of human rights provisions in entertaining cases brought before them. They shall directly apply international treaties which have been ratified by Ethiopia to provide remedies for the breach of persons wrongly convicted. They should also consider extra-contractual liability as justification to provide compensations to the victims of wrongful convictions. The courts should take judicial pro-activism in enforcing and promoting human rights.

Laws which provide for admissibility of unknown sources and shifting burden of proof to the accused should also be reconsidered by the legislature to decrease more emphasis on crime control which increases the risk of wrongful convictions to protect individual rights. Government shall allocate budgets in their annual economic plan to be paid for victims of wrongful convictions in form of compensations.

In disclosing wrongful convictions, there shall be an independent institution to investigate and expose cases that reveal erroneous convictions. As the foreign experience shows investigation of the case by police or prosecutor which was previously entertained might not be proper due to partiality and bias exist in finding out the truth of the case. The reinvestigation of the cases upon claim may be given either to the Ethiopian Human Rights Commissions or independent organs which deal with the issue shall be mandated as innocence commissions in the United States of America or Criminal Cases Review Commissions in United Kingdom.

Government institutions empowered with promoting human rights and non-governmental organizations shall enable by creating legal awareness to the community about wrongful convictions and the right to compensation for victims of wrongful convictions for the damage caused to them by state acts. The government shall also encourage civil society organizations to work on miscarriage of justice.

THE PLACE OF MULTIPARTY COMMERCIAL ARBITRATION UNDER ETHIOPIAN ARBITRATION LAW

*Alemu Balcha**

ABSTRACT

Multiparty arbitration is crafted to satisfy the interest of parties involved in circumventing complex commercial transactions resulting from interdependency of international commerce and globalization. It is all about how the issues of joinder, intervention, consolidation, and appointments of the arbitrator are managed in multiparty commercial disputes. With the primary aim of assessing the legal status, and the place of third-party participation in commercial arbitration, such as joinder, intervention, consolidation, and appointments of the arbitrator in multiparty dispute under Ethiopian arbitration law, doctrinal legal research methodology is employed. Accordingly, the finding of the paper shows that multi-party arbitration is not given proper attention. Neither the 1960 Civil Code (CC) nor the 1965 Civil Procedure Code (CPC) provides for the possibility of joinder, intervention, and consolidation of the arbitration proceeding saving for what's provided under Art.317 (1) of the CPC. The same is true for appointments of arbitrators. Again, the leading arbitration institution in the country, Addis Ababa Chamber of Commerce and Sectorial Association (AACCSA), institutional rules is silent on the issues of joinder, intervention, and consolidation of the arbitral proceeding though it regulated the appointments of arbitrators in multi party disputes. To this effect, the author argues for the proper facilitation of multi-party arbitration in our context because of various reasons. First, since the multiparty dispute is the fruits of globalization, Ethiopia cannot avoid globalization and the conundrum of multi-party disputes. Second, the construction industry in which the issues of the multi-party dispute is common is substantially increasing. Finally, the current move of the Ethiopian government towards the privatization of big companies has also a tendency to increase multi-party disputes. Accordingly, it is recommendable for Ethiopian legislators to reconsider and amend its arbitration law with proper inculcation of modern approaches and practices to multi-party arbitration.

Key Words: Multiparty arbitration, Joinder, Consolidation, Intervention

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I. INTRODUCTION

Commercial arbitration as a means for resolving international disputes has become more evident in the past several decades, as the international trade, commercial transactions and investments have experienced a boom.¹ Currently, the growing international interdependency of commerce and the globalization of the business world have led to complex contractual relations, which very often involve more than two parties bound by a multitude of contracts.²

Besides, we are experiencing international transactions graduating into a higher level of complexity; where often requiring the participation of several companies in the implementation of a single project. For instance, a typical construction project will usually involve the client, the main contractor, several subcontractors, an engineer or an architect, suppliers, financiers, and possibly additional commercial parties. Hence, the possibility for a dispute to arise among this multitude of parties who have built up their cooperation based on several contracts is unquestionably high. Consequently, disputes may arise between multiple parties, but also based on multiple contracts.³ Such kinds of disputes will inevitably lead to multiparty arbitration.

Multiparty arbitration is arbitration, which deals with a dispute involving more than two parties.⁴ Two types of multilateral disputes can be distinguished within this definition.⁵ First, a dispute involving more than two parties can look like a pure bipolar dispute involving two parties. A bipolar multiparty dispute would be a dispute where ‘the parties can normally be divided into two camps: a claimant camp and a respondent camp’, where the interests of the parties within each camp are coinciding or substantially the same.⁶ The second situation concerns multipolar disputes where the parties cannot be divided into two camps because of their divergent interests.⁷ Accordingly, the paper will uncover the issues of joinder,

¹ Gary B. Born, *International Commercial Arbitration* (Kluwer International LA, 2nd Ed., 2009), P1. See also Alan Redfern, Martin Hunter, & Nigel Blackaby, *Practice of International Commercial Arbitration*, Sweet and Max Well, 4th ed., 2004), Pp 22-27.

² Dimitar Pondev, *Multiparty and Multicontract Arbitration in Construction Industry* (John Wiley and Sons Ltd, 1st ed., 2017), P 2.

³ *Ibid.*

⁴ Olivier Caprasse, *Setting up of the Arbitral Tribunal in Multi-Party Arbitration, The- La Constitution du Tribunal Arbitral en Cas D'arbitrage Multipartite*, *International Business Law Journal* (2006), P197.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

intervention, consolidation, and appointment of arbitrators in both bipolar and multipolar disputes under the Ethiopian arbitration law.

Various conundrums are underlying multi-party arbitration. Prominently, deciding who may be a party to a multiparty dispute; the number of arbitrators; how the arbitrators are to be appointed; the administration of the proceedings to guarantee all parties involved an equal treatment while assuring speed and efficiency; the severance of cases where it turns out that there is not a sufficient nexus between the disputed contracts; the calculation and payment of an advance of fees and costs, and whether one or several awards shall be made are the major baffling issues in case of multiparty arbitration.⁸

Furthermore, in multiparty commercial arbitration, managing the issues of joinder, intervention, and consolidation of arbitral proceedings is very complex because of the consensual nature of arbitration, the law of privity of contract, and confidentiality of arbitral proceedings. In arbitration, 'joinder' is the procedural mechanism through which a 'third party' may be brought to an arbitration proceeding already commenced between other parties.⁹ Such mechanism refers to two different situations: first, where a respondent files a claim against a 'third party' (or against a 'third party' and the claimant); secondly, where the claimant, at a later stage of the proceedings, files an additional claim against a 'third party'.¹⁰ When a third party accedes to bi-party arbitration, it becomes a multi-party arbitration proceeding. On the other hand, 'intervention' is when a third party requests to join arbitration already in progress.¹¹ The question of joinder and intervention are the same as both deal with participation of third party to the existing arbitration proceeding. Consolidation in international commercial arbitration is known as a "procedural mechanism" of bringing two or more separate pending arbitration proceedings together into one case.¹²

⁸ Sigvard Jarvin, *Multi-Party Arbitration: Identifying the Issues*, New York Law School Journal of International & Comparative Law (1987), Vol.8, P321.

⁹ Klas Laitinen, *Multi-party and Multi-contract Arbitration Mechanisms in International Commercial Arbitration; A Study on Institutional Rules of Consolidation, Joinder, and Intervention; from A Finnish Perspective* (Unpublished, LL.M Thesis, University of Helsinki, 2013), P4. See also Assel Kezbekeva, *The Participation of Third Parties in Arbitration* (Unpublished, LL.M Thesis, University of Toronto, 2013), P34

¹⁰ *Ibid*

¹¹ *Ibid*.

¹² Arben Isufi, *Multiple Parties and Multiple Contracts in Arbitration* (Unpublished, LL.M Thesis, Ghent University, May 2012), P4.

Over the last several years, the world's leading arbitral institutions have adopted new rules, recognizing that the growth in international arbitration has been accompanied by the increasing complexity and sophistication of disputes.¹³ The approach taken by those institutional rules is via providing a mechanism for appointment of arbitrators and addressing the issues of joinder, intervention, and consolidation of the arbitral proceeding. For instance, the 2017 Revised ICC Rules contain more detailed provisions on the issues of appointment of arbitrators, joinder, intervention, and consolidation of the arbitral proceeding.¹⁴ The same is true for Hong Kong International Arbitration Center (HKIAC), Singapore International Arbitration Centre (SIAC), International Commercial Arbitration Court (ICAC), and Judicial Arbitration and Mediation Service (JAMS).¹⁵ Such kinds of the move are still ongoing, and even in 2018, the German International Arbitral Institution (DIS) has amended its arbitral rules and successfully adopted the issues of multi-party arbitration.¹⁶

The same approach was taken by the national legislation of various countries. To mention some of them, Hong Kong has refined its arbitration ordinance in 2011 with special emphasis on the issues of consolidation.¹⁷ In 2014, the Dutch Parliament has also adopted certain amendments in the Netherlands Code of Civil Procedure that was successfully refined provision governing multi-party arbitration, and the amendments were entered into force on 1 January 2015.¹⁸ South Africa, has introduced the new Arbitration Act No 15 of 2017 with proper incorporation of a provision governing complexities of multi-party disputes.¹⁹

¹³ Finley T. Harckham and Peter A. Halprin, The More The Merrier? Increase in Multiparty Arbitrations Spawns New Institutional Rules, May 2015; available at <http://ccbjournal.com/articles/32123/more-merrier-increase-multiparty-arbitrations-spawns%C2%A0new-institution> <accessed on Feb 03, 2018>.

¹⁴ International Chamber of Commerce Arbitral Rule, Revised in 2017 (hereafter ICC Rule), available at <https://iccwbo.org/publication/arbitration-rules-and-mediation-rules/>, Arts.7, 10 & 12.

¹⁵ Angela Carazo & Jamescontos, Institutional Approaches to Multi-Party and Multi-Contract Disputes in Arbitration, 2016 available at <http://www.mondaq.com/x/489396/Arbitration+Dispute+Resolution/Institutional+approaches+to+multiparty+and+multicontract+disputes+in+arbitration> <accessed on February 04, 2018>.

¹⁶ *Ibid*.

¹⁷ Herbert Smith Freehills, New Hong Kong Arbitration Ordinance, 2011 available at <http://arbitrationblog.kluwerarbitration.com/2011/06/01/new-hong-kong-arbitration-ordinance-comes-into-effect> <accessed Feb 04, 2018>.

¹⁸ Netherlands Code of Civil Procedure of 2015, Arts.1045 and 1046.

¹⁹ Pierre Burger, The International Arbitration Act Spells Opportunity for South Africa, March 2018 available at <https://www.werksmans.com/legal-briefs-view/international-arbitration-act-spells-opportunity-south-africa/> <accessed on February 12, 2018>

Coming to Ethiopia, the modern concept of commercial arbitration had, however, been alien until at least the mid-20th century, when Ethiopia developed most of its current codes on private law.²⁰ Some provisions were made for arbitration in the 1960 Civil Code and the 1965 Civil Procedure Code (CPC). Articles 3325 to 3346 of the 1960 Civil Code govern the enforcement of agreements to arbitrate in the form of either arbitral clauses or submissions. CPC, for its part, provides rules on some procedural aspects of arbitration. Besides, improvements concerning institutional arbitration are also indicative of the current trend toward better utilization of arbitration in commercial disputes. Two arbitral institutions, the Ethiopian Arbitration and Conciliation Centre (EACC) and the Arbitration Institute of the Addis Ababa Chamber of Commerce and Sectorial Associations (AACCSA) have been established.²¹

Being cognizant of the aforementioned points, if we go through the existing legal framework on arbitration in Ethiopia, less attention is given for multi-party disputes. Beyond the civil code and civil procedure provisions of Ethiopia, which is not clear on the issues of multiparty arbitration, the institutional rules of AACCSA have not paid sufficient attention to the issues of multi-party arbitration. The only provision that talks about the issue of multiparty arbitration is Article 10 (3) of AACCSA arbitral rule.²²

Though the Ethiopian legal framework is not clear on the issues of joinder, intervention, and consolidation of arbitral proceedings, Sirak Akalu and Michael Teshome argued that joinder, intervention, and consolidation are allowed under the Ethiopian arbitration law.²³ Accordingly, based on Article 317(1) of Civil Procedure Code, and Article 3345(1) of Civil Code, they have been arguing that, since the Civil Procedure Code allows for joinder, intervention, and consolidation of suits, these procedural aspects would inevitably apply in case of the arbitral proceeding.²⁴ Yet, the question is how we compromise it with the consensual

²⁰*Ibid*.

²¹Hailegabriel G. Feyissa, *The Role of Ethiopian Courts in Commercial Arbitration*, Mizan Law Review (2010), Vol.4 (2), P305.

²²Addis Ababa Chamber of Commerce and Sectorial Association, Revised Arbitral Rules of November 25, 2008, (Hereafter called AACCSA rule), Art.10 (3) available at [http://www.addis-chamber.com/file/ARBITRATION/20131126/Arbitration Rules%20\(English%20 Version\). pdf](http://www.addis-chamber.com/file/ARBITRATION/20131126/Arbitration%20Rules%20(English%20Version).pdf) <accessed on April 25, 2018>

²³Sirak Akalu and Michael Teshome, “Yegelgel Dagnet be Ethiopia” (Mega Publishing and Distribution Plc, 2017), Pp 93-108

²⁴*Ibid*

nature of arbitration, the law of privity of contract and confidentiality of arbitral proceeding.

Again, Alemayehu Yismaw and Haile Gabriel G. Feyisa emphasized that the existing arbitration laws are sketchy and do not cope with the emerging modern laws and practices in international commercial arbitration but without mentioning multi-party issues.²⁵ Though their work is not directly emphasized on the issues of multiparty arbitration, from their assertion, one can take a presumption that since multi-party arbitration is a currently circumventing practice in international commercial arbitration, the Ethiopian arbitration law is devoid of rules on multiparty disputes.

The aim of this article is, therefore, to examine and assess the place of multi-party commercial arbitration under the Ethiopian legal framework, identifying its shortcomings and exploring opportunities for proper regulation. To this end, the article investigates the pertinent provision of Civil Code and Civil Procedure Code of Ethiopia, and the institutional rules of the AACCSA. Again, since exploring all international institutional rules of arbitration is quite difficult, only ICC, UNCITRAL, and LCIA rules will be explored since they are the leading international arbitration institution where the conundrums of multi-party arbitration can be manifested. Finally, National legislation of the Netherlands, Hong Kong, and South Africa will also be explored as they are popular arbitration *fora*, and praised for having innovative legislation in the field of international commercial arbitration.

The remaining parts of this article are classified into 6 sections. The second section will uncover the approaches adopted by various institutional rules on the issues of multi-party arbitration with special emphasis on joinder, intervention, consolidation, and appointments of arbitrators. The third section presents the experiences of the Netherlands, Hong Kong, and South Africa on the issues of multi-party arbitration. The fourth section will embark on critically analyzing the place of multiparty arbitration under the existing Ethiopian arbitration law. The fifth section will present multiparty arbitration from the perspectives of AACCSA arbitral rules. The sixth section will explore the need for full implementation of

²⁵AlemayehuYismawu, *The Need to Establish A Workable, Modern and Institutionalized Commercial Arbitration in Ethiopia*, Haramaya Law Review (2015),Vol.4, P 37. See also Hailegabriel G. Feyissa, *supra* note 21, P 303

multiparty arbitration in Ethiopia and the seventh section will finalize the article by a way of conclusion and recommendation.

II. MULTI-PARTY ARBITRATION FROM THE PERSPECTIVES OF INSTITUTIONAL ARBITRAL RULES

Although the solution adopted differs in some particulars, the leading institutional arbitral rules are now incorporated provisions for the proper regulation of multiparty arbitration. Hence, this section is devoted to uncovering the solution adopted under leading arbitral institutions (ICC, LCIA, and UNICITRAL arbitral rules).

2.1. INTERNATIONAL CHAMBER OF COMMERCE (ICC) RULES OF 2017

i. Joinder and Intervention

The 1998 ICC Rules of Arbitration did not contain any provision dealing exclusively with joinder of additional parties; rather it provides that the Court has to decide whether a third party may join the arbitration proceedings.²⁶ However, while the ICC revised its Rules of Arbitration in 2012, the joinder of additional parties was vividly incorporated²⁷ and the status quo was preserved by the currently working ICC rules of arbitration of 2017. Thus, Article 7(1) of the ICC rule of 2017 provides, “*A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party (the “Request for Joinder”) to the Secretariat.*”

From this provision, we can surmise that a third party, who is not yet a part of the arbitration proceeding can join pending arbitral proceeding up on "Request for Joinder" to the Secretariat. For the joinder of third parties to realize, there should be an arbitration agreement that binds all parties to that effect.²⁸ The other important point is the approach taken by ICC rules in ensuring equal treatment of the parties in the appointment of arbitration in case of joinder of the parties. Concerning these issues, the joinder of parties after the appointment or

²⁶International Chambers of Commerce Arbitral Rule of 1998 (hereafter called ICC rule of 1998), Art .4 (6).

²⁷International Chambers of Commerce Arbitral Rule of 2012 (hereafter called ICC rule of 2012), Art.7.

²⁸International Chambers of Commerce Arbitral Rule of 2017 (hereafter called ICC rule of 2017), Art.6(4) (i)

confirmation, arbitrator is not allowed under ICC rule.²⁹ The main reason for not to allow the joinder of additional parties after confirmation or appointment of an arbitrator is that it is impractical to allow newly joinder parties to participate in the appointment of arbitrators. So, if the request for joinder is made before the confirmation or appointment of arbitrators, the newly added parties to arbitration can participate equally with the original parties in the appointment of arbitrators.

In a nutshell, the request for joinder may be submitted at any time after the filing of the request for arbitration, but not later than the confirmation or appointment of an arbitrator and joinder request most likely will be denied, unless the parties have explicitly regulated the matter in their contracts.

ii. Consolidation

If we ponder through, the arbitral rules of ICC 2017, it conferred the ICC court with the power to consolidate two or more ICC arbitrations into a single arbitration upon the request of the party wishing to do so subject to the condition provided thereof. Thus, Article 10 of the 2017 ICC Rules provides:

The court may, at the request of a party, consolidate two or more arbitrations pending under the rules into a single arbitration, where;

- a) The parties have agreed to consolidate; or
- b) All of the claims in the arbitrations are made under more than one arbitration agreements, the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the courts find the arbitration agreements to be compatible.

From the aforementioned articles, we can imagine three main scenarios where consolidation may be ordered by the ICC court upon the request of the parties willing to do so. The first scenario in which two pending arbitration proceedings may consolidate is the party's agreement. Accordingly, if there is an explicit agreement of the parties in all of the arbitrations to be consolidated, the court may order consolidation. The second phenomenon when consolidation may be ordered under ICC arbitral rule is the case in which all of the claims are made under the same arbitration agreement. Here, we have to be conscious of the fact that arbitration may be consolidated even if the parties are not the same. This broader scope

²⁹ ICC rule of 2017, Art. 7(1)

adopted was praised when it was introduced by ICC rule of 2012 as though it is more useful and appropriate preference since there is no reason to exclude consolidation from the very beginning where all of the parties are bound by the same arbitration agreement to arbitrate albeit they may not be party to both arbitrations.³⁰ On the other hand, it can be the case that claims made in these arbitrations are unrelated to each other. In such cases, the court shall consider case by case basis whether to consolidate the cases that have been brought under the same arbitration agreement in the events when there are no links between the claims, then the court can refuse to consolidate the arbitrations.³¹

Again, in a case when claims in arbitration are made under more than one arbitration agreements, the court may order consolidation of parallel proceeding provided that the concerned arbitration is between the same parties, based on the same legal relationship, subject to the compatibility of the concerned arbitration agreement.³² In such instances, arbitration agreements may be considered incompatible in cases where factors such as place of arbitration, the language of arbitration, the mechanism for selecting arbitrators or the number of arbitrators are different.³³

Generally, irrespective of how multi-party arbitral proceedings are initiated, and the particular provision applicable to such proceedings, the consent of all parties will be necessary for the consolidation of the arbitral proceeding. That means the provisions of the ICC Rules on these matters can be applied only if the parties have given their consent to be involved in multi-party proceedings.

iii. Appointment of Arbitrators

As far as the appointments of arbitrators are concerned, under ICC rules, discretion is given to the parties to address the issues of appointment of arbitrators via agreement irrespective of the nature of multi-party arbitration. In case when the parties failed to agree on the appointment of arbitrators, ICC rules have default provisions.

³⁰ Prof. Dr. H.E. Ercumenterdem, Consolidation of Arbitration in ICC Arbitration, October 2014, available at www.erdem-Erdem.av.tr/publications/law-post/consolidation-in-ICC-arbitration/ <last accessed on April 14,2018>.

³¹*Ibid*

³²*Ibid*

³³*Ibid*.

Accordingly, if there is a multiparty dispute that is supposed to undertake by three arbitrators, a joint appointment is recognized as a remedy.³⁴ In line with this, regarding bipolar multiparty arbitration, a joint appointment is recognized as a basic mechanism for appointment of arbitrators since parties can normally be classified into claimant and respondent camps. Again, in case of multipolar disputes, it is elusive to think for the joint appointment of arbitrators because of the divergent interests of the parties, and in such scenarios discretion is given to the ICC court to appoint each member of the arbitral tribunal.³⁵

Not only this, to solve the conundrum of appointment of arbitrators that may emanates from joinder of additional parties, ICC rules provided that, if the dispute is to be decided by three arbitrators, the additional party may nominate jointly with either the claimant(s) or with the respondent(s), as applicable. However, under Article 7(1), no party may be joined after the confirmation or appointment of an arbitrator, unless all parties, including the additional party, agree and the secretariat has the express power to set a time limit for the requesting joinder of an additional party. So presumably, a party would not be joined after an arbitrator has been appointed and thus would not be deprived of its opportunity to participate in the selection process.

Generally, under ICC arbitral rules, as far as the issues of appointment of arbitrators are concerned, the joint appointment of arbitrators is recognized, and in the absence of joint appointment, the ICC court is endowed with the discretion to appoint arbitrators.

2.2. LONDON COURT OF INTERNATIONAL ARBITRATION (LCIA) ARBITRAL RULES OF 2014

i. Joinder and Intervention.

In similar fashion with other institutional rules, LCIA arbitral rules have provided for the joinder of third parties subject to certain conditions. Thus, according to Article 22 (1) (viii)

The Arbitral Tribunal shall have the power, upon the application of any party only after giving the parties a reasonable opportunity to state their views...(viii) to allow one or more third persons to be joined in the arbitration as a party provided any such third person and the applicant party

³⁴ICC rule of 2017, Art.12 (6).

³⁵ICC rule of 2017, Art. 12(8)

have consented to such joinder in writing following the Commencement Date or (if earlier) in the Arbitration Agreement; and thereafter to make a single final award, or separate awards, in respect of all parties so implicated in the arbitration.³⁶

Based on this article, if either the claimant or respondent is applied to the arbitral tribunal so that third parties be added to the arbitration at hand, the arbitral tribunal may allow joinder of such third parties if and only if any such third person and the applicant party have consented to such joinder in writing following the Commencement Date or (if earlier) in the Arbitration Agreement. The written consent of all parties to arbitration, including the third person, is a precondition for determining the joinder of third parties. What makes things difficult is the possibility of consent after the commencement of the arbitration. Because addressing the issues of appointments of arbitrators in a way that the compromise equal participation of the parties would inevitably impractical.

If we look at the experiences of ICC, joinder of the third party is not allowed after the appointment or confirmation of arbitrators (after the commencement of arbitration). That means, under both ICC and LCIA arbitral rules, for joinder of third parties to be allowed the existence of an arbitration agreement that binds all parties is mandatory. Coming to the issues of intervention, LCIA is silent on whether third parties whose interests affected may be allowed to intervene in pending arbitration or not. That means, it is unclear as to whether a third party could intervene over the objections of all parties signatory to the arbitration or not.

Generally, under LCIA arbitral rules intervention is not regulated while joinder of the third party is allowed subject to the written consent of all parties, including the third person, though the possibility of consent after the commencement of arbitration is subject to bargaining.

ii. Consolidation

In a similar fashion with that of another arbitral institution, LCIA has also made its efforts in doing away with the complexities of consolidation of the arbitral proceeding.

Thus, Article 22.1 of LCIA 2014 provides,

³⁶London Court of International Arbitration Rules of 2014 (hereafter called LCIA rule of 2014), Art.22 (1).

(1) The Arbitral Tribunal shall have the power, upon the application of any party;

ix) to order, with the approval of LCIA court, the consolidation of arbitral awards with one or more other arbitration into a single arbitration subject to the LCIA rules where all parties to the arbitration to be consolidated agrees in writing.

x) to order, with the approval of LCIA court, the consolidation of the arbitration with one or more other arbitration subject to LCIA rules commenced under the same arbitration agreement or any compatible arbitration agreements between the same disputing parties, provided that no arbitral tribunal has yet been formed by LCIA court for such other arbitrations or if already formed, that such kinds of are composed of the same arbitrators:³⁷

Based on the aforementioned article, under LCIA the arbitral tribunal can consolidate arbitrations in two situations. The first scenario whereby the arbitral tribunal is empowered to consolidate two pending arbitral proceedings is where all parties to the arbitrations to be consolidated so agrees in writing, subject to the approval of the LCIA Court. The second scenario whereby the arbitral tribunal is allowed to consolidate two pending arbitrations involves a series of alternative grounds subject to the approval of the LCIA Court. Accordingly, if arbitrations to be consolidated is commenced under the same arbitration agreement provided no arbitral tribunal has yet been formed by the LCIA Court for such other arbitration(s) or, if already formed, that such tribunal (s) is (are) composed of the same arbitrators, the arbitral tribunal can order consolidation of those arbitrations upon the approval of LCIA Court. Grounds for consolidation of arbitral proceeding under both ICC and LCIA arbitral rule are similar since the consent of all parties are mandatory.

iii. Appointment of Arbitrators

As far as the appointment of arbitrators is concerned LCIA has vividly provided the mechanisms for appointments of arbitrators. This can be identified from Article 8 of the LCIA Rules. This Article provides:

8.1 Where the Arbitration Agreement entitles each party howsoever to nominate an arbitrator, the parties to the dispute number more than two and

³⁷*Ibid.*

such parties have not all agreed in writing that the disputant parties represent collectively two separate “sides” for the formation of the Arbitral Tribunal (as claimants on one side and respondents on the other side, each side nominating a single arbitrator), the LCIA Court shall appoint the Arbitral Tribunal without regard to any party's entitlement or nomination.

8.2 In such circumstances, the Arbitration Agreement shall be treated for all purposes as a written agreement by the parties for appointment of Arbitral Tribunal by the LCIA Court.³⁸

From the aforementioned articles, where parties agreed in writing for the joint appointment of arbitrators whereby disputant parties represent collectively two separate sides; claimants on one side and respondents on the other side, each side nominating a single arbitrator, the appointment would be undertaken per agreement of the parties. However, in default of the written agreement of the parties to that effect, the LCIA Court is given full discretion to appoint the Arbitral Tribunal without regard to any party's entitlement or nomination.

In a nutshell, under LCIA arbitral rules, in default of the written agreements of the parties as to the appointments of arbitrators, LCIA Court is given the discretion to appoint the Arbitral Tribunal even irrespective of any party's entitlement or nomination.

2.3. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) ARBITRAL RULES OF 2010

i. Joinder and Intervention

In a similar fashion with other arbitral rules, UNCITRAL rules have also clearly incorporated the issue of the addition of parties under its ambit. Thus, Article 17(5) of the 2010 UNCITRAL Arbitration Rules provides;

The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single

³⁸LCIA rule of 2014, Art 8.

award or several awards in respect of all parties so involved in the arbitration”.³⁹

Based on this article, the arbitral tribunal may at the request of any party allow joinder of a third party, provided that the concerned third party is a party to the arbitration agreement, and only after giving all parties, including the person or persons to be joined, the opportunity to be heard. Here, in the first instance, the third parties should be a party to the arbitration agreement, and all parties should be allowed to have their say on joinder of third parties and consented to it. Indeed, if the concerned third party is a party to the arbitration agreement and all parties to the arbitration have no objection to the addition of third parties, the arbitral tribunal can validly order joinder of third parties. But, the tribunal may not permit joinder, if it is prejudicial to other parties. When we come to the issues of intervention, UNCITRAL arbitral rule is silent. That means, the issue as to whether the third parties whose interest affected are allowed to intervene in pending arbitration or not is left unanswered.

ii. Consolidation

In recent years, because of the challenges associated with consolidating two pending arbitrations most of the arbitration institutions have sought to remedy the situation by introducing procedures for consolidation. The ICC and LCIA arbitral rules that allow consolidation of the arbitral proceeding subject to the consent of all parties to arbitration can be mentioned as an example. Compared to ICC and LCIA arbitral rules, UNCITRAL arbitral rules do not contain any provisions on the consolidation of multiple arbitrations with or without the consent of the parties. Accordingly, under the UNCITRAL Arbitration Rules, consolidation without the consent of the parties is a challenge.

iii. Appointment of Arbitrators

With the revision of its arbitration rules in 2010, UNCITRAL has answered the question as to the appointment of arbitrators in multi-party disputes. Thus, Article 10 (1) UNCITRAL rules of 2010 provides that “*where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent unless the*

³⁹United Nations Commission on International Trade Law Rule of 2010 (hereafter called UNCITRAL rule of 2010), Art.17 (5).

parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator".⁴⁰

From this Article, one can easily surmise that saving for otherwise agreement of the parties on appointment of arbitrators, in a case where parties can normally be classified into claimants' side or respondents' side, the multiple parties as claimant or as respondent will jointly appoint an arbitrator. This could be a proper solution for the issues of appointment of arbitrators in case of bipolar multi-party arbitration. Again, the UNCITRAL rule of 2010 was incorporated mechanism for appointment of arbitrators in case of multipolar multi-party arbitration. Thus, Article 10(3) of the UNCITRAL rules provides as follows:

In the event of any failure to constitute the arbitral tribunal under these rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and in doing so may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

From the aforementioned articles, in situations where parties failed to agree on the joint appointment of arbitrators, implied mechanism for appointment of arbitrator (s) is provided. Accordingly, when the parties may not be classified into defendant and claimant camps, the appointing authority is empowered to constitute arbitral and it may even revoke an appointment already made.

III. EXPERIENCES OF SOME NATIONAL JURISDICTIONS ON MULTI-PARTY ARBITRATION

Owing to the central principles of arbitration like the party's autonomy and consensual nature of arbitration, national laws have been refrained from addressing multi-party disputes. Yet, some states have introduced statutory multi-party arbitration provisions allowing for consolidation of parallel arbitrations, and intervention or joinder of third parties into pending arbitration under certain conditions.⁴¹ Accordingly, the solutions that forwarded to multi-party arbitration under the Netherlands, Hong Kong and South Africa will be explored below.

⁴⁰UNCITRAL rule of 2010, Art. 10.

⁴¹Dimitar Pondev, *supra* note 2, P121.

3.1. NETHERLAND

i. Consolidation

Alike that of the international arbitral rules, the complexities of multiparty arbitration were also the concerns of national legislation to which the Netherlands is not an exception. In the Netherlands, from the elements of multiparty arbitration, consolidation of parallel arbitral proceedings was first introduced in 1986 with the adoption of Article 1046 of the Netherlands Code of Civil Procedure. This Article was included, as a result of lobbying exerted by the domestic construction industry, and it was envisaged that arbitral proceedings on related issues, which were pending before different tribunals in the Netherlands, could be consolidated under an order issued by the President of the Amsterdam District Court following a party's request.⁴²

On May 27, 2014, the Dutch Parliament was adopted certain amendments in the Netherlands Code of Civil Procedure whereby Article 1046 was also refined.⁴³ These amendments were entered into force on 1 January 2015. Thus, the new Article 1046 provides:

- (1) In respect of arbitral proceedings pending in the Netherlands, a party may request that a third person designated to that end by the parties order consolidation with other arbitral proceedings pending within or outside the Netherlands, unless the parties have agreed otherwise. In the absence of a third person designated to that end by the parties, the provisional relief judge of the district court of Amsterdam may be requested to order consolidation of arbitral proceedings pending in the Netherlands with other arbitral proceedings pending in the Netherlands, unless the parties have agreed otherwise.
- (2) Consolidation may be ordered insofar as it does not cause unreasonable delay in the pending proceedings, also because of the stage they have reached, and the two arbitral proceedings are so closely connected that good administration of justice renders it expedient to hear and determine

⁴² Jacomijn Van Haersolte-Van Hof, *Consolidation under the English Arbitration Act 1996: A View from the Netherlands*, *Arbitration International* (1997), Vol.13 (4), P 427.

⁴³ For an English Translation of the Netherlands Code of Civil Procedure in its part concerning Arbitration, See <http://www.nai-nl.org/downloads/Text%20Dutch%20Code%20Civil%20Procedure.pdf> <Accessed on April 27, 2018>.

them together to avoid the risk of irreconcilable decisions resulting from separate proceeding.

From this provision, one can easily summarize that consolidation under Netherlands law has opt-out character, and provision on the consolidation will apply by default unless the parties agree to exclude its application. That means, unless the parties to arbitration envisaged or agreed to exclude the power of the court or third parties to order multi-party arbitration, the courts have the discretion to order multi-party arbitration. The courts may even order compulsory multi-party arbitration. Such kinds of the order tend to undermine the central principles like party autonomy and consensual nature of the arbitration. Not only this, the arbitral awards that rendered through such avenues are susceptible to the refusal of recognition and enforcement of arbitral awards based on Article V (1) (d) of the New York Convention. What makes such kinds of phenomena worse is that those parties who are not cognizant of the existing rules of multiparty arbitration would inevitably take a risk of compulsory consolidation.

ii. Joinder, Intervention, and Appointments of Arbitrators.

Unlike consolidation, the position taken by the Netherlands Code of Civil Procedure on joinder and intervention is subjected to the opt-in requirement for its implementation.

Thus, Article 1045, effective as of 1 January 2015 provides:

- (1) Unless the parties have agreed otherwise, at the written request of a third person who has an interest in the arbitral proceedings, the arbitral tribunal may allow that person to join or intervene in the proceedings, provided that the same arbitration agreement as between the original parties applies or enters into force between the parties and the third person.

From this provision, one can easily surmise that the implementation of the power of the arbitral tribunal to order joinder and intervention of the third party is subject to the existence of an arbitration agreement that binds all parties. That means, though the arbitral tribunal is conferred the power to order joinder and intervention by law, this provision can only be effective if multiparty disputes are previously envisaged by the parties, by the same arbitration agreements that bind all parties. However, the final discretion to allow joinder lies with the arbitral tribunal

irrespective of whether all concerned parties have consented. Unlike that of other elements of multiparty arbitration, the Netherlands Code of Civil Procedure as amended in 2014, has no separate provision for appointment of arbitrators in case of multiparty disputes.

Generally, the position of Netherlands law concerning multi-party arbitration is a hybrid of opted out and opted in approaches. 'opt-in' approach is adopted in relation to joinder and intervention by making multi-party arbitration contingent on the existence of a single arbitration agreement binding all parties while 'opt-out' approach, which applies by default, unless the parties agree otherwise was adopted in a case of consolidation *albeit* its consonance with the consensual nature of arbitration is subject of bargaining.

3.2. HONG KONG

i. Consolidation

Though its primary objective is not for regulating multi-party arbitration, Hong Kong was one of the first countries that introduced a consolidation provision in its arbitration act.⁴⁴ Consolidation was first dealt with under the 1982 Arbitration Ordinance, which gave courts a wide discretion to issue regulatory orders concerning related arbitrations, including consolidation orders.⁴⁵ Under that clause, the consent of the parties did not explicitly be considered, and therefore it was possible to apply that clause to multi-party disputes stemming from contracts containing arbitration agreements is silent on consolidation.⁴⁶ Furthermore, the then-effective legislation did not explicitly regulate whether the parties had the right to opt-out of the consolidation clause or it is silent whether parties are competent to exclude the tribunals from ordering consolidation via arbitration agreement. The application of this clause was considered in the well-known *Shuion* cases⁴⁷. The cases were concerned with a domestic project for the construction of two 34-store buildings. *Shuion* was the main contractor on the site who had entered into numerous subcontracts. One of them was with Schindler

⁴⁴Hong Kong Arbitration Ordinance 1982 of, available <http://oelawhk.lib.hku.hk/items/show/3286>, at Chapter 341, Section 6B <accessed on April 28, 2018>.

⁴⁵*Ibid*

⁴⁶Geoffrey MA and Neil Kaplan, Arbitration in Hong Kong: A Practical Guide (SWEET & MAXWELL ASIA, 2003), Pp 259–260.

⁴⁷ Re *Shuion* Construction C. Ltd. v. Schindler Lifts (HK) Ltd. [1986], Hong Kong Law Report 1177.

Lifts. It concerned the supply and installation of lifts and escalators for the project. The subcontract contained a pay-when-paid clause, which allowed progress payments to the subcontractor once the main contractor had been paid by the employer. There were no major differences between the main contract and the subcontract as they were drafted with reference to each other. Both contracts contained arbitration clauses.

Accordingly, the issues of consolidation came into an effect concerning the arbitration between *Shuion* and the employer on one hand, and arbitration between *Shuion* and Dah Chong Hong Limited – one of its other subcontractors, on the other hand. An architect was appointed as the sole arbitrator in both proceedings. *Shuion* once again requested consolidation, and the Supreme Court finally allowed the formal consolidation of the proceedings.⁴⁸ From this, we can easily understand that there was no common consent from all parties to consolidation, and the opposition of the parties to consolidation did not even preclude the Supreme Court from granting the regulatory orders under the then-effective Hong Kong legislation.

The legislative approach to consolidation in Hong Kong was changed; when a new Arbitration Ordinance came into force on 1 June 2011.⁴⁹ One of the purposes of the new Act was to diminish the powers of state courts to intervene in the proceedings.⁵⁰ Accordingly, the previous approach to the issues of consolidation was also changed. Thus, the new Ordinance under Article 2 of Schedule 2 provides;

- (1) If, concerning 2 or more arbitral proceedings, it appears to the Court –
 - (a) that a common question of law or fact arises in both or all of them;
 - (b) that the rights to the relief claimed in those arbitral proceedings are in respect of or arise out of the same transaction or series of transactions; or
 - (c) that for any other reason it is desirable to make an order under this section, the Court may, on the application of any party to those arbitral proceedings

⁴⁸ Dimitar Pondev, *supra* note 2, P135

⁴⁹ *Ibid.*

⁵⁰ Kun Fan, *The New Arbitration Ordinance in Hong Kong*, *Journal of International Arbitration* (2012), Vol. 29, No.6, Pp.715–717.

(d) order those arbitral proceedings – (i) to be consolidated on such terms as it thinks just; or (ii) to be heard at the same time or one immediately after another; or

(e) Order any of those arbitral proceedings to be stayed until after the determination of any of them.

Although this article almost literally repeats the wording of the clause under the previous Ordinance, substantial changes of approach to consolidation were undertaken. Under the previous Ordinance, the courts were given absolute discretion to order consolidation and even parties were not blessed to exclude the power of the court by opting out via arbitration agreement. However, under the new Ordinance, unlike the previous clause that applied by default, the new clause can come into play only if the parties opt for its application. Hence, under the current arbitration law of Hong Kong, the courts are allowed to order multiparty arbitration (consolidation) subject to the opt-in requirement. That means, the power of the court to order consolidation has come into effect only where parties opt for its application under the arbitration agreement.

ii. Joinder, Intervention, and Appointments of Arbitrators.

Hong Kong indeed was one of the first countries that introduced a consolidation provision in its arbitration act.⁵¹ Consolidation was first dealt with under the 1982 Arbitration Ordinance, which gave courts a wide discretion to issue regulatory orders concerning related arbitrations, including consolidation orders.⁵² Yet, incorporation of consolidation to the arbitration ordinance of 1985 has been incidental as its primary objective was not regulating multiparty disputes. Accordingly, the other elements of multiparty arbitration like joinder, intervention, and appointments of arbitrators are not regulated under Hong Kong national legislation. That means, the question as to whether the third parties whose interest affected is allowed to join or intervene in pending arbitration, and the conundrums underlying appointments of arbitrators are left unanswered. Though an arbitral tribunal does not have the power to make an order against someone who is not a party to the arbitration agreement a third party can intervene or join arbitration by

⁵¹Hong Kong Arbitration Ordinance of 1982, available <http://oelawhk.lib.hku.hk/items/show/3286>, at Chapter 341, Section 6B <accessed on April 28, 2018>.

⁵²*Ibid*

consent when all parties to an arbitration agreed to that effect since arbitration is a product of agreement.

3.3. SOUTH AFRICA

i. Consolidation

Arbitration proceedings in South Africa are relatively flexible, and a procedural framework is usually agreed upon between the parties with the Act underpinning and supporting the agreed-upon arbitration process.⁵³ With the coming into operation of the International Arbitration Act ("Act") on 20 December 2017, South Africa was dedicated to the statute governing international arbitration for the first time.⁵⁴ The Act has brought South Africa into line with international best practice on international arbitration.⁵⁵ One of the best practices that is incorporated by the new Arbitration Act No 15 of 2017 is the issues of multiparty arbitration. Accordingly, the new arbitration act No 15 of 2017 has incorporated provisions for the regulation of the complexities of multi-party disputes. Thus, article 10 of Arbitration Act 15 of 2017 provides;

(1) The parties to an arbitration agreement may agree that—

(a) The arbitral proceedings may be consolidated with other arbitral proceedings; or

(b) Concurrent hearings are held, on such terms as may be agreed.

(2) The arbitral tribunal may not order the consolidation of the arbitral proceedings or concurrent hearings unless the parties agree.

Based on this provision, consolidation is not possible unless the agreement provides for it. This is because the power to consolidate, either by the arbitrator or court, would frustrate the parties' choice or agreement to arbitrate their matter with their chosen arbitrator or tribunal. In circumstances where related contracts between different parties give rise to similar issues, consolidation of arbitral proceedings can be agreed to.⁵⁶

⁵³ Gerhard Rudolph and Michelle Wright, Global Arbitration Review, May 2017, available at <https://globalarbitrationreview.com/jurisdiction/1000205/south-africa> <accessed on May 28, 2018>

⁵⁴ Pierre Burger, *supra* note 19.

⁵⁵ *Ibid.*

⁵⁶ P. Ramsden, *The Law of Arbitration, South African and International Arbitration* (1st ed, 2009), P 124.

ii. Joinder, Intervention, and Appointments of the Arbitrator

Concerning the joinder or intervention and appointments of arbitration in multiparty disputes, both the South African new Arbitration Act No 15 of 2017 and the UNCITRAL model law that is incorporated by the new Arbitration Act to South Africa's arbitration regime is silent. That means, South Africa's national legislation has not made any provision concerning the participation of third parties in pending arbitration through joinder and intervention. However, nothing precludes the extension of the arbitration agreement to third parties if the remaining party to the arbitration agreement consent and the third party submits to the jurisdiction of the arbitration tribunal.

In other words, concerning joinder or intervention, a third party will be bound by an arbitration agreement and becomes an additional party to the arbitration agreement, where it seeks to participate and submits to the arbitral process, and all parties to the agreement have consented in other words or in circumstances where a third party replaces a party to the arbitration agreement.⁵⁷ In circumstances where there is a failure on all parties to agree to third party involvement, there can be no joinder or binding effect on a third party as this frustrates the consensual nature of an arbitration agreement. Moreover, a court may allow a third party to intervene, on good cause shown, and order that the dispute that is the subject of the arbitration proceedings be determined by way of interpleader proceedings in civil court.⁵⁸

Generally, as far as the issues of multiparty arbitration are concerned, when we compare the position of the national legislation that covered within the ambits of this paper, the Netherland national legislation is comprehensive enough in coping up with the complexities of multiparty arbitration. Accordingly, the 'opt-in' approach is adopted in relation to joinder and intervention by making multi-party arbitration contingent on the existence of a single arbitration agreement binding all parties while the 'opt-out' approach, which applies by default, unless the parties agree otherwise was adopted in the case of consolidation. Contrary to this, Hong Kong national legislation has not regulated the issues of joinder and intervention of third parties. The only element of multiparty arbitration that regulated by Hong Kong national legislation is consolidation. The same is true for South Africa.

⁵⁷ Gerhard Rudolph and Michelle Wright, *supra* note 53

⁵⁸ *Ibid.*

Whatever it may be, their experiences show how much the world communities are tilting towards the regulation of multiparty arbitration.

IV. THE PLACE OF MULTIPARTY COMMERCIAL ARBITRATION UNDER ETHIOPIAN ARBITRATION LAW

Multiparty arbitration is the arbitration of any disputes that involve several parties. In doing away with the complexities of multi-party arbitration instruments like joinder, intervention, and consolidation of parallel proceedings have been widely recognized under the international legal framework. Those widely used instruments may also lead to multi-party issues or increase multipartism since third parties are allowed to either join or intervene or two parallel proceedings are to be merged.

Until recently, international commercial arbitration has typically been a bilateral process involving two parties, claimant, and respondent, who had submitted their disputes to arbitration in the context of bilateral transactions, such as sales of goods or transport contracts.⁵⁹ However, the development of modern international trade has led to complex transactions, involving multi-party contracts or several interlinked contracts. That is often the case in construction contracts, banking transactions, or reinsurance contracts.⁶⁰ A logical consequence of the increase of complex commercial relationships is that disputes have also become complex and multi-party.⁶¹ This is not an exception for Ethiopia. The issues of joinder, intervention, and consolidation of parallel proceedings are not guests for Ethiopia. The Ethiopian courts are authorized to order joinder, intervention, and consolidation of parallel proceedings subject to the condition provided thereof.⁶² Yet, since arbitration emanates from arbitration agreement that makes it consensual, law of privity of contract, and confidentiality of arbitral proceeding, courts are at the liberty to order courts are not at liberty to joinder, intervention, and consolidation of arbitral proceeding though Article 317 (1) of Ethiopian Civil Procedure Code provides for the similarity of procedures in civil litigation and arbitration.

⁵⁹Carrion, Manuel Gomez, *Joinder of Third Parties; New Institutional Development*, Arbitration International (2015), Vol. 31, No.3, Pp 479-506.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶²Civil Procedure Code of the Empire of Ethiopia, Decree No. 52/1965, NEGARIT GAZETA, 25th Year, No.3 (hereafter called Civil Procedure Code), Arts.11, 41,& 43

The Ethiopian arbitration law is not clear on the issues of multi-party arbitration. Though the Ethiopian arbitration law is not clear on the issues of multi-party arbitration; we cannot escape the conundrums of multi-party arbitration. This attributes to the fact that multi-party arbitration is not something that merely confined to the existence of governing legal framework; rather it is a result of the interdependency of business transaction and globalization whereby the involvement of several parties in a single project is becoming mandatory. Accordingly, multiparty disputes would inevitably come into an effect as Ethiopia may not be excluded from globalization.

Having this in mind, let me get down to the place of multi-party arbitration under Ethiopian arbitration. Accordingly, if we ponder through the existing legal framework for commercial arbitration in Ethiopia, the issues of multi-party arbitration have not given enough attention. The main governing regime on the substantive issues concerning commercial arbitration, Ethiopian civil code, is ignorant of multi-party disputes. Accordingly, the complex issues underlying multi-party disputes like the appointment of arbitrators and jurisdictional dilemma are left unanswered.

What makes the Ethiopian Civil Code unique is its failure to address the issues of appointments of arbitrators in case of bipolar multi-party disputes which were not even paid attention under the international legal framework as though it is a conundrum in multi-party disputes. If we look at the experiences of other countries and institutional arbitral rules, the issues of a bipolar multi-party dispute are supposed to be solved by the normal principles of bilateral arbitration as parties can normally be divided into claimant and respondent camp, and it was not even the concern of the world community. The concern of the world community is more of multipolar multiparty disputes than bipolar multiparty disputes. This can be easily understood from international experiences on multiparty disputes. Accordingly, where parties to the arbitration have no opposing interests or the parties within each camp have identical interests, it will *de facto* constitute a normal bilateral arbitration.⁶³

Coming back to Ethiopia, since the existing arbitration law is not comprehensive enough on the issues of bilateral arbitration the presumption that the normal principles of bilateral arbitration solve the issue of bipolar multiparty dispute is

⁶³ Olivier Caprasse, *supra* note 4.

quite cumbersome. For instance, the Ethiopian arbitration law has not recognized the issues of joint appointment of arbitrators, which was supposed to be used in bipolar disputes. This may attribute to the fact that the existing arbitration law of Ethiopia is grounded on the traditional perception of arbitration, as though it is two parties set up. Hence, the issues of appointments of arbitrators in both multipolar and bipolar multiparty disputes are left unanswered under the Ethiopian Civil Code. To this effect, in a case when parties to arbitration failed to address the problem of appointment of arbitrators parties in their arbitration agreement, we have no default rules that fill the gap that left by the parties.

Another problem is related to the issues of jurisdictional dilemma. The issue as to whether or not the Court or arbitral tribunal is a competent organ to order joinder, intervention, and consolidation of arbitral proceedings is a puzzling question. One may be argued as though an arbitral tribunal is competent to order multi-party arbitration based on the principles of "competency competency" as enshrined under Article 3330(2) of the Civil Code. The doctrine of competency allows the arbitral tribunal to decide its competence. The principle of competency is an accepted principle and a common feature of the international legal framework. It authorizes the arbitral tribunal to determine their jurisdiction even in default of authorization of the parties.⁶⁴ In Ethiopia, the arbitral tribunal is allowed to determine its jurisdiction, subject to the authorization of the parties. Hence, unless the parties to arbitration authorize the arbitral tribunal to determine their competency, the issues of the jurisdictional dilemma would remain intact.

Yet, Ethiopian Civil Code may be praised for recognizing the principles of party autonomy.⁶⁵ Once arbitration agreement is made by fulfilling all validity requirements of general contract and any special requirements provided under the special provision governing arbitration, it has a binding effect since the contract is a law for the contracting parties.⁶⁶ In line with this, parties are at liberty to determine the nature of arbitration, the seat of arbitration, the procedure to be used in disposing of the issues and the like via arbitration agreement. So, nothing prohibits contracting parties to provide for multi-party arbitration through their arbitration agreement. Accordingly, in case of complex commercial transactions,

⁶⁴ See UNCITRAL model law, art.16 (1), UNCITRAL rules, Art.21 (2), ICC rule, Art. 6(2), UK Arbitration Act of 1996, section 30 (1), etc.

⁶⁵ Civil Code of the Empire of Ethiopia, Proclamation No 165/1960, NEGARIT GAZETA, 19th Year No. 2, 5th May 1960, Addis Ababa (here after Civil Code), Art.3331.

⁶⁶ Civil Code, Proc. No.165/1960, P. 1731.

to escape the peril of parallel proceeding like the conflicting decision, high cost and time, the parties are at liberty to provide for the possibility of joinder, intervention, and consolidation of parallel proceeding via arbitration agreement.

However, the problem is what would be the fate of such kinds of multi-party arbitration where the contracting parties failed to address every issue by an arbitration agreement? If the contracting parties addressed every complexity of multi-party arbitration via arbitration agreement, everything would be undertaken in line with their agreement. To this effect, since Ethiopian arbitration law is not clear on the issues of multi-party arbitration, the default rule which ought to fill the gaps when the contracting parties failed to address certain issues via arbitration agreement is quite absurd.

The other important legal framework that governs commercial arbitration in Ethiopia is the Civil Procedure Code.⁶⁷ Unlike the Civil Code that governs the substantive issues of arbitration; civil procedure code is there to govern the procedural aspects of commercial arbitration. As far as the issues of multi-party arbitration are concerned, no provision answers whether multi-party arbitration is allowed or not. Accordingly, the complex issues underlying multi-party disputes like whether the third party or non-signatories allowed to join or intervene in the pending arbitral proceeding, consolidation of parallel proceeding, and the issues of a jurisdictional dilemma as to the competent authority that orders multi-party arbitration are not clear.

However, some writers have been trying to answer the question of multi-party arbitration via interpretation of Article 3345 (1) of the Civil Code and 317 (1) Civil Procedure Code. Prominently, if we go through the works of Sirak Akalu and Michael Teshome on the issues of arbitration in Ethiopia, they argued that joinder, intervention, and consolidation of parallel arbitral proceedings are allowed under the Ethiopian arbitration law.⁶⁸ They argued that, since the first paragraph of Art 317 of CPC requires a degree of similarity between the procedure in arbitration and court proceedings, the arbitral tribunal should bound by the procedures in civil litigation. Accordingly, since joinder, intervention, and the consolidation of parallel proceedings are allowed in civil litigation, the same should be held in the

⁶⁷ Civil Procedure Code, Arts.315-319, 244(2) (g), 350-357 & 456-461.

⁶⁸ Sirak Akalu and Michael Teshome, *Supra* note 23. See also Michael Teshome, Arbitration, and Interests of Third Parties, available at <http://www.abysinnialaw.com/blog-posts/itemlist/category/1156-arbitration> <accessed on Feb 12, 2018>.

case of arbitration proceedings.⁶⁹ The provision of the Civil Procedure Code that talks about the similarity of procedure in civil litigation and arbitration is amenable to interpretation. But, it is worth plausible to strictly interpret that concerned provision, in a way that compromises procedural fairness and the very purpose of the arbitration.

It is a truism that the main reason that makes arbitration preferable over litigation is the informality of the proceeding that in turn makes it less costly and time-saving. Hence, it is paradoxical to claim for the strict adherence of the arbitral tribunal to the procedure of civil litigation and extends procedural similarity up to joinder, intervention, and consolidation of the arbitral proceeding. Besides, the decision of the cassation courts in the case between Mr.Gebru Kore v.Mr. Amadeyiu Federeche can also be taken as a ground stone in testing the validity of the aforementioned argument. In its ruling, the Federal Supreme Court Cassation Division affirmed that the arbitral tribunal does not need to follow a rigid court procedure or nonflexible litigation style.⁷⁰ Not only this, mindful of the merits of avoiding any interpretation that would disturb the relative informality of the arbitral proceedings, scholars have long considered Art 317 as imposing a soft requirement of similarity designed only to ensure procedural fairness in arbitration.⁷¹ Under the Ethiopian legal system, the interpretation of a law by the Federal Supreme Court rendered by the Cassation Division with not less than five judges shall be binding on federal as well as the regional council at all levels.⁷² Accordingly, from the decision of the cassation courts in the case between Mr.Gebru Kore Vs. Mr. Amadeyiu, it is clear that the similarity of procedures in civil litigation and arbitration as envisaged under Article 317(1) of the Civil Procedure Code is only to ensure fairness in arbitration. To this effect, it is difficult to conclude that joinder, intervention, and consolidation of parallel proceeding is allowed in the arbitration.

Furthermore, even once we recognize that the procedural similarity extends up to joinder, intervention, and consolidation; various issues may be left unanswered. In the first instance, arbitration is born out of arbitration agreements that bound only

⁶⁹See Civil Procedure Code, Art.41, 43, &11. These provisions vehemently provide for the issues of joinder, intervention, and consolidation of suits in civil litigation, respectively.

⁷⁰Mr.Gebrukore Vs. Mr.Amadeyiu Federeche, Federal Supreme Court, Cassation Bench, Files No 52942/2003

⁷¹ Hailegabriel G. Feyissa, *supra* note 21, P 305

⁷²Federal Courts Proclamation Reamendment Proclamation, Proclamation No. 454/2005, Fed. Negarit Gazeta 11thYear No. 42, Addis Abab 14th June.2005, Art.2 (4).

the contracting parties. Accordingly, the central principles of arbitration like party autonomy, confidentiality, and consensual nature should not be undermined. In line with this, allowing third parties to join, or intervene in the bilateral arbitration between two parties, and consolidation of two parallel proceedings tends to undermine the aforementioned central principles of arbitration. Yet if the parties to arbitration have known that there might be concerned parties that would likely to intervene or join the arbitration in the future and then provide arbitration clause that also accommodates the potential interests of third party or agree mutually on arbitration rules by recognizing third parties whose legal or contractual interests may be substantially affected and inserted the same to arbitration agreement, the question of multiparty disputes may not be an issue. The problem is what if parties to arbitration failed to do so? In such cases default rules that fill the gaps that may be left by the parties are mandatory. Hence, compromising the issues of the advantages of multi-party arbitration on one hand, and central principles of arbitration, on the other hand, is quite problematic in default of specific legal rules.

The other problem is related to how the issues of appointment of the arbitrator are to be addressed, especially when consolidation, joinder, or intervention is allowed after the confirmation or appointment of an arbitrator. It is the central principles of Ethiopian arbitration law that all parties should be given equal opportunities in the appointment of arbitrators, and failures to do so will inevitably affect the very essence of arbitration.⁷³ Besides, the appointment of the arbitrator made without due consideration to what is provided under an arbitration agreement is one of the grounds for refusal of recognition and enforcement of an arbitral award under Ethiopian law.⁷⁴ If we allowed the third parties to intervene or join the pending arbitral proceeding that is already commenced upon the appointment of arbitrators by the original parties to arbitration, what would be the fate of the new third parties that allowed to intervene or join to enjoy equal opportunities in appointments of arbitrators? Here, if all parties to arbitration are not given equal opportunities in appointments of arbitration, it will affect the very essence of arbitration. On the other hand, if we allow third parties who are not parties to arbitration to appoint arbitrators, the appointment of the arbitrator that is made without due consideration to what is provided under an arbitration agreement would lead to refusal of recognition and enforcement of an arbitral award. Hence, default rules that compromise the aforementioned dilemma are mandatory.

⁷³Civil Procedure Code, Art.356(a)

⁷⁴*Ibid.*

However, though the Ethiopian Civil Procedure Code is not comprehensive and clear enough on the issues of multiparty arbitration, the decision of the arbitral tribunal that may be rendered based on multi-party arbitration, provided by the parties via arbitration agreement would inevitably be recognized and enforced based on the provision of the Civil Procedure Code.

V. MULTIPARTY COMMERCIAL ARBITRATION FROM THE PERSPECTIVE OF ADDIS ABABA CHAMBER OF COMMERCE AND SECTORIAL ASSOCIATIONS ARBITRAL RULES

Addis Ababa Chamber of Commerce and Sectorial Association has been established, by the General Notice Number 90/1947, in April 1947 as an autonomous, non-governmental, non-political and non-profit organization to act on behalf of its members.⁷⁵ The Chamber Re-establishment Proclamation No. 341/2003 further provides the legal framework for the establishment of Chambers of Commerce and Sectorial Associations.⁷⁶ Since its establishment, it has served its members in promoting socio-economic development and commercial relations with the rest of the world. Its major objective is to promote the establishment of conditions in which business in general and in Addis Ababa, in particular can prosper.

Today, Addis Ababa Chamber of Commerce and Sectorial Associations is one of the most dynamic civil society organizations representing business in Ethiopia and is active in matters of importance extending beyond its regional geographic base.⁷⁷ AACCSA has its own arbitration rules.⁷⁸ The rule has got articles that are put into different categories. Accordingly, the components of the subject matter that is regulated by the arbitral rule are comprised of initiation of the proceeding,

⁷⁵ Addis Ababa Chamber of Commerce and Sectorial Association, Brief Profile, 2016 available at <http://addis-chamber.com/wp-content/uploads/2016/08/AACCSA-Profile.pdf> <accessed on April 18/2018>

⁷⁶ *Ibid*

⁷⁷ Tefera Eshetu and Mulugeta Getu, Addis Ababa Chamber of Commerce and Sectorial Association Arbitration Center, February 2012 available at <https://www.abyssinialaw.com/study-on-line/item/339-addis-ababa-chamber-commerce-and-sectorial-association-arbitration-center>, <accessed on April 19, 2018>

⁷⁸ AACCSA, Revised arbitral rules of November 25, 2008, available at [http://www.addischamber.com/file/ARBITRATION/20131126/ArbitrationRules%20\(English%20Version\).pdf](http://www.addischamber.com/file/ARBITRATION/20131126/ArbitrationRules%20(English%20Version).pdf) <accessed on April 25, 2018>.

composition of the tribunal, the arbitral proceeding, nature of the award, and the cost of arbitration.

Compared to international arbitral rules, AACCSA's institutional rule has not paid enough attention to the issues of multi-party arbitration. In coping up with the emerging conundrum of multi-party arbitration, various international institutional rules have been amended their arbitral rules and incorporated the issues of multi-party arbitration. We may not compare AACCSA with international arbitral rules like ICC, LCIA and UNCITRAL arbitral institutions that have currently amended their arbitral rules and comprehensively incorporated the issues of multi-party arbitration since AACCSA has not made substantial amendments yet. However, this does not mean that AACCSA is ignorant of the issues of multi-party arbitration. Accordingly, if we ponder through the arbitral rules of AACCSA, certain provisions affirm the recognition of multi-party arbitration by AACCSA arbitral rules. Prominently, Art. 10(3) of AACCSA arbitral rules that provide the issues of appointment of arbitrators in the case of multi-party arbitration can be mentioned as an example. Thus, Art.10 (3) of AACCSA arbitral rules provides,

Where there are multiple parties on either side, conversely the dispute is to be decided by more than one arbitrator, the multiple claimants, jointly, and the multiple respondents jointly shall nominate an equal number of arbitrators. If either side fails to make such a joint nomination, the Institute shall make the nomination for that side. If the circumstances so warrant, the Institute may nominate the entire arbitral tribunal, unless otherwise agreed by the parties.

From this provision, one can easily surmise that the applicability of this provision is confined to bipolar multi-party disputes whereby parties can normally be classified into claimant and respondent camps. Accordingly, in a case where the disputes that submitted to the arbitral tribunal involves several parties and the dispute is to be decided by more than one arbitrator, the claimant camps jointly, and the respondent camps jointly, will nominate an equal number of arbitrators provided that those parties normally classified into claimant and respondent side. Here, one may wonder as to how the umpire arbitrators may be appointed if the dispute is supposed to be decided by three arbitrators or the number of arbitrators required is odd. The remedy is provided by Article 10(5) of arbitral rules. Thus, Art. 10(5) provides,

Where the dispute is to be decided by three or more arbitrators, the even number of arbitrators shall nominate the presiding arbitrator within 20 days of their appointment. If the Arbitrators failed, the Institute shall nominate the presiding arbitrator...

From this provision, we can easily understand that co-arbitrators jointly appointed have given the discretion to appoint the presiding arbitrators. If the co-arbitrators failed to do so within the time limit, the power will swiftly shift to the Institute itself. Though the arbitral rules of AACCSA try to address the issues of appointment of arbitrators in case of bipolar multi-party disputes, no attention is given for the appointment of arbitrators in a case of multipolar disputes where the parties to arbitration cannot normally be classified into claimant and respondent sides because of their divergent interest

The other point that is worth discussion under AACCSA arbitral rule is whether joinder, intervention and consolidation of arbitral proceedings are allowed or not in case of a multiparty dispute. As far as the issues of joinder, intervention, and consolidation of arbitral proceedings are concerned, the arbitral rule is silent. It is a truism that AACCSA was launched to promote the establishment of conditions in which business in general, and in Addis Ababa in particular, can prosper.⁷⁹ However, the failures of AACCSA to inculcate the currently emerging complexities of international commercial transactions would inevitably defeat its objective. The experiences of the world community assure that multiparty arbitration has a lot of contribution in facilitating international commercial transactions as it provides an avenue for resolving currently emerging multiparty disputes that emanate from the complexities of business transactions that attributes to globalization.

VI. THE NEED TO FACILITATE FULL IMPLEMENTATION OF MULTI-PARTY ARBITRATION IN ETHIOPIA

Currently, the importance of multi-party arbitration in international trade is substantially increasing. The justification of interest in it and its ever-growing significance is grounded on legal-political, normative, and practical reasons.⁸⁰The

⁷⁹ AACCSA, Brief Profile, 2016, *supra* note 75.

⁸⁰D. Janićijević, *Multiparty Arbitration: Problems and Latest Developments*, Law and Politics (2015), Vol.13, No.1, P 34

legal-political reasons are attributed to the impact of the realm of the modern legal communication, which becomes more intense and more complex, with more transactions involving multiple participants, from which disputes eligible for resolution by the means of arbitration may derive.⁸¹ The complexity of commercial transactions that emanates from the interdependency of international commerce and globalization is becoming the norm of international trade. Hence, to facilitate international trade, multiparty arbitration is of the essence.

Coming to Ethiopia, whether we like or not, the complexities of commercial transactions that necessitate multi-party arbitration would inevitably come into an effect. In the first instance, since Ethiopia cannot exclude itself from globalization, the possibility of complex commercial transactions is high. Because, globalization brings arbitration to countries and regions of the world where it was previously unknown and which are often ill-prepared for its arrival, causing gaps that urgently need filling.

Furthermore, the construction industry in which the complexities of commercial transaction is common, are substantially increasing in Ethiopia. Ethiopia's formal construction sector comprises indigenous and indigenized firms, as well as numerous major foreign civil engineering and construction companies.⁸² Hence, in addition to the complex nature of construction project where, apart from a client and a main contractor—an engineer and/or an architect, several subcontractors, suppliers, financiers, and possibly additional commercial parties are involved, the participation of major foreign civil engineering and construction companies in construction industry of Ethiopia would inevitably increase the possibility of multiparty disputes. Construction is a huge part of Ethiopia's economic recovery and the building sector has seen double-digit growth, expanding by 37% annually, and is ushering in a new phase of development for the country.⁸³ Besides, according to the 2017 edition of African Economic Outlook, construction activities in Ethiopia accounted for 15.9% of GDP at current prices during the 2015/16 fiscal year.⁸⁴ Hence, facilitating the full implementation of multiparty arbitration in the

⁸¹*Ibid.*

⁸²The Construction Industry in Ethiopia 2018; available at <https://www.businesswire.com/news/home/20180222006605/en/Construction-Industry-Ethiopia-2018-Key-Drivers>, < accessed on June 8, 2018>

⁸³Ethiopian Construction Industry Update 2016, available at <http://www.buildingshows.com/market-insights/Insights/Ethiopia-construction-industry-update/801816843> <accessed on June 8, 2018>

⁸⁴The Construction Industry in Ethiopia, *Supra* note 82.

construction industry has something to do with the overall development of the count

Again, Ethiopia is just on the eve of privatizing some big companies that were initially dominated by the government as a short term solution to the country's economic challenges. The privatization of those big companies would inevitably increase the possibility of multi-party disputes. Hence, in default of a dispute settlement mechanism that best fits the currently circumventing the complexities of a commercial transaction, it is elusive to guess for the participation of both private domestic and foreign companies.

The other reason for ever-growing interest and justification of multi-party arbitration is that arbitration procedural rules, contained in national regulations, international conventions or autonomous arbitral sources, in most cases do not provide directly applicable solutions for majority of problems, which may occur in the course of resolving complex or multiparty disputes (normative reasons); most of the issues addressed only indirectly, through the extensive interpretation or the accordant application of the provisions, tailored exclusively for the ordinary, bipolar, two-party procedural scheme of the arbitration proceedings.⁸⁵ The same holds for Ethiopia since the Ethiopian arbitration law and arbitral rule of AACCSA are silent on this concern. What makes things worse is that, unlike other jurisdiction where the extensive interpretation or the accordant application of the provisions, tailored exclusively for the ordinary, bipolar, two-party procedural scheme of the arbitration proceeding was plausible, in our context the existing arbitration law is not even comprehensive enough and it is quite cumbersome to extend its applicability to multi-party arbitration via interpretation.

In a nutshell, owing to the aforementioned reasons, facilitating the proper implementation of multi party arbitration has something to do with ensuring certainty and predictability underlying international trade.

VII. CONCLUSION AND RECOMMENDATION

7.1. CONCLUSION

Due to the complexities as well as the advantages attached to it, the issues of multi-party arbitration have been attracting the attention of world communities.

⁸⁵ D. Janićijević, *supra* note 80

Since, the Dutco case of 1992, the world communities are geared towards the regulation of multi-party arbitration via amendments of institutional arbitral rules and national arbitration laws. The dominant approach taken in almost all cases is that multi-party arbitration is subjected to the consent of all parties, and in the absence of unanimous agreement of the parties, both the tribunal and local courts will not be authorized to order consolidation or joinder or intervention. This approach conforms to what is prescribed by the New York Convention and more generally for the parties' procedural autonomy in international arbitration.

When we come to the context of Ethiopia, the current legal regulation of commercial arbitrations, as contained in the Civil Code and Civil Procedure Code is not clear on the issues of appointments of arbitrators, joinder, intervention, and consolidation of arbitral proceeding in multiparty disputes. Though the Ethiopian arbitration law is not clear on the issues of multiparty arbitration some scholars have been arguing as though multi-party arbitration is allowed under the Civil Procedure Code, citing the procedural similarity in case of arbitration and civil litigation as enshrined under Article 317(1) of the Civil Procedure Code. The procedural similarity in case of civil litigation and arbitration could by no means extend up to joinder, intervention, and consolidation of arbitral proceedings. First, from the cassation decision on the case between Mr. Gebru Kore vs. Mr. Amadeyiu, it is clear that the similarity of procedures in civil litigation and arbitration as envisaged under Article 317 (1) of the CPC is only to ensure fairness in arbitration.

Furthermore, even once we recognize that the procedural similarity extends up to joinder, intervention, and consolidation of arbitral proceedings, how we compromise the central principles of arbitration like party autonomy, confidentiality, and consensual nature of arbitration in default of clear laws? Again, it is the central principles of Ethiopian arbitration law that all parties should be given equal opportunities in the appointment of arbitrators, and failures to do so will inevitably affect the very essence of arbitration. If we allowed the third parties to intervene or join the pending arbitral proceeding that already commenced upon the appointment of arbitrators by the original parties to arbitration, what would be the fate of the new third parties that allowed to intervene or join to enjoy equal opportunities in appointments of arbitrators? Here, if all parties to arbitration are not given equal opportunities in appointments of arbitration, it will affect the very essence of arbitration. On the other hand, if we allow third parties who are not parties to arbitration to appoint arbitrators, the appointment of the arbitrator that

made without due consideration to what is provided under an arbitration agreement would lead to refusal of recognition and enforcement of an arbitral award. Hence, the default rules that compromise the aforementioned dilemma are mandatory.

In a similar fashion with the arbitration law of Ethiopia, AACCSA arbitral rules have not paid proper attention to the issues of multi-party arbitration. There is no clear provision that talks about the issues of joinder, intervention, and consolidation of the arbitral proceeding. The only provision that is directly related to multi-party arbitration is Article 10 (3) of AACCSA arbitral rule that vehemently provides for the appointments of arbitrators in multi-party arbitration. The inculcation of this provision could be taken as an indication of the possibility of multi-party arbitration under arbitral rules. Not only this, the Institute had its guidelines on how arbitral submission of multiparty arbitration ought to make. Hence, though AACCSA has recognized the possibilities for multiparty arbitration, it has not paid proper attention to regulating the same.

In a nutshell, despite the substantial importance of multi-party arbitration in international trade and inclination of the world communities towards its regulation, multi-party arbitration has not given necessary space in our context.

7.2. RECOMMENDATION

Based on the aforementioned analysis and conclusion, the following are my recommendation for Ethiopian legislator, AACCSA, and business communities respectively:

➤ For Ethiopian government and AACCSA

- ❖ It is recommendable for the Ethiopian legislator and AACCSA to rethink and amends its arbitration rules and incorporate provision for multi-party arbitration subject to the consent of all concerned parties in arbitration. Accordingly, the following provision should be added to the Ethiopian arbitration regime either via inculcation to the existing arbitration law or separate legislation, and AACCSA arbitration rules

i. Joinder and intervention of third parties

Unless the parties have agreed otherwise, at the written request of a third person who has an interest in the arbitral proceedings, the arbitral tribunal may allow that person to join or intervene in the proceedings, provided that the same arbitration agreement as between the original parties apply or enters into force between the parties and the third person provided that the request for joinder or intervention is made before the confirmation or appointment of arbitrators.

ii. Consolidation.

The arbitral tribunal may, at the request of a party, consolidate two or more arbitrations pending under the rules into a single arbitration, where;

- a) The parties have agreed to consolidate; or
- b) All of the claims in the arbitrations are made under more than one arbitration agreements, the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the courts find the arbitration agreements to be compatible.

iii. Appointment of arbitrators

- a) Where there are multiple parties as a claimant or as respondent unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or respondent, shall appoint an arbitrator.
- b) In events of any failure to constitute an arbitral tribunal, the court or the appointing shall at the request of any party, constitute an arbitral tribunal and, in doing so may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

➤ For the business community

- ❖ Until the Ethiopian government amended its arbitration law with proper inculcation of multi-party issues, my recommendation for the business community is to get their arbitration agreement right. Because, though it may not be a panacea, it is of great help.
- ❖ Finally, since the business community may not have any information as to the possibility of joinder, intervention, and consolidation arbitral proceeding via

arbitration agreement, I recommend for any concerned stakeholders to work on awareness creation so that the business community resorts to an arbitration agreement to share from the chalice of multiparty arbitration.

BU'A-QABEESSUMMAA MANA MURTII HAWAASUMMAA GANDAA MOOTUMMAA NAANNOO OROMIYAA*

*Azzanee Indaalammaa***

*Abdii Tasfaa****

The 1995 Constitution of Federal Democratic Republic of Ethiopia and Oromia National Regional State Revised Constitution of 2001, in addition to formal courts, advocate for establishment or recognition of religious and customary court by the legislative organ of respective governments. Besides, the Revised Constitution of Oromia National Regional State established social court as one of government office at kebele level. However, not only the establishments, but also effectiveness of these institutions in delivering judicial service is paramount important towards the realization of right to access to justice. This article is limited to assessing the effectiveness of Social Courts of Oromia National Regional State in delivering judicial service to local residents in the region. Towards the assessment, the objectives, rules, and principles under Proclamation for Re-establishment and Determination of Power of Social Courts No.128/2007 are used as parameters. The study is undertaken using both qualitative and quantitative methodology. About 108 in-depth interview is conducted with clients, staff of administration office from kebele to regional level, chairperson of presiding judges of social courts, president of courts from District to Supreme Court of Oromia, house speaker of council of people of Woreda, and staff of Office of Caffee Oromia. Besides, about 102 judges from kebele social court to Supreme Court of Oromia are addressed via questionnaire. And 79 files of social courts but collected from all levels of courts in the region are closely analyzed. All data collected and analyzed briefly claim a finding that in delivering judicial service kebele social courts are ineffective in its actual estate, but good in handling the conflict of residents in customary ways in a method not portrayed under the Proclamation mentioned above. Hence, the article suggests for replacement or re-adjustment of kebele social court with other courts having customary nature both in procedure and substantive.

Key words: *Social Courts, Effectiveness, Oromia National Regional State, Proclamation, Constitution, Right to Access to Justice, Judicial Service*

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1. SEENSA WALIIGALAA

Mirga namooma sadarkaa addunyaattis ta'e sadarkaa biyyoolessaatti haguuggii seeraa argatan keessaa tokko mirga haqa argachuu ti. Mirgi haqa argachuu rakkina haqaa lammiilee mudatuuf mirga dhaabbilee haqaa biratti furmaata argachuu dandeessisu dha.¹ Mirkanaa'uun mirga kanaa nama dhuunfaa tokkoof gaaffii haqaa kan deebisuu malu yoo ta'es nageenyaa fi tasgabbii hawaasaa mirkaneessuu keessattis shoora olaanaa kan qabu dha. Akka waliigalaatti, mirgi haqa argachuu sochii hawaasummaa jiraattoota kan hoogganuu fi rakkoo haqaa jiraattoota mudateef sirna itti furmaata argatan kan dandeessisu yoo ta'u, keessattuu hiyyeessotaa fi miidhamtootaaf, haala madaalawaa, bu'a-qabeessaa fi itti gaafatamummaa hordofsiisuun kan mirgi ittiin eegamu, waldhabbiin ittiin furamuu fi aangoon ittiin too'atamu dha.²

Labsiin Waliigala Mirga Dhala Namaa (*Universal Declaration of Human Right*) mirga haqa argachuu ilaalchisee 'Namni kamiyyuu mirga heera ykn seera biyya isaatiin beekkamtii argate yeroo sarbame mana murtii biyyattiitti seerummaa gaafachuu ni danda'a'³ jechuun tumamee jira. Bifuma wal fakkaatuun, Waliigalteen Mirga Siiviilii fi Siyaasaa Idila-addunyaa (*International Convention on Civil and Political Rights*) namni mirgi ykn bilisummaan isaa sarbame qaama aangoo qabu biratti miidhaa isa irra gaheef beenyaa gaafachuu fi argachuuf mirga akka qabu ni kaa'a.⁴ Sadarkaa Ardii Afrikaattis, Chaartariin Mirga Namaa fi Uummata Afrikaa (*African Charter on Human and Peoples Rights*) kwt. 7 jalatti, namni kamiyyuu sarbamuu mirgaa fi bilisummaa isaa ilaalchisee mana murtii biyyattii keessatti komii isaa dhageessifachuuf mirga akka qabu ibsa. Sadarkaa biyyaa fi Naannoo Oromiyaattis walduraa duubaan Heerri Mootummaa Rippabilika Dimookraatawaa Federaalawaa Itoophiyaa (kana booda, HMRDFI jedhamuun ibsama) fi Heerri Mootummaa Naannoo Oromiyaa (kana booda,

¹American Bar Association, Access to Justice Assessment Tool, A Guide to Analyzing Access to Justice for Civil Society Organizations, 2012, F1

²Access by people, in particular from poor and disadvantaged groups to fair, effective and accountable mechanisms for the protection of rights, control of abuse of power and resolution of conflicts. This includes the ability of people to seek and obtain a remedy through formal and informal justice systems, and the ability to seek and exercise influence on law-making and law-implementing processes and institutions, available at: Article up on A Framework for Strengthening Access to Justice in Indonesia, FF1-2

³Labsii Waliigala Mirga Dhala Namaa (UDHR), Kwt. 8

⁴Waliigaltee Mirga Siiviilii fi Siyaasaa Idila-addunyaa (ICCPR), kew. 2(3) (b) fi Kwt. 14

HMNO jedhamuun ibsama) kwt. 37 jalattis mirga kanaaf beekkamtiin kennameefii jira.

Mirga haqa argachuu lammiilee haala dhaqqabamaa ta'een mirkaneessuuf manneen murtii idileedhaan alatti manneen murtii biroo adeemsa salphaa fi al-idilee hordofuun tajaajila abbaa seerummaa kennan hundeesuun barbaachisaa dha. Heerri MRDFI mana murtii idileetin alatti mana murtii aadaa fi mana murtii amantaatiif beekamtii kan kenne yoo ta'u, Heerri MNO manneen murtii Heera MRDFI'tiin beekamtii argataniin dabalatatti, Mana Murtii Hawaasummaa Gandaa (kana booda, MMHG jedhamuun ibsama) hundeessee jira.⁵ Caffeen Mootummaa Naannoo Oromiyaas aangoo, caaseffamaa fi itti gaafatamummaa MMHG labsiidhaan tumee jira.⁶ Labsiin kunis kaayyoo hundeeffama MMHG yoo ibsu; jiraattota gandaa gidduutti nagaa fi tasgaabbii mirkaneessuun misoomaaf haala mijeessuu, jiraattootni gandaa hubannoo seeraa qaban akka cimuu gochuu fi jiraattootni gandaa dhiyeenyaan tajaajila haqa akka argatan taasisuu akka ta'eetti kaa'eera.⁷

Kaayyoon barruu kanaa, bu'a-qabeessummaa Manneen Murtii Hawaasummaa Gandaa sakatta'uun hanqinaalee jiran adda baasuun jiraattootni gandaa tajaajila haqaa qulqullina qabu haala itti argatan irratti sirna diriiruu malu akeekuu dha. Gaaffilee qorannoon kun bu'uura godhate deebisuuf mala akkamtaa fi hammamtaa walkeessa makuun gaggeeffame. Malli akkamtaa kan filatameef waa'ee bu'a-qabeessummaa tajaajila abbaa seerummaa manneen murtii hawaasummaa gandaa fi hanqinaalee gama kanaan jiran adda baasuuf odeeffannoo bal'aa ta'e hooggantoota waajjiraalee adda addaa ykn abbootii adeemsaa, abbootii seeraa MMHG fi abbootii dhimmaa irraa argachuuf mala sirrii waan ta'eefi. Malli hammamtaa filatamuu kan barbaachiseef bu'a-qabeessummaa MMHG ilaalchisee safartuulee isaan ittiin ibsamuu danda'an bu'uureffachuun sadarkaa maalii irratti akka argamu agarsiisuuf waan fayyaduuf mala qorannoo kanaa ta'ee filatameera.

Muuxannoon biyyoota adda addaa illee sakatta'amaniiru. Muuxannoon biyyoota biroo kunis kan sakatta'aman sirna fooyya'aa naannoo keenyaaf fayyadu adda baafachuuf kan gargaaran waan ta'eefi. Haaluma kanaan, muuxannoon biyyoota akka Naayijeeriyaa, Zaambiyaafi Keeniyaa ilaalamaniiru. Biyyoonni kunis kan filatamaniif dhimmoota xixiqqaa kanneen akka naannoo keenyaatti manneen

⁵Heera Mootummaa Naannoo Oromiyaa, kew. 90

⁶Labsiin MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99

⁷Labsiin MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk. 128/99, kew. 6(1-3)

murtii hawaasummaa gandaatiif kennamee jiru ilaalchisee sirna fakkeenyummaa qabu waan diriirfatani qabaniifi.

Haaluma kanaan, daataan bifa af-gaaffii baay'inaan 108 (dhibba tokkoo fi saddeet), bar-gaaffii baay'inaan 102 (dhibba tokkoo fi lama) fi galmee 79 (torbaatamii sagal) sakatta'uun qaamolee adda addaa irraa funaanameera. Daataan bifa af-gaaffiitiin funaaname bu'a-qabeessummaa MMHG beekuu fi hanqinaalee gama kanaan jiran adda baasuuf kan fayyade dha. Daataa bifa bar-gaaffiitiin funaanuun kan filatameef adda durummaan safartuulee bu'a-qabeessummaa tajaajila abbaa seerummaatti gargaaramuun sadarkaa manni murtii hawaasummaa gandaa irratti argamu agarsiisuuf waan gargaaruufi. Galmeen abbootii seeraa mana murtii hawaasummaa gandaatiin murtaa'anii jiranii fi galmeeleen ol'iiyannoon manneen murtii idileetti murtii argatanii jiran ykn ilaalamaa jiran sakatta'amaniiru. Galmeelee kana sakatta'uun haala hojimaata MMHG beekuu fi rakkoolee gama kanaan jiranis adda baasuuf kan fayyade dha. Daataan qaamolee adda addaa haala garaa garaatiin funaanaman kunis mala akkamtaa fi hammamtaa bu'uureffachuun bu'uura gaaffii qorannoo deebisuu danda'uun xiinxalamanii jiru.

Bu'uuruma kanaan waajjiraalee sadarkaa Naannoo, Godina, Aanaa fi Gandoota adda addaa irraa daataan funaanamaniiru. Sadarkaa naannootti Mana Murtii Waliigala Oromiyaa irraa daataan bifa af-gaaffiitiin funaanameera. Dabalataanis, galmeen ol'iiyannoon MMWO dhaqe sakatta'ameera. Sadarkaa Godinaatti Mana Murtii Olaanaa, Waajjira Bulchiinsa Godinaa irraa daataan funaanameera. Akkasumas, galmeen ol'iiyannoon Mana Murtii Olaanaa dhaqee jiru kan ilaalameera. Haala naannoo Oromiyaa bakka bu'uu danda'uun kallattii hundumaa irraa (Giddugala, Lixa, Baha, Kaabaa fi Kibba) filatamaniiru.⁸

Sadarkaa Aanaatti, Mana Murtii Aanaa, Waajjira Bulchiinsa Aanaa, Waajjira Af-Yaa'ii Aanaa irraa daataan funaanameera. Dabalataan, Mana Murtii Aanaa irraa galmeen sakatta'ameera. Sadarkaa gandaatti bulchaa gandaa, abbootii seeraa MMHG, abbootii dhimmaa irraa daataan funaanameera. Akkasumas, manneen murtii hawaasummaa gandaa irraa galmeen ilaalameera.

⁸Bu'uuruma kanaan, godinaalee saddeetii fi aanolee isaan jala jiran lama lama irraa daataan funaanameera. Dabalataanis, gandooleen tokko tokko aanolee kana jalaa filatamanii ilaalamaniiru. Godinaaleen kunneenis Godina Shawaa Bahaa, Harargee Bahaa, Arsii Lixaa, Baalee, G/A/N/F, Shawaa Lixaa, Jimmaa fi Shawaa Kaabaa dha.

2. MIRGA HAQA ARGACHUU FI MMHG

2.1. QABIYYEE MIRGA HAQAA ARGACHUU

Mirgi haqa argachuu dhaqqabamummaa haqaatin ala mirkanaa'uu hin danda'u. Mirgi haqa argachuu adeemsa haqa argachuuf deemamu irraa adda bahee kan ilaalamu miti. Mirga haqa argachuu madaaluuf Waldaan Ogeessota Seeraa Ameerikaa qabiyyeewwan mirga haqa argachuu jechuun elemantoota afur kaa'era. Elamantootni kunneenis kanneen armaan gadiiti.

2.2.1. Haguuggii Seeraa

Lammiileen rakkoo haqaa isaan mudateef furmaata akka argataniif haguuggiin seeraa gahaa ta'e jiraachuun murteessaa dha.⁹ Haguuggiin seeraa kun seerota biyyi tokko baaftu hunda (Heera Mootummaa Biyyaattii, Labsiilee, Dambiilee fi Qajeelfamoota dhimma garagaaraa irratti bahaan) hammata. Qabiyyeen seerota kanaas mirgaa fi dirqama lammiilee, aangoo fi caaseeffama mana mootummaa, sochii siyaas-diinagdee hawaasichaa kan hoogganu dha. Dhimmotni kunneen seeraan haguuggii argachuun isaanii amantaa uummatni mirga haqa argachuu irratti qabu kan gabbisuu dha. Sirna haqaa idilee keessatti haguuggiin seeraa mirgaa fi dirqama lammiilee qofa kan tarreessuu otuu hin taane kanarra darbees wal diddaa, wal dhabbi, ykn falmii seerummaan irratti gaafatamuu danda'an (justiciable issue) dhaabbilee haqaa kamitti murtiin kennamuu akka qabu ni kaa'u.

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Gama biraatiin, haguuggiin seeraa kun bu'a qabeessa akka ta'uuf qajeeltoo fi istaandardii iftooma qabuu fi lammiilee gidduutti loogummaa ykn garaagarummaa kan hin uumne ta'uu qaba.¹¹ Hanga danda'aameettis namni beekuu kan danda'uu fi itti gargaaramu ta'uu qaba. Qabiyyeen seerota kunneenii haala salphaa ta'een lammiilee biyyattiin kan hubatamuu fi yeroo mirgi isaanii sarbamee haala salphaa ta'een gaafachuu kan dandeessisu ta'uu qaba.

⁹ABA, Access To Justice Assessment Tool, A Guide To Analyzing Access To Justice For civil Society Organizations, 2012, F.4

¹⁰Akkuma 9^{ffaa}

¹¹Akkuma 10^{ffaa}, F6.

2.2.2. Beekumsa Seeraa

Rakkoo haqaa isaan mudateef furmaata argachuuf lammiileen seerummaa hojii isaanii ykn wanta argachuu otuu qaban dhaban beekuu qabu. Tokkoon tokkoo mirgaa fi dirqama isaanii beekuun garuu irraa hin eegamu.¹² Kana jechuunis mirga haqa argachuu keessatti mirgii fi dirqamni lammiileen qabanii fi yeroo mirgi isaanii sarbamee argameettis haala itti kabachiifatan ilaalchisee seera baasuu qofaa osoo hin taane adeemsa mirga isaanii ittiin kabachiifatan irratti hubannoo qabaachuu kan hammatu dha.

Mirga haqa argachuu mirkaneessuuf mootummaan hawaasa waa'ee mirga isaa beeku uumuu qaba. Sochii hawaas-diinagdee miseensa hawaasaa gidduuttii fi mootummaaf hawaasa gidduu jiru ilaalchisee hawaasni beekuu fi itti fayyadamuu qaba. Hawaasa beekumsa ykn hubannoo seeraa qabu uumuun kan danda'amu barnoota babal'isuu fi odeeffannoo gama idilee fi al-idilee ta'een yoo kenname dha.¹³ Kanaaf, dhimmi kun xiyyeeffannaan irratti hojjatamuu kan gaafatuu dha.

2.2.3. Gorsa Seeraa Argachuu fi Ogeessa Seeraan Bakka Bu'amu

Lammiileen mirgaa fi dirqama isaanii hanga ta'e ni beeku jedhamee yoo yaadame illee adeemsa mirga isaanii ittiin kabachiifatan guutummaatti ni beeku jedhamee hin tilmaamamu. Murtii odeeffannoo irratti hundaa'e murteessuuf lammiileen gorsa ogeessa seeraa irraa argachuun isaaniif mala. Kanarra darbees barbaachisaa yeroo ta'etti ogeessa seeraan bakka bu'amuuf illee haalli carraa itti argatan uumamuufii qaba.¹⁴

Lammileen ogeessa seeraatin bakka bu'amuuf ykn gorsa barbaachisu argachuuf humna diinagdee kan qaban yoo ta'e baasii isaaniitiin tajaajila kana argachuu ni danda'u. Lammiilee humna diinagdee hin qabneef garuu mootummaan carraa kana qopheessuufii qaba. Kunis lammiileen bifa wal qixxummaa qabuun rakkoo haqaa isaan mudateef furmaata akka argatan isaan taasisa.

Mirgi haqa argachuu dandeettii fi naamusa ogeessota kanaa illee kan dabalatu dha. Ogeessi murtii kennu ga'umsaa fi naamusa qabaachuu qaba. Lammiileen seera jiru irratti hundaa'uun qofa furmaata argachuu qabu.

¹² Akkuma 11^{ffaa}, F11

¹³ Akkuma 12^{ffaa}.

¹⁴ Akkuma 13^{ffaa}.

2.2.4. Dhaqqabamummaa Dhaabbilee Haqaa

Lammileen rakkoo haqaa isaan mudate furmaata argachuuf humna dhaabbilee haqaatti gargaaraman qabaachuu qabu.¹⁵ Baasii haqa argachuuf taasifamu qixa lamaan ilaaluun ni danda'ama. Inni tokko baasii kallattii yoo ta'u, inni biraa carraa baasiif saaxilamuuti. Baasiin kallattii kaffaltii abbaa seerummaa, kaffaltii ogeessa seeraaf (abukaatoo) fi bakka namuusni hin jirreetti kaffaltii malaammaltummaati.¹⁶ Kaffaltiin inni biraa immoo mirga haqa argachuuf mirkaneeffachuuf jecha dantaa biroo dhabuu (opportunity cost) dha. Mirga ofii gaafachuuf baasiin bahuu fi yeroon fudhatu mirga murtiidhaan argachuuf deeman caaluu hin qabu.¹⁷

Tajaajila dhaabbileen haqaa kennan argachuuf baasiin guddaa lammiilee eeggata yoo ta'e, murtii dhumaa argachuufis yeroo dheeraa kan fudhatu yoo ta'e, mirgi haqa argachuu mirkanaa'eera jechuun hin danda'amu.

Mirga haqa argachuu mirkaneessuuf dhaabbilee tajaajila abbaa seerummaa itti dhiyeenyaan hawaasaaf kennaan kanneen baasii xiqqeessan hundeessuu fi sirna salphaa ta'e diriirsuun barbaachisaa dha. Namni tokko rakkoo haqaa isa mudate argachuuf fageenya sababawaa hin taane (unreasonable) deemuu hin qabu. Baay'inaa dhimmaa fi ogeessaa wal madaalchisuun illee dhaqqabamummaa haqaa haala guutuu ta'een mirkaneessuuf baay'ee barbaachisaa dha.

2.4. HAGUUGGII SEERAA MMHG'TIIF SADARKAA MOOTUMMAA FEDERAALAA FI NAANNOO OROMIYAATTI KENNAAME

Heerri Mootummaa RDFI kwt. 78 jalatti aangoo abbaa seerummaa mana murtiif kenneera. Caaseeffama mana murtii federaalaas: Mana Murtii Waliigalaa, Mana Murtii Olaanaa fi Mana Murtii Sadarkaa Jalqabaa jechuun kaa'eera. Manneen murtii idileedhaan dabalattis, Manni Maree Bakka Bu'oota Uummataa Mootummaa Federaalaas ta'e, Mootummaa Naannolee Manneen Murtii Amantaa fi Mana Murtii Aadaa hundeessuu ykn beekkamtii kennuufii akka danda'an Heerri kun tumeera.¹⁸ Kanaan alatti, aangoo abbaa seerummaa mana murtii idilee ykn qaama aangoo abbaa seerummaa seeraan kennameef irraa kan fudhatu Manni murtii addaa (special) ykn manni murtii yeroofi(ad-hoc) adeemsa abbaa

¹⁵Akkuma 14^{ffaa}, F20.

¹⁶Akkuma 15^{ffaa}.

¹⁷Akkuma 16^{ffaa}.

¹⁸Heera Mootummaa RDFI, kw. 78 (5)

seerummaa seeraan kaa'ame hin hordofne hundeeffamuu akka hin qabne Heerri kun ifatti tumee jira.¹⁹ Kanarraa kan hubatamu, Heera mootummaa RDFI keessatti MMHGtiif beekamtiin kan hin kennamneef ta'uu isaati.

Gama biraatiin, Heerri MNO caaseeffama waajjiraalee sadarkaa gandaatti hundeeffaman keessaa MMHG isa tokko akka ta'e ni ibsa.²⁰ Kunis kan agarsiisu Heerri MNO kun Heera Mootummaa RDFI irraa bifa adda ta'een MMHG'tiif beekamtii ifa ta'e kan kenne ta'uu isaati. Heerri kun MMHG ofii isaatiin yoo hundeesu mana murtii aadaa fi mana murtii amantaa garuu Caffeen Mootummaa Naannoo Oromiyaa akka hundeesuuf ykn beekamtii akka kennuuf akeeka. Kunis kan agarsiisu manni murtii hawaasummaa gandaa mana murtii aadaa, mana murtii amantaa ykn mana murtii idilee irraa adda ta'uu isaati.

Bakka manni murtii idilee hundaa'ee jiruttii fi bakka manni murtii aadaa ykn amantaa hundeeffamuu danda'utti Heerri MNO MMHG hundeesuun isaa barbaachisummaa MMHG irratti gaaffii kaasuu ni danda'a. Tumaa Heeraa irraa akka hubatamutti, manneen murtii idilee ifatti hundaa'anii jiran Mana Murtii Aanaa, Mana Murtii Olaanaa fi Mana Murtii Waliigalaati.²¹ Manneen murtii kunneen beekamtii fi eegumsa heeraa fi seeraa cimaa kan qabanii fi adeemsa seeraa idilee qofa hordofuudhaan tajaajila abbaa seerummaa kan kennani dha. Aangoon isaanis seera qaama mootummaa seera baaftuudhaan tumamee jiru hiikuudhaan hojiirra oolchuu dha. Akkuma armaan dura kaafnetti manni murtii aadaa ykn manni murtii amantaa wal duraa duubaan seera aadaa fi seera amantaa qofa irratti hundaa'uudhaan tajaajila abbaa seerummaa kan kennani dha. Gama biraatin, MMHG murtii dirqiisaa kennuu kan danda'u seera biyyattii qofa irratti hundaa'uu dha.²² Bu'uura labsii kanaatiin MMHG seera ykn hojimataa aadaa kan gargaaramu wal falmitoota araarsuu qofaafi. Wal falmittootni araaramuuf fedhii hin qabne seera idileetiin tajaajila abbaa seerummaa argachuuf dirqamu. Kunis kan agarsiisu, namootni ogummaa seeraa hin qabne akkaataa seera idilee biyyattiin tajaajila abbaa seerummaa akka kennaa jirani dha. Abbootiin dhimmaa falmii isaanii araaraan hin xumuranee dhimmi isaanii nama ogummaa seeraa hin qabneen murtii akka argatu taasifama jechuu dha. Kanarraa ka'uun gara

¹⁹Heera Mootummaa RDFI, kew. 78 (4)

²⁰Heera Mootummaa Naannoo Oromiyaa, kew. 90

²¹Heera Mootummaa RDFI, kew. 64

²²Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk. 128/99, kew. 24(2) & 33(3)

fuulduraatti manni murtii aadaa yoo hundeeffama ta'e barbaachisummaan MMHG xiqqaachuu akka danda'u tilmaamuun kan danda'amu dha.

Labsii Gurmaa'ina, Aangoo fi Hojii Manneen Murtii Mootummaa Naannoo Oromiyaa Irra Deebiin Murteessuuf Bahe, labsii lak. 216 /2011, kew. 31 jalatti aangoo mana murtii aanaa yoo kaa'u, dhimma hariiroo hawaasaa qabeenyaa socho'u tilmaamni mallaqaa qarshii milliyoona 1 (tokko) hin caalle, qabeenya hin sochoone tilmaamni mallaqaa isaa qarshii miliyoona 3 (sadii) hin caalle ilaalee murteessuuf aangoo qaba jedha. Labsiin dursa aangoo Manneen Murtii Mootummaa Naannoo Oromiyaa Irra Deebiin Hundeeessuuf Bahe Lak. 141/2000 fi yeroo ammaa haqamee jiru kew. 28(1) (c) jalatti manni murtii aanaa dhimmoota MMHG'dhaan ilaalamanii murtii dhumaa argatan ol'iiyannoodhaan fuudhee ilaalu akka danda'u ifatti kaa'ee ture. Labsiin haaraa bahe bifa labsii duraa irraa adda ta'een dhimmoota MMHG'tti ilaalamanii murtii dhumaa argatan manni murtii aanaa ol'iiyannoodhaan ilaaluuf aangoo qabaachuu isaa otuu ifatti hin kaa'iin ragga'eera.

Kana ka'uumsa godhachuudhaan ogeessota gidduu aangoo MMHG akka haqamee jirutti yeroo falmii kaasuu ni mul'ata. Falmii kana qixa seeraa fi heeraan tin yoo ilaalamu labsiin lakk. 128/99 aangoo fi caaseeffama MMHG tumuudhaaf malee MMHG hundeeessuudhaaf kan bahe miti. MMHG jalqabuma Heera MNO'tin hundaa'ee kan jiru waan ta'eef labsiidhaan haqamuu hin danda'u. Dabalataanis, labsii MMHG irra deebiin gurmeessuuf bahe lak. 128/99 keessatti dhimmi gama MMHG tin murtii dhumaa argate mana murtii aanaatti ol'iiyannoodhaan ilaalamuu akka qabu ifatti tumee jira. Tumaan seeraa aangoo oliyyata dhagahuu mana murtii aanaatiif labsii duraa lak. 141/2000 keessatti kennee ture labsii haaraa lakk. 216/2011 keessaa dhabamuun isaa aangoo oliyyannoo dhagahuu mana murtii aanaa hambiseera yaadni jedhu ogeessota muraasa biratti ni dhagahama. Haa ta'u malee, qixa qajeeltoo hiika seeraatiin yoo ilaalamu labsiin lak. 216/2011 kan bahe labsii dhimma wal fakkaataa bulchuuf bahee ture labsii lak. 141/2000 haqee bakka bu'uufi malee labsiin dhimma MMHG bulchuuf lak. 128/99 haquuf miti. Labsiin dhimmoota garagaraa bulchuuf bahaan wal haquu akka hin dandeenye qajeeltoo hiikoo seeraa irraa kan hubatamuu dha. Tumaan seeraa mani murtii aanaa murtii MMHG'tin kenname ol'iiyannoodhaan akka ilaaluuf labsii 128/99 keessatti caqasame labsii 216/2011 keessaa hafuun isaa irra deddeebii /redundancy/ tumaa seeraa kan hanbise yoo ta'e malee bu'aa biraa ni qabaata jedhamee hin yaadamu. Dimshaashatti, Labsiin Aangoofi Hojii Manneen Murtii Mootummaa Naannoo

Oromiyaa Irra Deebiin Murteessuuf Bahe Lak. 216/2011 aangoo ol'iiyannoo mana murtii aanaa dhimmoota MMHG tiin ilaalamanii irratti qabu hambise jechuuf tumaa seeraa caqasamus ta'e hiikoon seeraa sababaawaa fi dhama-qabeessi hin jiraatu.

2.5. AANGOO FI ITTI GAAFATAMUMMAA MMHG MOOTUMMAA NAANNOO OROMIYAA

2.5.1. Aangoo MMHG

Manni Murtii Hawaasummaa Gandaa falmii tokko ofitti fudhatee ilaaluuf himatamaan jiraataa gandichaa ta'uu qaba. Aangoo hundee dubbii qabeenya hin sochoone fi qabeenya biroo tilmaama hanga qarshii 1500.00 (kuma tokkoo fi dhibba shan) kan qabu. Kanaan alattis, ragaalee hojii dhabiinsaa, falmii hidda fi damee mukaa ollaatti darbuu, falmii dallaa fi mana haaromsuu, qabeenya bade lafa ormaa keessa seenanii ilaalu, falmii sarara elektirikaa, ujummoo bishaanii, falmii daandii irra deeman argachuu, falmii mirga abbaa qabeenyummaa gar-malee fayyadamuu, falmii bishaan bokkarratti ka'u fi falmii bishaan lagaarratti ka'u ilaaluuf aangoo qaba.²³

2.5.2. Bilisummaa fi Itti Gaafatamummaa MMHG

Manni Maree Gandaa jiraataa uummata gandichaatiin kallattiin kan filataman ta'ee qaama gandichaa keessatti aangoo olaanaa qabu.²⁴ Muudamni abbootiin seeraa mana murtii hawaasummaa gandaas bulchiinsa gandaatiin dhiyaachuun mana maree kanaan kan ragga'un ta'u. Abbootii seeraa MMHG ta'anii muudamuuf jiraattota gandaa, miseensa mana maree bulchiinsa gandaa fi miseensa mana maree gandaa sagalee qaban kan hin taane, umriin isaanii waggaa 30 ol, fakkeenya gaarii, tattaaffii fi kaka'umsa hojii fi amantaa uummataa kan qaban ta'uu qaba.²⁵

Barri hojii abbaa seeraa MMHG yeroon kan daanga'e dha. Yeroon turtii abbootii seeraas kan Mana Maree Gandaa dha.²⁶ Abbaan seeraa tokko carraa irra deebi'ee filatamuu yoo qabaateyyuu akka qajeeltootti garuu bara hojii mana maree gandaa waliin tokko dha.²⁷ Barri hojii mana maree gandaa waggaa shan (5)²⁸ yoo ta'u

²³Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk. 128/99, kew.(14- 23).

²⁴Heera Mootummaa Naannoo Oromiyaa, kew. 91.

²⁵Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk, kew. 9 (7).

²⁶Heera Mootummaa Naannoo Oromiyaa, kew. 101(3)

²⁷Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk, kew. 9(6).

abbootiin seeraas haalonni osoo yeroon kun hin xumuramiin hojiirraa itti gaggeeffaman jiraachuun akkuma eegametti ta'ee baruma kanaan daanga'u jechuu dha. Barri hojii isaanii yoo xumurame, gandicha gadidhiisanii deemuu, mana maree bulchiinsa gandaa keessatti miseensa ta'ee filatamuu, mana marii gandaa keessatti miseensa sagalee qabu ta'ee filatamuu, iddoo seeraan murtaa'ee alatti dhaddacha gaggeessee yoo argame, guyyaa fi yeroo dhaddachi itti gaggeeffamu ifatti osoo hin ibsiin yoo hafe, ragaa bitaa fi mirgaa gareen walfalmitootaa osoo hin dhaga'iin murtii kan kenne yoo ta'e fi firummaan ykn loogummaan ykn matta'aan kan hojjetu yoo ta'e abbootii seeraa MMHG hojii isaanii irraa gaggeeffamuu ni danda'u.²⁹ Kanaan alatti, abbootiin seeraa MMHG hojii isaanii bilisummaa guutuudhaan hojjechuu akka qaban serri ni kaa'a.³⁰

2.4.3. Adeemsa Falmii fi Kenniinsa Murtii Manneen

Murtii Hawaasummaa Gandaa Hordofan

Abbootiin dhimmaa dursa falmii isaanii araaraan akka xumuran gochuu³¹ fi araari kan hin milkooftne yoo ta'e, ragaa bitaafi mirgaa dhaga'uun bu'uura seeraatiin murtii kennuu akka qabani dha. Araari kan hin danda'amne yoo ta'e qofaa gara falmiitti akka galamu seerichi ni kaa'a. Araaraan akka xumuran carraan osoo hin kennamiin murtiin kennames kufaa akka ta'u dha. Waldhabbiin araaraan kan hin xumuuramne yoo ta'e manni murtii adeemsa akkamii hordofuu akka qabu labsicha keessatti tumamee jira.³²

Araari kan hin milkooftne yoo ta'e falmii dhagahuuf kan beellamu ta'a. Guyyaa falmiitti manni murtii duraan dursee himataa fi himatamaan dhiyaachuu isaanii ni qulqulleeffata. Himatamaan himannaa irratti dhiyaate ni amana yoo ta'e, jechuma amantaa isaa irratti hundaa'uun murtii kenna. Himatamaan ni waakkate yoo ta'e immoo ragaa himataa kan dhaggeeffatu ta'a. Ragaan himatamaa himannaa dhiyaate kan hubachiise yoo ta'e ragaa himatamaa dhaggeeffata. Kanumarratti hundaa'uun murtiin harka caalmaan ni kennama.³³ Qabiyyeen murtiis ijoo himannaa dhiyaate, deebii kenname, jecha ragaa fi seerota murtiin irratti

²⁸Heera Mootummaa Naannoo Oromiyaa, Kew. 94(3).

²⁹Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, Kew. 11

³⁰Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, Kew.7(1, 2)

³¹Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, Kew.24(1)

³²Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, Kew. 25-30 ilaaluun ni danda'ama.

³³Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, Kew. 32

hundaa'uun kenname caqasuu qaba.³⁴ Jecha biraatiin, yeroo araarri hin milkoofnetti MMHG seera adeemsa fi muummeetiin alatti fayyadamuun murtii kennuu akka danda'u labsii kanaan ifatti aangeeffamee hin jiru.

Manni murtii hawaasummaa murtii ofii kenne raawwachiisuuf aangoo qabu. Murtii kana raawwachiisuudhaan walqabatee abbaan murtiin itti murtaa'e raawwachuu otuu danda'uu sababa gahaa hin taaneen raawwachuu yoo dide hanga guyyaa torbaa akka to'annaa jala turu ajajuu danda'u.³⁵ Yeroo caalbaasiin taasifamutti nama gufachiise hanga caalbaasiin xumuramutti guyyaa torbaaf to'annaa jala akka turu ajajuu ni danda'u.

2.6. MUUXANNOO BIYYOOTA BIROO

Muuxannoo biyyoota hambaa kana filachuuf ka'uumsa kan taasifne biyyootni hambaa tajaajila haqaa salphaa fi dhaqqabamaa ta'e sadarkaa gadiitti (grass root level) kennuuf mala akkamii diriirsanii fayyadamaa jiru kan jedhu dha. Manni murtii sadarkaa gadiitti biyyoota kanaan hundeeffame mana murtii aadaa ykn mana murtii dhimma xixiqqaa ilaalaan ta'uu danda'a. Wal fakkeenyi guddaan manneen murtii kunneenii fi MMHG Naannoo Oromiyaa gidduu jiru kaayyoo hundeeffama isaaniiti. Innis, adeemsa salphaa fi dhaqqabamaa bifa mana murtii idilee irraa adda ta'een tajaajila abbaa seerummaa hawaasa sadarkaa gadiitiif kennuu danda'uu dha.

2.6.1. Naayijeeriyaa

Heerri mootummaa Naayijeeriyaa Naannoleen gama Mana Maree Bakka Bu'oota (Assembly) isaaniitiin sadarkaa gadiitti (grassroot) Mana Murtii Gandaa (Area Court) ykn Mana Murtii Aadaa akka hundeesaniif aangoo kennee jira. Manneen murtii kunneen mana murtii jalaa (grassroot court) jedhamu. Sababni isaas, hawaasa sadarkaa gadiitti argamaniif adeemsa walxaxaa hin taaneen tajaajila waan kennaniifi dha.³⁶ Moggaafamni manneen murtii kanaa Kaaba Naayijeeriyatti Mana Murtii Gandaa (Area Court) yoo jedhaman Kibba Naayijeeriyatti Mana Murtii Aadaa ykn Mana Murtii Naannoo (Customary or District Court) jedhamuun beekama.

³⁴Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, Kew. 33

³⁵Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99 ,Kew. 35(5)

³⁶ Udosen Jacob Idem, *The Judiciary and the Role of Customary Courts in Nigeria*, Global Journal of Politics and Law Research (2017), Vol.5, No.6, F34.

Dhimma yakkaa fi siviilii ilaaluuf aangoo kan qaban yoo ta'u, manneen murtii kunneen seeraa ykn aadaa hawaasa keessa jiran irratti hundaa'uun murtii kennu. Yakka ilaalchisee murtiin isaan kennan kan haqaa fi seera biyyattiin walitti bu'u ta'uu hin qabu.

Adeemsa hordofan ilaalchisee manneen murtii Kibba Naayijeriyaatti argaman Seera Deemsa Falmii Yakkaa (Criminal Procedure Act) kan gargaaraman yoo ta'u, kanneen Kaaba Naayijeriyaatti argaman Koodii Deemsa Falmii Yakkaa gargaaramu. Deemsa siivilii ilaalchisee seera mana murtii gandaa fi seera daangaa aangoo isaaniitti bahe gargaaramu. Adeemsa falmii salphaa kan gargaaramanii fi hawaasa biratti dhiyeenyatti kan argaman waan ta'eef, namootni baay'een manneen murtii kanatti ni gargaaramu.³⁷

Naayijeeriyaa keessa naannoo Leegoosii (Lagos) fi Akuwaaa Ibom (Akwa Ibom) fudhachuun hojimaata biyyattii ilaaluun ni danda'ama. Akuwaa Ibom keessatti manni murtichaa mana murtii aadaa ykn gandaa (customary or district court) jedhamuun beekama. Abbootiin seeraa mana murtii kanaa dhiyeessa hogganaa mana murtiidhaan (chief justice) Komishinnii Tajaajila Abbaa Seerummaan muudamu. Abbootiin seeraa kun baay'inaan sadii yoo ta'an walitti qabaan ogeessa seeraa muuxannoo waggaa shanii yoo qabaatu, isaan hafan garuu miseensa hawaasaa ta'aanii namoota barumsa hin qabnes ta'uu danda'u. Walitti qabaan dhaabbataadhaan kan qaxaramu yoo ta'u, kanneen hafan marsaa tokkoof yeroo waggaa sadii qofaaf qaxaramu. Falmiin hanga danda'ametti abbootiin seeraa sadi bakka jiranitti gaggeeffama, yoo tokko hin jirre ta'e garuu walitti qabaan sagalee lama kan qabaatu ta'a. Aangoo yakkaa ilaalchisee manneen murtii kunneen yakkoota adabbiin isaanii niiraa kuma tokko ykn adabbii hidhaa ji'a sadii hin caalle ilaalu ni danda'u. Himannaa yakkaa kana hanga danda'aameetti araaraan (reconciliation) xumuruun beenyaa kaffalchiisuuf yaalu.

Dhimma siiviilii ilaalchisee abbummaa qabeenyaa, abbummaa qabiyyee, lafa namaa qabachuu /occupation/ ilaalchisee beenyaan gaafatamu hanga niira 1000 /kuma tokko/ hin dabarreetti, gatiin isaa niiraa kuma tokko kan hin caalle ta'ee dhimma qabeenyaa dhaalaa fi qabeenya nama du'ee bulchuu ilaaluuf, falmii gaa'ilaa bu'uura aadaatiin hundeeffame, guddisa daa'immanii bu'uura seera

³⁷Akkuma 36^{ffaa}.

aadaatiin ni ilaala. Ol'iyyannoon murtii mana murtii naannoo kanaa gara mana murtii maajistireetiitti fudhatama.³⁸

Naannoo Leegos keessatti manni murtii aadaa Komishinii Tajaajila Abbaa seerummaatiin kan hundeeffamu yoo ta'u abbootii seeraa sadii hanga shanii qabaata. Seerri mana murtii aadaa Leegos namni perezedaantii ykn abbaa seeraa mana murtii aadaa ta'een kan muudamu³⁹ nama amala gaarii fi hawaasa biratti fudhatama qabu, nama galii gahaa qabu, yoo xiqqaatee sadarkaa barnootaa sartifikeetii qabuu fi umuriin isaa 50 fi isaa ol ta'e dha.

Yeroon turtii abbootii seeraa mana murtii Leegos waggaa shaniif yoo ta'u sana boodas irra deebiin muudamuu ni danda'a. Kan hojiirraa gaggeeffamu tajaajila abbaa seerummaa kennuuf sammudhaan yoo dadhaban, hanqina dandeettii, yakkaan balleessaa yoo jedhamaniifi badii naamusaa yoo agarsiisani dha.⁴⁰ Abbootiin seeraa mana murtii aadaa dirqama isaa bahuu keessatti hojii hojjateef ykn akka hojjatamu ajajeef aangoodhaan alattis miira fayyaalummaatiin /in good faith/ aangoon qaba jechuun raawwateef ykn akka raawwatu ajajeef itti hin gaafatamu.⁴¹

Yakkaa ilaalchisee manni murtii kan adabbiin isaanii niira dhibba lama hin caalle ykn hidhaa ji'a tokko hin dabarre ilaaluuf aangoo qaba. Kanaan ala yakkoota ciccimoo ilaaluuf aangoo hin qabu.⁴² Dhimma siiviilii ilaalchisee gatiin isaa hanga niiraa kuma tokko hin caalle ta'ee dhimma qabeenyaa dhaalaa fi qabeenya nama du'ee bulchuu, falmii gaa'ila bu'uura aadaatin hundeeffamee fi guddisa daa'immanii bu'uura seera aadaatin ilaaluuf aangoo qaba.⁴³

2.6.2. Zaambiyaa

Zaambiyaa keessatti dhaqqabamummaa haqaa mirkaneessuuf mana murtii dhimmoota xixiqqaa (Small Claim Court) jechuudhaan hundeeffamee jira. Manneen murtii kunneen kan dhaabbatan hoggansa Mana Murtii Waliigalaa jalatti (Chief Justice) yoo ta'u, dhimmoota hanga qarshii biyyattii kumaa afuriitti

³⁸Akkuma 37^{ffaa},F 46

³⁹The Lagos State Customary Courts Law 2011, Section. 6

⁴⁰ The Lagos State Customary Courts Law 2011, Section 7

⁴¹The Lagos State Customary Courts Law 2011, Section17

⁴²Udosen Jacob Idem, olitti yaadannoo lak.36^{ffaa}, F38

⁴³Chigozie Nwagbara, *The Nature, Types and Jurisdiction of Customary Courts in Thenigeria Legal System*, Journal of Law, Policy and Globalization , Vol.25, 2104, F6

tilmaamamu ilaaluuf aangoo qabu.⁴⁴ Dhimmi kunis jaarsummaan (arbitration) ilaalama. Manni murtii kun abbaa murtii (arbitrator) tokko kan qabu yoo ta'u, abbaa murtii ta'ee muudamuuf yoo xiqqaate muuxannoo hojii seeraa (legal practitioner) waggaa shan qabaachuu qaba. Abbaan seeraa kun kan muudamu Komishinii Tajaajila Abbaa Seerummaa (Judicial Service Commission) heera biyyattiitiin hundaa'eeni. Abbaan murtii kun miindeeffamaa dhaabbataa otuu hin taane hanga hojjateen (allowance) kaffalamaaf.⁴⁵ Ofiisara seeraa Koomishinii Tajaajila Abbaa Seerummaatiin ramadamaniiifis ni qabu.⁴⁶

Falmiin mana murtii kanatti taasifamu dhaddacha banaa, adeemsa salphaa fi alidileetiini.⁴⁷ Wal falmitootni ogeessa seeraa bakka buufachuun falmii gageessuu hin danda'an. Kaayyoon jalqabaa mana murtii kanaa hanga danda'aametti dhimma wal falmitootaaf haqa mirkaneessuun araaraan (reconciliation) xumuru dha. Falmii wal falmitootaa xumuruuf manni murtii seera ragaatiin otuu hin daanga'iin seeraa fi safuu ykn hamilee (equity) gargaaramuu danda'a.⁴⁸ Manni murtii kun adeemsa salphaa kan hordofuu fi murtii kenne ofiif kan raawwachiisu dha. Namni ajaja mana murtii fudhachuu didee fi hojii mana murtichaa gufachiisu dalagee argamee hojii isaa kanaanis balleessa jedhame qarshii dhibba afur ykn hidhaa ji'a ja'aa hin caalle adabamuu ni danda'a.⁴⁹

2.6.3. Keeniyaa

Keeniyaa keessatti dhaqqabamummaa haqaa mirkaneessuuf akkuma biyyoota biroo manni murtii dhimmoota xixiqqaa ilaalan hundeeffameera. Manneen murtii kun kan hundeeffaman hooggansa Mana Murtii Waliigalaatiini.⁵⁰ Abbaan seeraa mana murtii kanaa Koomishinii Tajaajila Abbaa Seerummaan muudamu. Barbaachisaa ta'ee yoo argame, hooggansa olaanaa mana murtii waliigalaatiin muudamuu ni danda'u. Abbaan murtii (adjudicator) mana murtii kanaa Abukaatoo Mana Murtii Ol'aanaa kan ta'ee fi yoo xiqqaate muuxannoo waggaa sadii kan

⁴⁴ Republic of Zambia The Small Claims Courts Act, Art.5.

⁴⁵ Republic of Zambia The Small Claims Courts Act, Arts. 4, 5,7 and 8.

⁴⁶ Republic of Zambia The Small Claims Courts Act, Art. 10

⁴⁷ Republic of Zambia The Small Claims Courts Act , Art.12 (1 &2)

⁴⁸ Republic of Zambia The Small Claims Courts Act, Arts.14 &16,

⁴⁹ Republic of Zambia The Small Claims Courts Act, Art. 25

⁵⁰ The Republic of Kenya Small Claims Court Act Act No. 2 of 2016, Art.4 (2)

qabu ta'uu qaba. Haalli hojii isaa dhaabbataas ykn yeroo (full or part time) ta'uu danda'a.⁵¹

Daangaan aangoo naannoo mana murtii kanaa haala itti fayyadamina hawaasaa giddugaleessa godhachuun hoogganaa waliigalaa mana murtiin (chief justice) murtaa'a. Aangoon mana murtii kanaas dhimma waliigaltee gurgurtaa fi dhiyeessa tajaajilaa ykn meeshaalee, itti gaafatamummaa waliigalteen alaa ykn kaffaltii beenyaa, qabeenya socho'u, beenyaa miidhaa qaamaa, fi falmii wal dandeessisuu (set off) hanga shilingii 200,000.00 ta'u ilaaluuf aangoo qaba.⁵²

Adeemsi falmii haqa uumamaa (natural justice) irratti kan hundaa'e dha. Murtiin kennamu fedhii wal falmitootaa giddu-galeessa taasisuun adeemsa hiikkaa wal diddaa filannoo (alternative dispute resolution) irratti hundaa'a. Falmiin waliigalteedhaan yoo xumuramu, waliigaltichi akka murtii dhumaatti fudhatama. Walfamitootni dhaddachatti argamuu hin dandeenye maatii isaanii bakka buusuu kan danda'an yoo ta'ees, ogeessa seeraatin bakka buusuun hin danda'amu.⁵³

Manneen murtii kanatti falmiin teeleefoonaa ykn vidiyofoonii ykn mala elektirooniksii birootin raawwachuun ni danda'a. Murtii murteessuuf seera ragaaa biyyattiin murtii kennuuf hin dirqamu.⁵⁴ Hanga danda'ametti falmiin mana murtii kanatti gaggeeffamu gaafuma jalqabame xumuramuun murtiin akka kennamu barbaadama. Yoo dadhabame garuu, guyyaa dhaa guyyaatti otuu addaan hin citiin dhimmichi xumuramuu qaba.⁵⁵ Qaamni murtii mana murtii kanatti komii qabu Mana Murtii Olaanaa biyyattiitti oliyyannoo kan fudhatu yoo ta'u murtiin mana murtii kanaan kennamu isa dhumaati.⁵⁶

Namootni mana murtii kana arrabsan ykn doorsisan, ajaja mana murtii kabajuu didan, adeemsa mana murtii gufachiisan adabbii hidhaa guyyaa shanii ykn shillingii kuma dhibba tokko ykn lamaanuu adabuuf manni murtii kun aangoo qaba.⁵⁷

⁵¹The Republic of Kenya Small Claims Court Act Act No. 2 of 2016, Arts.5 & 6

⁵² The Republic of Kenya Small Claims Court Act Act No. 2 of 2016, Arts.11 &12

⁵³The Republic of Kenya Small Claims Court Act Act No. 2 of 2016, Arts. 11 & 20

⁵⁴The Republic of Kenya Small Claims Court Act Act No. 2 of 2016, Arts. 29 & 32.

⁵⁵The Republic of Kenya Small Claims Court Act Act No. 2 of 2016, Art. 34

⁵⁶The Republic of Kenya Small Claims Court Act Act No. 2 of 2016, Art. 38

⁵⁷The Republic of Kenya Small Claims Court Act Act No. 2 of 2016, Art. 47

3. SAKATTA'IINSA BU'A QABEESSUMMAA TAJAAJILA ABBAA SEERUMMAA MANNEEN MURTII HAWAASUMMAA GANDAA NAANNOO OROMIYAA: XIINXALA DAATAA

Seensa

Manni murtii kamiyyuu kan hundeeffamuuf tajaajila abbaa seerummaa kennuuf yoo ta'u, tajaajila isaa kana madaaluuf safartuuleen sadarkaa idila Addunyaattis ta'e sadarkaa biyya keenyaatti haala wal fakkaataan hojiiirra oolan hin jiran. Kana jechuun garuu, bu'a-qabeessummaa tajaajila abbaa seerummaa madaaluun hin danda'amu jechuu miti. Biyyootni addunyaa safartuulee garagaaraa baasuun tajaajila abbaa seerummaa biyya isaanii ni madaalu.

Sadarkaa biyya keenyaatti safartuun tajaajila abbaa seerummaa mana murtii madaaluuf qophaa'ee hin jiru. Safartuuleen kunneen qofaatti adda bahaanii hin kaa'amne jechuun garuu bu'a qabeessummaa tajaajila abbaa seerummaa mana murtii idilees ta'e, kan MMHG madaaluun hin danda'amu jechuu miti. Bu'a-qabeessummaa MMHG qixa kaayyoo hundeeffama isaatiinii fi itti gaafatamummaa isaatiin madaaluun ni danda'ama. Labsiin MMHG irra deebiin hundeeffamuuf baheetiin tajaajilli mana murtii kanaan kennamu dhaqqabamaa, si'aawaa, wal qixxummaa fi haqummaa kan qabu, bilisummaa kan qabuu fi itti gaafatamummaan kan itti mirkanaa'u ta'uu qaba.⁵⁸ Dabalataan, tajaajila kennamutti fayyadamuuf uummatni mana murtii kana irratti amantaa qabaachuu qaba. Qorannoon kunis safartuuleedhuma: amantaa uummataa, dandeettii, naamusa, dhaqqabamummaa, si'aayina, wal qixxummaa fi haqummaa, bilisummaa fi itti gaafatamummaa fi kanneen biroo roqummaa qabanii fi kan labsii keessatti bifa kallattii fi al kallattiidhaan caqasaman gargaaramuun bu'a qabeessummaa MMHG akka itti aanuutti xiinxalameera. Dabalataanis, muuxannoo biyyoota hambaa tajaajila wal fakkaataa kennaa jiran giddu galeessa godhachuun bu'a-qabeessummaan MMHG madaalameera.

3.1. AMANTAA UUMMATNI MMHG IRRATTI QABU

MMHG kaayyoo dhaabbate galmaan gahuuf hawaasni ykn jiraattootni gandaa tajaajila haqaa ni arganna jechuun amantaa irraa qabaachuu qabu. Amantaan hin jiraanne taanaan kaayyoon hundeeffama isaanii galma ga'eera jechuun hin

⁵⁸Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, Kew. 6(3), 7(1), 9(3), 9(7), 11-13

danda'amu. Aangoo MMHG'f seeraan ifatti kennamee jiruun⁵⁹ dhimmoota ofitti fudhee ilaalu irratti jiraattotni gandaa hubannoo gahaa qabaachuu qabu. Af-gaaffii taasifameen jiraattonni gandaa MMHG dhimmoota kunneen ilaaluuf aangoos ta'e dandeettii ni qabu jedhanii amanuu ykn fudhachuu irratti harcaatiin akka jiru eeraniiru.⁶⁰ Kanarraan kan ka'e uummatni himannoo isaanii gara bulchaa ykn maanaajara gandaatti dhiyeeffachaa akka jiranidha.⁶¹ Dursa, abbaan dhimmaa bulchaa biratti komii ykn himata isaa dhiyessee sana booda bulchaan gandaa falmii wal falmitootaa gara MMHG'tti haalli itti qajeelchu akka jiru eeraniiru.⁶² Kunis kan agarsiisu MMHG irratti amantaa fi hubannoo dhabuu dha. MMHG irraa uummatni amantaa dhabuu taateewwan akka sababaatti kaafaman kanneen armaan gadiiti.

3.1.1. Manni Murtii Hawaasummaa Gandaa Dandeettii Raawwachiisummaa Dhabuu

Manni murtii hawaasummaa gandaa murtii ofii kenne raawwachiisuuf abbaa idaa hanga guyyaa torbaatti to'annaa jala tursiisuu akka danda'uu fi hidhataa gandaa ykn poolisii ajajuu akka danda'u seerri aangessee jira.⁶³ Haa ta'u malee, qabatamaan, poolisiin idilee ykn hidhataan gandaa ajaja kennamuuf hojiirra oolchuuf fedhii akka hin qabnee⁶⁴ fi iddoon turamuu qabu labsichi ifatti hin kaa'u.

⁵⁹Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99,kew.14-23 tarreeffamee jiru ilaaluun ni danda'ama

⁶⁰Afgaaffii Aadde Munaa Gizaawu, It/Aantuu/Af-yaa'ii Aanaa Sinaanaa, gaafa 22/05/11 taasifame, Af-gaaffii Obboo Kadir Mohaammad, Walitti qabaa A/seeraa MMHG Mag/Roobee Ganda Odaa, gaafa 22/05/11 taasifame, Obboo Abbaba Addunyaa, Perezidaantii MMA Adaamii Tulluu, gaafa 30/05/11 taasifame

⁶¹Afgaaffii Obboo Aabbuu Oosaa, Itti/Ga/Waj/Bulchiinsaa Go/Arsii Lixaa, gaafa 13/05/11 taasifame,Obboo Hirphoo, Perezidantii MMA Shaashamannee, gaafa 14/05/11 taasifame, Af gaaffii Obbo Alamuu Urgee, It/Ga/W/Bu/Aanaa Gobbaa, gaafa 23/05/11 taasifame, Obboo Girmaa Wandimmuu, A/A Komii fi Iyyannoo Aanaa Gobbaa, gaafa 23/05/11 taasifame, Obboo Hasan Yuuyyaa, It/Aanaa Af-yaa'ii Aanaa Baabbilee, gaafa 05/06/11 taasifame.

⁶²Marii obbo Huseen Ahimad, Walitti qabaa A/seeraa MMHG Mag/Baabbilee Gandaa 02 fi Addee Firii Kabbadaa, A/seeraa MMHG Mag/ Babbilee Ganda 02, gaafa 05/06/11 taasifame, Obboo Mangistuu Dabbabaa, Af-yaa'ii Aanaa Ada'aa, gaafa 27/05/11 taassifame galmee Umar Huseen Vs Abdulqaadir Turaa, Mag/Roobee ganda Odaa Roobee, lakk. 10033/11 gaafa 01/04/11 barra'e ta'e keessatti himataan mukni himatamaa daangaa darbuun dameen isaa mana isaa irra waan baheef akka muka kana ciruuf gara bulchaa gandaatti iyyatee bulchiinsis dhimma kana Mana Murtii Hawaasummaa Gandaa akka ilaaluuf xalayaa barreessuun gaafateera

⁶³Labsii MMHG MNO irra deebiin fooyyessuuf bahe lakk. 128/99kw.(35/5, 8)

⁶⁴Obboo Gammachuu Bafataa, Walitti qabaa A/seeraa MMHG Araadaa/Shaashamannee/, gaafa 15/05/11 taasifame, Obboo Dastaa Galatoo, It/aanaa Bulchaa Ganda Magaalaa Shaashamannee Araadaa,Gaafa 15/05/11 taasifame.

Qabatamaanis MMHG abbaa idaa yeroo gara buufata poolisii ykn mana amala sirreessatti ergan dhaabbileen kunneen ofitti fudhatanii tursiisuu diduu,⁶⁵ MMHG aangoo tursiisuu hin qabu yaada jedhu qabaachuu⁶⁶ fi wabiin gadhiisuun jira.⁶⁷ Kunis, kan agarsiisu uummata qofaan otuu hin taane caasaadhuma mootummaa biroottiin aangoo MMHG'tti amanuu dhiisuun kan mul'atu ta'uu isaati. Dandeettii raawwachiisummaa dhabuun isaanii amantaa uummataa akka hin goonfanne taasissee jira.

3.1.2. Muudamaa fi Muudama Irraa Gaggeeffamuun Abbootii Seeraa MMHG Iftoomina Dhabuu

Muudamni abbootii seeraa naamusa, kaka'uumsaa fi dandeettii irratti hundaa'a.⁶⁸ Labsichi muudama abbootii seeraa ilaalchisee jiraattootni gandaa yaada kennuun akka hirmaachuu qaban kaa'a.⁶⁹ Muudama irraa gaggeeffamuunis wal qabatee haala kamiin raawwatamu akka qabu labsichi teechiseera.⁷⁰ Haa ta'u malee, qabatamaadhaan muudamnis ta'e muudama irraa gaggeeffamuun ilaalchaa fi fedhii bulchaa gandaa irratti hundaa'a. Keessumaa, bulchaan gandaa haaraan muudamnaan yoo xiqqaate walitti qabaan yeroo jijjiiramu ni mul'ata.⁷¹ Muudama abbootii seeraa irratti hirmaannaan hawaasaa laafaa dha. Bulchaan nama ofii itti amanuu fi ajajuu danda'u qofaa akka muudamu gochuun ni jira.⁷² Kun kan agarsiisu muudama raawwachuu fi irraa kaasuu qaama abbummaan raawwatu ilaalchisee iftoominnii fi haalli walfakkaataan akka hin jirre dha. Kun immoo hawaasni mana murtii irraa amantaa akka hin horanne gumaacheera.

Dhimma kana ilaalchisee muuxannoo biyya Keeniyaa yoo ilaallu abbaan seeraa mana murtii Koomishinii Tajaajila Abbaa Seerummaan kan muudamanii fi muudama irraas qaamuma kanaan ka'u. Biyya Zaambiyaa keessattis manneen

⁶⁵Af gaaffii obboo Muktaar Haajoo, Walitti qabaa MMHG Gobbaa 01, gaafa 23/05/11 taassifame

⁶⁶Afgaaffii Ob. Muktaar Haajoo, Akkuma 65^{ffaa}

⁶⁷Afgaaffii Ob. Muktaar Haajoo, Akkuma 65^{ffaa}

⁶⁸Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew. 9/3 /

⁶⁹MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew. 9/1/

⁷⁰MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew. 11

⁷¹Af-gaaffii addee Munaa Gizawu, It/Aantuu Af-yaa'ii Aanaa Sinaanaa, gaafa 22/05/11 taassifame, Obboo Hirphoo, Perezidantii MMA Shaashamannee, gaafa 14/05/11 taasifame, Obboo Awwal Mohaammad Nuur, It/Ga/Wa/Bu/Aanaa Sinaanaa, gaafa 22/05/11 taasifame

⁷²Afgaaffii Addee Asaffaash Waabatoo, Itti Aantuu Af-yaa'ii Aanaa Shaashamannee fi Tashooma Bulloo, Itti gaafatamaa Waj-Af yaa'ii Aanaa Shaashamannee, gaafa 13/05/11 taasifame, Obboo Biraanuu Adii, It/Aanaa-Af-Yaa'ii Aanaa Wandoo, gaafa 15/05/11 taasifame, Obboo Mustafaa, It/Ga/Wa/Bu/Aanaa Wandoo, Gaafa 15/05/11 taasifame

murtii kun kan dhaabbatan Hooggansa Mana Murtii Waliigalaatiini. Abbootiin seeraa kun kan muudamanis ta'ee muudama irraa kaafaman Komishinii Tajaajila Abbaa Seerummaa heera biyyattiitiin hundaa'eeni.

3.1.3. Miirri Tajaajiltummaa fi Hojimaatni Idilaa'aa Ta'e Dhabamuu

Ummatni MMHG irratti amantaa akka dhabu kan taasise sababani inni biraa hojimaatni dhaddacha bifa idilaa'aa ta'een gaggeeffamuu dhabuu dha.⁷³ Abbootiin seeraa iddoo baay'eetti torbanitti guyyaa lama hojii dhaddachaaf kan argaman yoo ta'u, kunumtuu idilaa'aa miti. Yeroo barbaadan kan hojiirratti argamanii fi sa'a hojii kan hin kabajne dha.⁷⁴ Gama biraatiin, mindeeffamaa ta'uu dhabuu, bakki hojii mijaawaa dhabamuu, waraqaa fi kobbee (qalama) hojiidhaaf ta'u dhabuun abbootiin seeraa miira tajaajiltummaa akka dhaban taasisa.⁷⁵ Nuffii hojii irraan kan ka'e komii baqachuun abbootiin seeraa fedhii isaaniitin aangoo gadi lakkisuun illee ni mul'ata.⁷⁶ Sababoota kunneeniin hojiin idilaa'aa ta'uu dhabuu isaatiin uummatnis amantaa akka irraa dhabu taasisa.

Muuxannoo biyyootaa irraa kan hubatamu garuu, abbootiin seeraa kun bilisaan osoo hin taane kaffaltiin hanga ta'e akka kennamuufi dha. Fakkeenyaaf, biyya Zaambiyaa keessatti abbaan murtii kun miindeeffamaa dhaabbataa yoo ta'uu baatanis hanga hojjataniin (allowance) kaffalamaafii kan hojjechaa jirani dha.

⁷³Af gaaffii Obbo Alamu Urgue, It/Ga/W/Bu/Aanaa Gobbaa, gaafa 23/05/11 taasifame, Obbo Girmaa Wandimuu, A/A Komii fi Iyyannoo Aanaa Gobbaa, gaafa 23/05/11 taasifame, Marii obboo Qamar Shamsuu, Af Yaa'ii Aanaa Gobbaa, Addee Baatuu Simee, Itti Aantuu Af Yaa'ii Aanaa Gobbaa, Margituu Alamu, Ogeessa Hawaasummaa Waj/Af/Yaa'ii Aanaa Gobbaa waliin taasifame

⁷⁴Obboo Gammachuu Bafataa, Walitti qabaa A/seeraa MMHG Araadaa Shaashamannee, Gaafa 15/05/11 taasifame, obbo Dastaa Galatoo, It/aanaa Bulchaa Ganda Magaalaa Shashamannee Araadaa, Gaafa 15/05/11 taasifame

⁷⁵Af-gaaffii obboo Kadir Mohaammad, Walitti qabaa A/seeraa MMHG Magaalaa Roobee Ganda Odaa, gaafa 22/05/11 taasifame, Obbo Muktaar Haajoo, Walitti qabaa MMHG Gobbaa 01, gaafa 23/05/11 taasifame, Obbo Biraanuu Abbaba, Walitti qabaa A/s MMHG Magaalaa Haromayaa Ganda 01, obbo Buudee Goonaa, Walitti qabaa MMHG Magaalaa Baatuu Ganda 01, Kadir Bantii, Abbaa Seeraa MMHG, Mag/Baatuu ganda 01, gaafa 30/05/11 taasifame

⁷⁶Obbo Mangistuu Dabbabaa, Af yaa'ii Aanaa Ada'aa, gaafa 27/05/11 taasifame, Obbo Bobboosaa Gammadoo, Af yaa'ii aanaa Tulluu Dimtuu, gaafa 30/05/11 taasifame

3.1.4. Kabaja Mana Murtii Eegsisuuf Abbootiin Seeraa MMHG Aangoo Dhabuu

Tajaajila haqaa MMHG'tiin kennamuuf abbootiin dhimmaa, ragootni bitaaf mirgaa fi namootni biroo maamila MMHG ta'u jedhamee ni yaadama. Dhadachi gaggeeffamu naamusaawaa ta'a jedhamee yoo tilmaamames al naamusummaan dhaddacha jeequun calaqqisu hambisuuf aangoo abbootii seeraaf kenname hin jiru. Qabatamaadhaan akka naannoo Oromiyaatti hanqina seeraa kanaaf dhaddacha irratti abbaa seeraa arrabsuun yoo muudate adabuun akka hin danda'amne dha. Kun immoo uummatni MMHG irratti amantaa akka hin horanne taasisuu isaa abbootiin seeraa yoo kaasan ni mul'ata.⁷⁷

3.2. RAKKOO NAAMUSAA ABBOOTII SEERAA MMHG

Tajaajila haqaa MMHG'tiin kennamuuf sadarkaan naamusa abbootii seeraa baay'ee murteessaa dha. Bakka naamusni gaariin hin jirretti tajaajilli haqaa bu'a qabeessa ta'e ni jiraata jedhamee hin tilmaamamu. Qorannoo taasifameen MMHG mootumaa naannoo Oromiyaa keessatti rakkooleen naamusaa bifa armaan gadiitiin calaqqisan ni jiru.

3.2.1. Abbaa Dhimmaaf Ol'iiyannoo Yeroon Kennuu Dhabuu

Erga murtiin kennamee booda, gareen komii qabu mana murtii aanaatti oliyyannoo fudhachuu akka qabu labsii MMHG keessatti ifaan taa'eera. Garuu, manneen murtii tokko tokko biratti abbootiin seeraa haaloo qabachuun ol'iiyannoo kennuuf rinciicuu,⁷⁸ abbootiin seeraa hundi galmee irratti mallatteessuu dhabuu, namni murtii barreessu hin jiru jechuu, garagalcha guutuu kennuu dhabuu, murtii jalqaba barraa'uu fi garagalcha gidduu garaagarummaa uumuu fi garagalcha irratti chaappaa gochuu dhabuun rakkoolee mul'atanidha.⁷⁹ Kun immoo yeroon ol'iiyannoo abbaa dhimmaa jala akka darbu taasisuu danda'a. Kanarraan kan

⁷⁷Af-gaaffii obbo Kadir Mohaammad, Walitti qabaa A/seeraa MMHG ganda Mag/Roobee ganda Odaa, gaafa 22/05/11 taasifame, Afgaaffii obbo Tashoomaa W/Giyoorgis, I/G Koree Dhaabbii Diinagdee, Abarraash Kumaa, I/A Afyaa'ii A/T/Kuttaayee, waliin gaafa 04/06/2011 taasifame

⁷⁸Afgaaffii Obbo Taarikuu Abbabaa, Perezidaantii Mana Murtii A/T/Kuttaayee, waliin gaafa 04/06/2011 taasifame

⁷⁹Afgaaffii Obboo Kumaa Daadhii, Daayireektara Diiyireektoreetii KTAS MMO Godina Arsii Lixaa, waliin gaafa 13/05/11 taasifame.

ka'ees yeroo qaamolee garagaraa garagalchi oliyyannoo abbaa dhimmaatiif akka kennamu MMHG'tti xalayaa barreessan ni mul'ata.⁸⁰

3.2.2. Sababa Gahaa fi Seerawaa Hin taaneen Abbaa Dhimmaa Deddeebisuu

MMHG biratti abbaa dhimmaa deddeebisuun ni mul'ata.⁸¹ Qabatamaan falmii ilaalameen murtii kennuun dura marsaa kudhan, ⁸² toorba⁸³ fi saddeet⁸⁴ kennamee kan jiru dha. Namoota barbaadaniif ilaalanii kanneen biroo beellamuun ni mul'ata. Dhimma wal falmitoota ilaaluuf darbee darbee fayidaa addaa bifa matta'aan otuu hin taane bifa durgootiin barbaaduun ni mul'ata.⁸⁵ Kun al naamusummaa abbootii seeraa biratti calaqqisu dha.

3.3. DANDEETTII ABBOOTHII SEERAA MANNEEN MURTII HAWAASUMMAA GANDAA

MMHG himannaan dhiyaate furmaata akka argatuuf mala hiikkaa waldiddaa filannoo fi falmii idileetti gargaaramuu danda'a. Abbootiin seeraa walfalmiiwwan dhiyaatan irratti gareen wal dhabdee isaanii duraan dursee araaraan akka hiikkatan

⁸⁰ Akka fakkeenyaatti, xalayaa lakkoofsa 61/2/2010 gaafa guyyaa 28/12/2010 Manni Maree A/G/Jaarsoo MMH Ganda D/Dooyyuutiif barreessee jiru, wajjirumti kun xalayaa lakkoofsa 252/2/2010 gaafa 30/08/2010 MMH Ganda G/Usummaneetiif barreesse akkasumas xalayaa lakkoofsa 29/02/2010 gaafa 02/12/2010 waajjirri kun MMH Ganda D/Dooyyuutiif barreessee jiru ilaaluun ni danda'ama. Dabalataan, xalayaa lakkoofsa 112/2011 gaafa guyyaa 01/05/2011 Af-yaa'iin Aanaa Dandii Mana Murtii Hawaasummaa gandaa G/Areeraaf barreessee jiru ilaaluun ni danda'ama.

⁸¹ Afgaaffii Obboo Kumaa Didhaa, Daayireektara Diiyireektoreetii KTAS MMO Godina Arsii Lixaa, waliin gaafa 13/05/11 taasifame, Obboo Abdumaalik Jeelaan, BB perezidantii MMA Sinaanaa, waliin gaafa 20/05/11 taasifame, Obbo Abdiisaa Kamaal, It/Ga/Wa/Bu/Aanaa Adaamii Tulluu, aliin gaafa 30/05/11 taasifame, Obboo Bashiir Abuunaa, Abbaa Addemsaa Iyyannoo fi Komii, Aanaa Adaamii Tuulluu, waliin gaafa 30/05/11 taasifame, Obbo Biraanuu Adii, itti Aanaa Af-yaa'ii Aanaa Wandoo, waliin gaafa 15/05/11 taasifame, Obbo Mustafaa, It/Ga/Wa/Bu/Aanaa Wandoo, waliin gaafa 15/05/11 taasifame.

⁸² Falmii obbo Dheeressaa Tafarii fi obbo Simee Mootummaa, Magaalaa G/Gurraachaa Ganda 01 tiin ilaalamee lakkoofsa galmee 1248/11

⁸³ Falmii obbo Katamaa Girmaa fi Abbabee Tafaraa waliin mana murtii hawaasummaa gandaa Garba Gurraachaa ganda 01 ilaalamee lakkoofsa galmee 1223 ta'e irratti gaafa guyyaa 21/03/2011 murtee argate

⁸⁴ Falmii obbo Fiqaaduu Baallammii fi Obbo Caalaa Mitikkii, Garbagurraachaa ganda 01 lakkoofsa galmee 877/2010 gaafa 20/11/2010

⁸⁵ Afgaaffii Obbo Biraanuu Adii, Itti Aanaa Af-Yaa'ii Aanaa Wandoo, Gaafa 15/05/11 taasifame, Obbo Mustafaa, It/Ga/Wa/Bu/Aanaa Wandoo, gaafa 15/05/11 taasifame.

tattaaffii gochuu qabu.⁸⁶ Yeroo araarri hin milkoofnetti bu'uura seera biyyattiitiin murtii haqa qabeessa ta'e kennuutu irraa eegama. Kun immoo beekumsa seeraa gaafata.

Abbaa seeraa MMHG ta'uun muudamuuf kaadhimamtoonni amala gaarii, tattaaffii fi kaka'uumsa hojii, amantaa uummataa kan qaban ta'uu akka qaban labsichi yoo kaa'ees,⁸⁷ sadarkaa barumsa ilaalchisee waan ibsame hin jiru. Afaan Oromoo dubbiiisuu fi barreessuu danda'uun illee akka ulaagaa tokkotti hin kaa'amne. Qabatamaanis, abbootiin seeraa filataman tokko tokko kanneen barreessuu fi dubbisuu hin dandeenye ta'aanii argamaniiru.⁸⁸ Kanarraan kan ka'e bakka tokko tokkotti manaajarri gandaa murtii barreessuun abbootiin seeraa irratti mallatteessaa jiru.⁸⁹ Gama biraatiin, abbootii dhimmaa abukaatoon falmuu akka danda'an labsiin kun ni kaa'a.⁹⁰ Qabatamaanis falmiin gaggeeffaamaa jiru kana agarsiisa.⁹¹ Kun immoo hanqina dandeettii abbootii seeraa kana bu'uureffachuun haqni akka jallatuu, dhimmoonni walxaxaa akka ta'an, manni murtii oliyyata dhaga'uu ijoo dubbii qabachuuf akka rakkatuu fi saffisaan haqni akka hin argamne taasisuu danda'a. Akka waliigalaatti, sakatta'iinsa galmee taasifameen hanqinni dandeetti abbootii seeraa bifa armaan gadiitin ibsaman ni jira.

3.3.1. Haanqinaalee Barreessa Murtii

Murtiin MMHG'tiin kennamu qabxiiwwan falmiidhaan ka'an, jecha ragaa gabaabinaan, ijoo dubbii fi xiinxala ragaa fi seeraa kan haammate ta'uu qaba.⁹² Haa ta'u malee, abbootiin seeraa, seera irratti hundaa'uun murtii kan kennan osoo hin taane hubannoo dhuunfaa fi marartummaa bu'uureffachuuni.⁹³ Murtiin

⁸⁶Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew. 24(1)

⁸⁷Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew. 9(7(c))

⁸⁸Fakkeenyaaf, Walitti Qabaa Abbaa Seeraa MMHG Mag/Baabbilee Ganda 02 fi Mag/Wandoo Ganda 01 kaasuun ni danda'ama

⁸⁹Afgaaffii Obbo Abbaba Addunyaa, Perezidantii MMA Adaamii Tulluu, waliin gaafa 30/05/11 taasifame.

⁹⁰Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew. 26(2)

⁹¹Akka fakkeenyaatti, falmii Paaster Baacaa Bayyanaa fi Adde Urgee Tafarraa Mana Murtii Hawaasummaa Ganda Gafarsa Buraayyuu Ka'ee Dh/I/M/M/W/O tti murtii argatee jiru ilaaluun ni danda'ama.

⁹²Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew. 33(3)

⁹³Af gaaffii Obbo Bukaar Kaadiroo, BB MM Olaanaa Harargee Bahaa, waliin gaafa 04/06/11 taasifame

kennamaa jirus bifa gabaasa fakkaatuun barreeffamaa jira.⁹⁴ Galmeen qulqullina qaban darbee darbee yoo jiraatanis⁹⁵ galmeen qulqullina hin qabnes kan mul'atani dha. Fakkeenyaaf, galmeen hin dubbifamne, lakkoofsa hin qabne,⁹⁶ mallattoo abbaa seeraa hin qabne,⁹⁷ fuula dhumaa qofa irratti mallatteessuu,⁹⁸ murtii firii himannaa fi deebii hin haammanne, ijoo dubbii wal falmitoota gidduu jiru adda baasuu dhabuu, jecha ragootaa caqasuu dhabuu, seerummaa gaafatame ifatti otuu hin kaa'iin murtii kennuu,⁹⁹ abbaa seeraa tokko qofa ta'uun dhadacha moggaasuun murtii kennuu¹⁰⁰ fi darbee darbee maqaa wal falmitootaa murtii irratti caqasuu dhabuu¹⁰¹ ni mul'ata.

3.3.2. Hanqinaalee Ragaan Walqabatee Mul'atan

Falmiin MMHG'tti taasifamu araaraan yoo hin xumuramne ragaa dhaga'uun murtii kennuu qabu. Manni murtii himatamaan yoo haale dursee ragaa himataa dhaga'uu qaba.¹⁰² Ragaan himataa bu'uura himannaatiin yoo hin hubachiifne

⁹⁴Afgaaffii Obbo Kumaa, Daayireektara Diiyireektoreetii KTAS MMO Godina Arsii Lixaa, waliin gaafa 13/05/11 taasifame, Obboo Abdulmaalik Jeelaan, BB Perezidantii MMA Sinaanaa, waliin gaafa 20/05/11 taasifame. Akkasumas galmee Obbo Alamayyoo Zawudee fi Obboo Moosisaa Dandaatti murtee argate, falmii Nuurasaa Walabee fi Obboo Uumaan Wayyeessaa Mana Murtii Hawaasummaa Magaalaa Giincii Ganda 02 ilalamee murtii argatee jiru ilaaluun ni danda'ama.

⁹⁵Fakkeenyaaf, Galmee Dannaboo Tibbeessoo fi Abbabalinyi Woldee, MMHG Maagaalaa Baatuu Ganda 02, lakk. 065/09, gaafa 12/03/09 murtee argate, Galmee Baayyuu Baqqalaa fi Jamaal Muhaammad, MMHG Baatuu Ganda 01, lakk. Galmee 10493, gaafa 10/11/09 murtee argate ilaaluun ni danda'ama.

⁹⁶Galmee Addee Mazigabaa Baayyuu fi Bassuufiqaad Yoohaannis, MMHG Baha Gobbaa, gaafa 12/3/10 murtaa'e, galmee Wa/Bu/Ga/Baha Gobbaa fi Shaariif Ahimad, MMHG Baha Gobbaa, gaafa 21/02/07 murtss'e, Lataa Yaaddechaa fi Fayisaa Nugusee/2/, MMHG Goofinqira Aanaa Diinshoo, gaafa 05/09/10 murtaa'e, Abdurahimaan AbNoo fi Mohaammad Abnoo, MMHG H/A/Haawushoo, gaafa 13/1/2011 murtaa'e ilaaluun ni danda'ama.

⁹⁷Galmee Sufiyaa Usmaan fi Kaalisaa Bashaa/5/, Bulchiinsa Magaalaa Haramayaa ganda 01, lakk. 2/01/0076/11, gaafa 22/1/11 murtaa'e.

⁹⁸Galmee Addee kadaraa Hirphoo fi Ahimad Sh/Ashiimi, MMHG W/ Ibsanaa, lakk. Galmee 35/2011, gaafa 30/01/2011 murtaa'e ilaaluun ni danda'ama.

⁹⁹Falmii Obbo Kadir Huseen fi H/Huseen Shataa, MMHGMagidaa Aanaa Diinshoogaafa 14/1/10 murtee argate, Falmii Baanataa Boruu fi Zannaba Margaa, MMHG Magaalaa Baatuu Ganda 01, lakk. Galmee 110555, gaafa 02/09/10 murtee argate, Addee Kadaraa Hirphoo fi Ahimad Sh/Ashiimi, MMHG W/ Ibsanaa, lakk. Galmee 35/2011, gaafa 30/01/2011 murtee argate ilaaluun ni danda'ama.

¹⁰⁰Falmii Obbo Simirat Charinat fi Wuubit Azzanaa, MMHG Baha Gobbaa, gaafa 02/03/07 murtaa'e, Mahaammad Kadir /n-10/ fi Obbo Nagaash Taaddala, Mana Murtii Hawaasummaa Gandaa Kaabiiraa Xeemoo Islaameenaa, gaafa 13/01/11 murtaa'ee jiru ilaaluun ni danda'ama.

¹⁰¹Falmii H/kunii Hasan fi Musaa Abduu, MMHG Keemoo Suleeymaanaa, gaafa 30/08/10 murtaa'e.

¹⁰²Labsii MMHG MNO irra deebiin fooyyessuuf bahe lakk. 128/99, kew. 32(2)

himatamaan bilisaan gaggeeffama. Ragaan himataa firii dubbii himannaa keessatti caqasame yoo hubachiisan garuu itti fufuudhaan ragaan himatamaa ni dhaga'ama.¹⁰³ Haa ta'u malee, sakatta'iinsa galmee taassifameen ragaa bitaaf mirga dhaga'uun wal qabatee rakkooleen bifa armaan gadii ni mul'atu.

Ragaa Bitaaifi Mirgaa Dhaga'uu Dhabuu: Galmee tokko tokko irratti abbootiin seeraa ragaa bitaafi mirgaa osoo hin dhaga'iin murtii yeroo kennan ni mul'ata. Fakkeenyaaf, falmii MMHG tokkotti tureen himannaan dhiyaate haalamee otuu jiruu ragaa bitaafi mirgaa otuu hin dhaga'iin murtiin kennamee oliyyannoon gara mana murtii aanaatti fudhatamee qajeelfamaan gad-deebi'ee jira.¹⁰⁴

Ragaa Gama tokkoo Qofa Dhaga'uun Murtii Kennuu: bu'uura seeraatiin ragaan himataa erga dhaga'amee booda kan himatamaa kan dhaga'amu, ragaan himataa himannaa dhiyaate yoo hubachiise qofaa dha. Yeroo ragaan himataa firii dubbii himannaa keessatti caqasame hubachiisetti manni murtii ragaa himatamaa dhaga'uuf dirqama qaba. Gama biraatiin, ragaan himataa qofa irratti hundaa'uun murtiin kennamu hin jiru. Qabatamaan garuu, yeroo ragaa garee tokkoo qofaa dhaga'uun murtii kennan ni mul'ata. Fakkeenyaaf, falmii himataa fi himatamaa gidduutti tureen ragaa garee tokkoo qofa dhaga'uun murtiin kennamee jira. Murtii kana komachuun oliyyannoon gara mana murtii aanaatti fudhatamee akka qulqulleessaniif qajeelfamaan gadi deebi'eera.¹⁰⁵

Ijoo Ragaa Ogeessaan Qulqullaa'uu Qabu Qulqulleessuu Dhabuu: Falmii taasifamaa jiru ilaalchisee ijoon dubbii guutummaatti ragaa namaa qofaan qulqullaa'uu dhiisuu danda'a. Dhimmootni ragaa ogeessaa barbaadan yeroo dhiyaatanitti manni murtichaa ogeessaaf waamicha taasisu qaba. Qabatamaanis yeroo mul'atu ni argama. Fakkeenyaaf, falmii manni fincaanii mana jireenyaatti siqee qotamee jiru fayyaa irratti dhiibbaa geessisaa jira jechuun himannaa dhiyaate irratti manni murtii wajjirra fayyaa irraa ogeessi dhiyaate yaada akka kennu ajajee

¹⁰³Kanuma olii kew. 32(3)

¹⁰⁴Falmii aadde Zarfee Abdii fi Esheetuu Shifarraa faa gidduutti taasifame, Mana Murtii A/Magaalaa Laga Xafoo Laga Daadhiitti lakoofta galmee 16915 gaafa 10/03/2011 murtee argate , Falmii Obbo Baqqalaa Wadaajoo faa fi Obbo Baqqalaa Jamboolaa faa gidduutti taasifamee mana murtii Aanaa Dandiitiin lakoofta galmee 58122 irratti gaafa 30/04/2011 kennamee jiru ilaalauun ni danda'ama.

¹⁰⁵Falmii aadde Zawdituu Zallaqaa fi Obbo Birhaanuu jidduutti taasifamee Mana Murtii Nanaa Giraar Jaarsoon lakoofta galmee 31906 gaafa 22/08/2010 murtee argate. Falmii Mahaammad Abdallaa fi Qaasim Adam /n-2/, Mana Murtii Aanaa Sinaanaa, lakk. Galmee44333, gaafa 14/02/11murtee argate

jira. Ogeessis dhimmicha qulqulleessuun gabaaseera.¹⁰⁶ Manni murtiis yaada ogeessaa kana giddugaleessa godhachuun murtii kennee jira.

Gama biraatiin immoo falmii tilmaama qabeenyaa mormiin irratti ka'e otuu ogeessaan ykn qaama biraatin hin qulqulleessiin yoo hafan ni mul'ata. Galmee mana murtii tokkotti ilaalameen tilmaama qabeenya mancaa'e ilaalchisee ijoo qabatee tilmaama isaa ogeessaan otuu hin qulqulleessiin kanuma himataan gaafate murteesseera.¹⁰⁷ Falmii biraa keessattis qabeenya manca'eef kaffaluun dura tilmaamni ogeessaan haa ilaalamu jedhamu irra dabuun murtii kennee sababa oliyyannoo ta'eera.¹⁰⁸

3.3.3. Aangoo Isaanii Ala Bahuun Dhimmoota Ilaaluu

MMHG himannoo aangoo isaaniif kennameen ala himannoo dhiyeeffame cufuu akka qabu seerri ni kaa'a.¹⁰⁹ Garuu aangoo seeraan isaaniif kennamee jiru ala bahuun yeroo dhimmoota keessummeessanii fi murtii kennan ni mul'ata. Falmii MMHG'tti ilaalame murtee argate irratti himataan tilmaama marga dheedame gaafatee jira. Himatamaan abbaa qabiyyee lafaa miti jechuun falmeera. Manni murtii kun lafti qabiyyee eenyuti kan jedhu irra darbuun tilmaama qabeenya manca'ee akka kaffalu murteesseera. Murtee kana komachuun oliyyannoon mana murtii aanaatti fudhatamee lafti margi irra jiru kun kan eenyuuti? Qabiyyichi bara 2010 ALI keessa harka eenyuu ture? Kan jedhu ragaan qulqulleessuun murtii kennuu akka qaban qajeelfamaan deebisee jira.¹¹⁰

Falmii birootiin himataan sababa himatamaan daangaa darbee gamoo abbaa darbii tokkoo ijaaree jiruuf akka irraa diigamuuf himannaa hundeessae jira. Himatamaan daangaa hin dabarre jechuun deebii kenneera. Manni murtii kunis himatamaan daangaa darbee waan jiruuf akka daangaa isaatti deebi'u jechuun murteesseera.

¹⁰⁶Falmii Obbo Amaaan Fattoo fi Dagafuu Dachaasaa, MMHG Baha Gobbaa, guyyaa 19/03/2010 murtee argate.

¹⁰⁷Falmii Wa/Ga/Baha Gobbaa fi Shariif Ahmad, MMHG Baha Gobbaa, gaafa 21/02/07 murtee argate

¹⁰⁸Falmii obbo Moosisaa Dhaabaa fi Obbo Alamaayyoo Zawudee gidduutti taasifamee Aanaa Dandii Mana Murtii Hawaasummaa Katkataa Waranbulchiitti gaafa guyyaa 13/04/2011 murtee argatee oliyyannoon mana murtii Aanaatti ilaalamee lakkoofsa galmee 58617 irratti gaafa 05/06/2011 murtee argate ilaaluun ni danda'ama.

¹⁰⁹Labsiin MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew. 31

¹¹⁰Falmii Aadde Geexee Xaafaa fi Obbo Birruu Miidhaksoo, MMHG Ganda Daannisaa Shoonoo Ka'ee mana murtii Aanaa Dandiitti lakkoofsa galmee 58148 irratti gaafa 23/05/2011 murtee argate.

Murtii kana komachuun oliyyannoon fudhatamee manni murtii aanaa MMHG aangoo isaan ala murteesse jira jechuun murtii kana diigeera.¹¹¹

Falmii biroo keessattis himatamaan qabiyyee lafa bara 2006 irraa kaasee itti fayyadamaa ture daangaa tilmaamaan meetira 30 darbuun baargaamoo dhaabee waan jiruuf akka jeequmsa irraa dhaabuu fi baargamoo isaa irraa akka kaafatuuf himannoo hundeesseera. Himatamaan gama isaatiin MMHG aangoo hin qabu jechuun mormii sadarkaa duraa kaasee jira. Manni murtii mormii sadarkaa duraa irra darbuun himatamaan lafa himataatti dagalee meetira 14 fi dheerina meetira 40 daangaa darbee waan jiruuf akka gadhiisu jechuun murteesseera. Murtii kana komachuun oliyyannoon mana murtii aanaatti fudhatamee dhimma aangoo hin qabne irratti murtii kennee jechuun murtii diigee jira.¹¹²

Akka waliigalaatti, sakatta'iinsa galmee taasifameen MMHG aangoo isaatiin ala dhimmoota ykn falmii dhaga'uun murtii kennaa akka jiruu dha. Kun immoo sababa oliyyannoo ta'ee manni murtii oliyyata dhaga'u diiguun qajeelfamaan gadi deebisaa jira. Haalli kun qisaasama yeroo fi baasii hin malleef walfalmitoota kan saaxilaa jiru ta'uu isaati.

3.3.4. Seerummaa Gaafatamee Olitti Murtii Kennuu

MMHG abbaa seerummaa gaafatameen olitti yeroo murtii kennu ni mul'ata. Falmii MMHG tokkotti tureen himatamaan himataatti karaa waan cufameef 5m akka banamuuf gaafatee manni murtii immoo 6m akka banuuf murteesseera. Himatamaanis seerummaa gaafatameen olitti murteeffame jechuun oliyyannoo fudhatee murteen kenname dogongora jechuun hanguma gaafatame 5m'tti hir'isuun murtii fooyyesseera.¹¹³

¹¹¹Falmii obbo Binaalfoo Gabayyoo fi Obbo Goshuu Awwaqaa gidduutti taasifamee mana murtii magaalaa Buraayyuutiin lakkoofsa galmee 69199 gaafa 04/04/2011 murtee argate ilaaluun ni danda'ama.

¹¹²Falmii obbo Guddisaa Xilahuunii fi obbo Fiqaaduu Yiggaxuu gidduutti falmii taasifamee mana murtii Hawaasummaa Ganda Ma/Laga Xafoo Laga Daadhii Ganda ol irratti murtii argatee oliyyannoon Mana Murtii Magaalaa Laga Xafoo Laga Daadhii lakkoofsa galmee 15665 gaafa guyyaa 15/06/2008 murtee argate

¹¹³Falmii Obbo Muusaa Abduu fi H/Kuunii Hasan, Mana murtii Aanaa Sinaanaa, lakk. Galmee 44102, 08/02/11 murtee argate.

3.3.5. Rakkoo Ijoo Dubbii Qabachuun Walqabatee Jiru

Falmii mana murtiitti taasifamu keessatti ijoo dubbii adda baasuun falmii afaanii gaggeessisuu fi ragaa dhaga'uun murtii sirrii kennuuf gargaara. Haa ta'u malee, ijoo dubbiin wal qabatee rakkooleen armaan gadii ni mul'atu.

Falmii wal falmitoota gidduu jiru ilaalchisee manni murtii ijoo dubbii qabachuun ragaa bitaafi mirgaa ijoo wal fakkaataa irratti dhaga'uu qaba. MMHG haaluma kanaan murtii kan kennan yoo ta'es darbee darbee garuu ragaa himataaf ijoo dubbii tokko qabatanii, ragaa himatamaa dhaga'uuf immoo ijoo dubbii kan biraa qabachuun jira.¹¹⁴ Kun immoo murtiin qulqullina qabu akka hin kennamnee fi walfalmitootnis oliyyannoof akka saaxilaman taasisa.

Falmii MMHG'tti dhiyaatee jiru ilaalchisee himatamaan amanee yeroo jirutti bu'uuruma amantaa kennameen manni murtii murtii kennuu akka qabu seerri ni kaa'a.¹¹⁵ Manni murtii hawaasummaa gandaa tokko tokko garuu firii dubbii amaname irratti yeroo jecha ragaa dhaga'an ni mul'ata.¹¹⁶ Kun immoo dhimmoonni saffisaanii fi haala saphaa ta'een akka furmaata hin arganne taasisa.

Dandeettii seeraa abbootiin seeraa MMHG qaban madaaluuf bargaaffii abbootii seeraa mana murtii idileen guutameen abbootiin seeraa 93.8% ta'aan gadi-aanaa fi daraana gadi-aanaa yoo jedhan, 5% fi 1.2% immoo wal duraa dubaan sadarkaa giddugaleessa fi olaanaa irratti argama jechuun deebisanii jiru.

Akka waliigalaatti, sakatta'iinsa galmee, af-gaaffii fi bargaaffii taasifameen dandeettii fi beekumsi seeraa abbootii seeraa bira hanqinni kan jiru ta'uu isaati. Kun immoo kallattiin bu'a qabeessummaa MMHG daran miidha.

3.4. BILISUMMAA MMHG

Bu'a qabeessummaa MMHG mirkaneessuuf manni murtichaa bilisummaa dhaabbataa fi dhuunfaa qabaachuu qaba. Bilisummaan kunis itti gaafatamummaa mirkaneessuuf shoora olaanaa qaba. Qabatamni jirus akka armaan gadiitti xiinxalameera.

¹¹⁴Falmii Obbo Boonaa Bulbulaa fi Girmaa Alamaayyoo, MMA Ada'aa, lakk. Galmee 52487, gaafa 10/09/08 murtee argate.

¹¹⁵Labsiin MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew 33 (2)

¹¹⁶Falmii Wa/Ga/Baha Gobbaa fi Shariif Ahmad, MMHG Baha Gobbaa, gaafa 21/02/07 murtee argate.

3.4.1. Bilisummaa Dhabbataa

Manni murtii hawaasummaa gandaa bilisummaa dhaabbataa qabaachuu isaa irra akka qabaachuu hin dandeenye labsiin mana murticha hundeessuuf bahe ni agarsiisa. Labsichi kew. 7 jalatti abbootiin seeraa hojii abbaa seerummaa isaanii bilisummaa guutuun hojjachuu akka qaban yoo jedhu kew. 5 jalatti immoo itti waamamni isaa mana maree gandaatiif akka ta'e ni kaa'a. Akka qajeeltootti, barri hojii abbaa seeraa mana murtichaa bara hojii mana marii gandaa akka ta'e labsiin dabalataan ibseera.¹¹⁷

Daataan funaaname akka agarsiisutti MMHG sadarkaa ilaalchaatti Mana Maree Bulchiinsa Gandaati, Mana Marii Gandaatti ykn Bulchaa Gandaatti hirkatee jira.¹¹⁸ Murtii ofii murteessan Mana Maree Bulchiinsaa garagalchaan beeksisuun darbee darbee ni mul'ata.¹¹⁹ Galmee ofii murteessuun chaappaa Mana Maree Gandaatiin chaappeessanii bahii gochuunis kan mul'atu dha.¹²⁰

Filannoo abbootii seeraa ilaalchisee muudamuu isaanii dura wal gahii uummataatni yaada irratti kennuu akka qabu dha. Kaadhimamaan yaada uummataatiin kufaa yoo hin taane, bulchaan mana marii gandaatti dhiyaatee sagalee caalmaa yoo argate muudamuu akka qabu labsichi ni kaa'a.¹²¹ Darbee, darbee garuu, ilaalcha siyaasaa irratti hundaa'uun filannoo fi muudamni taasifamaa akka jiru dha. Keessumaa, walitti qabaan abbaa seeraa ilaalchuma siyaasaa irratti hundaa'uun bulchaan gandaa muudamaaf filata akka jiru dha.¹²²

Akka waliigalaatti, namni hawaasa keessatti kabaja qabu filatamaa akka jiru dha. Keessumaa naannoo baadiyyaatti firoomaan ykn walitti dhiyeenyaan muudamni

¹¹⁷Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew. 7(6)

¹¹⁸Afgaaffii Obbo Huseen Ahimad, Walitti qabaa A/seeraa MMHG Magaalaa Baabbilee Ganda 02 fi Addee Firii Kabbada, A/seeraa MMHG Magaalaa Babbilee Ganda 02, Waliin gaafa 05/06/11 taasifame

¹¹⁹Falmii Addee Hajjoo Qaasoo fi Awwal Biluu, MMHG A/Hawushoo, gaafa18/ 1/2011murtaa argate.

¹²⁰Falmii Aragguu Caacaa fi Afooshaa Abboo, MMHG Qaxilaa, gaafa 29/12/07 murtaa'e

¹²¹Miil-jalee 6^{ffaa}, kew. 9

¹²²Af-gaaffii Obbo Hirphoo, Perezidantii MMA Shaashamannee, Waliin gaafa 14/05/11 taasifame, Obbo Awwal Mohaammad Nuur, It/Ga/Wa/Bu/Aanaa Sinaanaa, Waliin gaafa 22/05/11 taasifame, Addee Asaffaash Waabattoo, Itti Aantuu Af-yaa'ii Aanaa Shaashamannee fi Tashooma Bulloo, Itti Gaafatamaa Waj-Af Yaa'ii Aanaa Shaashamannee, Waliin gaafa 13/05/11 taasifame, Obboo Biraanuu Adii, It/Aanaa/Af-yaa'ii Aanaa Wandoo, Waliin gaafa 15/05/11 taasifame, Obbo Mustafaa, It/Ga/Wa/Bu/Aanaa Wandoo, Waliin gaafa 15/05/11 taasifame.

raawwatamu baay'ee xiqqaa ta'uu isaa ni eerama.¹²³ Haa ta'u malee, iddoo tokko tokkootti namni cimaan abbaa seeraa mana murtichaa ta'ee akka tajaajiluuf hin barbaadamu. Bulchaan nama ofiin ajajuu danda'u Mana Marii Gandaatiif dhiyeessuutu mul'ata jechuun komiin ni ka'a.¹²⁴

Muudama irraa gaggeeffaamuu abbootii seeraa ilaalchisee bu'uura labtiin kaa'uun abbaan seeraa hojiirraa kan gaggeeffamu: barri hojiisaa yeroo xumuramu, miseensa mana marii bulchiinsaa fi gandaa ta'uun yoo filatame fi rakkoo naamusaa yoo agarsiise dha.¹²⁵ Qabatamaan garuu, hanqinaaleen adda addaa ni jira. Bulchaan gandaa yeroo jijjiirametti abbaan seeraa mana murtiis carraan jijjiiramuu yookiin aangoo irraa kaafamuu olaanaa dha. Keessumaa, yeroo bulchaan gandaa haaraan filatamu walitti qabaa abbaa seeraa haaraa muudamaaf dhiyeessuun ni mul'ata. Gama biraatiinis, bulchaan abbootiin seeraa yeroo, yeroon akka jijjiiraman taasisaa jiraachuu isaa komiin ni ka'a.¹²⁶

Akka waliigalaatti, xiinxala kana irraa hubachuun kan danda'amu bilisummaa dhaabbataa MMHG Naannoo Oromiyaa ilaalchisee hanqinaalee adda addaa akka qabu dha.

3.4.2. Bilisummaa Hojii

Bilisummaan dhaabbataa fi kan dhuunfaa ykn bilisummaan hojii hariiroo kallatti waliin qabu. Bakka bilisummaan hojii hin jirreetti bilisummaan dhaabbataa ni jira jedhamee hin tilmaamamu. Abbaan seeraa MMHG hojii isaanii bilisummaan hojjachuu akka qaban seerri ifaan ni kaa'a.¹²⁷ Haa ta'u malee, qabatamaan hojii isaanii guutummaan bilisa ta'anii hojjachaa kan hin jirre ta'uu wantootni mul'isan ni jiru. Dhimma mana murtii hawaasummaatti ilaalamuu qabu foollee/qeerroo/ fi

¹²³Afgaaffii Obbo Jaarsoo Badhaasoo, Bulchaa Aanaa Shaashamannee, Waliin gaafa 13/05/11 taasifame, Obbo Mangistuu Dabbaba, Af yaa'ii Aanaa Ada'aa, Waliin gaafa 27/05/11 taasifame, Obbo Gammachuu Lammaa, Perezidaantii MMA Bishooftuu, Waliin gaafa 27/05/11 taasifame, Aade Fanaayee Yilmaa, Dura Teessuu B/M/Jimmaatti B/G/Mandara Aweetuu, Waliin gaafa 20/05/2011 taasifame

¹²⁴Af gaaffii obboo Yaasiin Ibraahim, BB perezidantii MM Aanaa Wandoo, Waliin gaafa 15/05/11 taassifame. Obboo Biraanuu Adii, It/Aanaa/Af-yaa'ii Aanaa Wandoo, Waliin gaafa 15/05/11 taasifame, Obbo Mustafaa, It/Ga/Wa/Bu/Aanaa Wandoo, Waliin Gaafa 15/05/11 taasifame, Obbo Dhufeeraa Maammoo, Afyaa'ii Mana Maree A/Kuyyuu, Obbo Mokonnnon Bayyanaa, I/G/W/Afyaa'ii fi Mana Maree A/Kuyyuu, Waliin gaafa 28/05/2011 taasifame.

¹²⁵Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew.11

¹²⁶Af-gaaffii obboo Hirphoo, Perezidantii MMA Shaashamannee, Waliin gaafa 14/05/11 taasifame, Obboo Bobboosaa Gammadoo, Af yaa'ii Aanaa Tulluu Diimtuu, Waliin gaafa 30/05/11 taasifame

¹²⁷Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew. 7

maanguddoon waliin ta'uun yoo ilaalanis ni mul'ata. Fakkeenyaaf, bulchiinsa gandaa tokkotti himannaa daandiin cufamee jiru akka saqamuuf gaafatame irratti walfalmitootaan akka jaarsummaatti osoo hin eeramiin maanguddoonii fi foolleen qaboo yaa'ii qabachuun himatamtoonni daandii cufan akka bananiif murteessuun murtii kanas galmee mana murtii hawaasummaatti galii ta'ee jira.¹²⁸

Bakka tokko tokkottis bulchaan gandaa fi maanajarri gandaa dhimma gara qajeelchuu irra ofii isaaniitiin yeroo ilaalan mul'ata.¹²⁹ Fakkeenyaaf, falmii daandiin akka banamuuf himannaa dhiyaateen bulchiinsi gandaa falmii kana dhaga'uun murtii kenneera. Himatamaanis murtii kana komachuun oliyyannoo mana murtii aanaatti dhiyeeffatee, manni murtiis dhimma kana dhaga'uuf bulchiinsa gandaa miti jechuun wal falmitootni dhimma isaanii dursa gara MMHG'tti akka dhiyeeffatan ajajuun galmee oliyyannoo cufeera.¹³⁰

Daangaa hojii isaanii beekuu dhiisuun yeroo bulchaan gandaa fi MMHG waliin murtii kennan ni mul'ata.¹³¹ Iddoo kaanitti MMHG, bulchaa fi itti gaafatamaa bulchiinsaa fi nageenyaa waliin ta'uun wal iddoo dhabbiin jirutti argamuun yeroo hiikan ni mul'ata.¹³² Fakkeenyaaf, falmii mukti daangaa darbe akka ciramuuf gaafatameen walitti qabaan abbaa seeraa, barreessaa abbaa seeraa, Bulchaa Araddaa, Itti Aanaa Bulchaa Araddaa fi Itti gaafatamaa Poolisii Komuuniitii ta'uun ilaalanii murtii kennaniiru. Murtii isaaniitinis himatamaan muka kana akka ciruuf ajajaniiru.¹³³

Akka waliigalaatti, daataa funaaname akka agarsiisutti MMHG bilisummaa hin qaban jechuun ni danda'ama. Kunis bu'a-qabeessummaa hojii isaanii daran miidheera.

¹²⁸Falmii Sufiyaa Usmaan fi Kaalisaa Bashaa/n-5/, Bulchiinsa Magaalaa Haramayaa Ganda 01, lakk. 2/01/0076/11 ta'e irratti gaafa 22/1/11 murtaa'e.

¹²⁹Af-gaaffii Obbo Bobboosaa Gammadoo, Af Yaa'ii Aanaa Tulluu Dimtuu, Waliin gaafa 30/05/11 taasifame, Obboo Kumaa Didhaa, Daayireektara Diiyireektoreetii KTAS MMO Godina Arsii Lixaa, waliin gaafa 13/05/11 taasifame.

¹³⁰Falmii Obbo Tafarraa Taaddasaa fi Darajjee Tafarraa, Mana Murtii Aanaa Ada'aa, lakk. Galmee 45224, gaafa 28/01/07 murtee argate.

¹³¹Af gaaffii Obbo Shamshaddiin Abdullee, Af Yaa'ii Aanaa Haaromayaa, Waliin Gaafa 06/06/11 taasifame, Obbo Mangistuu Dabbabaa, Af yaa'ii Aanaa Ada'aa, Waliin Gaafa 27/05/11 taasifame.

¹³²Af gaaffii Obbo Biraanuu Abbaba, Walitti qabaa A/s MMHG Magaalaa Haromayaa Ganda 01, Waliin Gaafa 06/06/11 taasifame, Obbo Jamaal Ahimad, Bulchaa Magaalaa Haromayaa Ganda 01, Waliin Gaafa 06/06/11 taasifame.

¹³³Falmii Aadde Zeeyituunaa Abrahaamii fi Obbo Awaqa Wandimmuu, MMHG Magaalaa Haramayaa Ganda 01, Waliin Gaafa 29/02/10 murtaa'e.

3.5. ITTI GAAFATAMUMMAA MIRKANEESSUU

Manni murtii hawaasummaa gandaa ji'a sadii sadiin mana marii gandaatiif gabaasa raawwii hojii akka dhiyeessan labsiin ni akeeka. Kunis hojii manichaa hoogganuu fi itti gaafatamummaa mirkaneessuuf akka ta'e ni tilmaamama. Qabatamaadhaan kan mul'atu garuu iddoo baay'eetti Manni Murtii Hawaasummaa gandaa gabaasa bulchaa gandaatiif ykn maanaajara Gandaatiif dhiyeessee bulchaan gandaa ykn maanaajarri gandaa gabaasa seektaroota biroo waliin walitti cuunfee mana maree gandaatiif dhiyeessaa kan jiru dha.¹³⁴ Gandoota tokko tokko biratti immoo mana marii gandaatiif gabaasni hojii MMHG kan hin dhiyaannee¹³⁵ fi manni marii gandaa illee manni murtii kun gabaasa raawwii hojii akka dhiyeessuuf hordofaa kan hin jirree dha.¹³⁶

Badii naamusaatiin wal qabatee Abbaan Seeraa barri hojii isaa xumuramuun dura rakkoo naamusaa yoo agarsiise hojii irraa gaggeeffamuu akka qabu ni kaa'a. Wantootni akka badii naamusaatti kaa'aman: iddoo dhaddacha seeraan murtaa'e alatii dhaddacha gaggeessuu, guyyaa fi yeroo dhaddachi gaggeeffamuu ifatti osoo hin ibsin hafuu, ragaa bitaa fi mirgaa garee wal falmitootaa osoo hin dhaga'iin murtii kennuu, firummaa ykn loogummaa ykn matta'aadhaan hojjachuu, garagalcha murtii abbaa dhimmaa dhoowwachuu, gochoota mirga oliyyannoo abbaa dhimmaa daangessan raawwachuu ykn raawwachuudhaaf yaaluu dha.¹³⁷

Haala qabatamaa manneen murtii hawaasummaa keessatti mul'atan yoo ilaallu akkuma armaan dura rakkoolee galmee keessatti mul'atan kaasuuf yaalametti ragaa bitaa mirgaa otuu hin dhaga'iin murtii kennuun, garagalcha murtii dhorkachuun fi loogiidhaan hojjachuun MMHG keessatti kan mul'ataa jiru dha.

¹³⁴Af gaaffii Obbo Kamaal H/Huseen, Af Yaa'ii Mana Maree Ganda Araadaa Magaalaa Shaashamannee, Waliin Gaafa 14/05/11 taasifame, Obbo Kadir Mohaammad, Walitti Qabaa A/Seeraa MMHG Ganda Magaalaa Roobee Ganda Odaa, Waliin gaafa 22/05/11 taasifame, Obbo Huseen Ahimad, Walitti Qabaa A/Seeraa MMHG Magaalaa Baabbilee Ganda 02 fi Aadde Firii Kabbada, A/Seeraa MMHG Magaalaa Babbilee Ganda 02, Waliin Gaafa 05/06/11 taasifame.

¹³⁵Afgaaffii Obbo Dhufeeraa Maammoo, Afyaa'ii Mana Maree A/Kuyyuu, Obbo Mokonnon Bayyanaa, I/G/W/Afyaa'ii fi Mana mare A/Kuyyuu, waliin gaafa 28/05/2011 taasifame, Obboo Gammachuu Bafataa, Walitti qabaa A/seeraa MMHG Araadaa Magaalaa Shaashamannee, Walii Gaafa 15/05/11 taasifame.

¹³⁶Afgaaffii Obbo Dhufeeraa Maammoo, Afyaa'ii Mana Maree A/Kuyyuu, Obbo Mokonnon Bayyanaa, I/G/W/Afyaa'ii fi Mana mare A/Kuyyuu, Waliin Gaafa 28/05/2011 taasifame, Obbo Boggaalee Badhaadhaa, Abbaa Seeraa fi A/A/G/Siivilii Mana Murtii A/Kuyyuu, Waliin gaafa 28/05/2011 taasifame, Obboo Gammachuu Bafataa, Walitti Qabaa A/Seeraa MMHG Araadaa Magaalaa Shaashamannee, Waliin Gaafa 15/05/11 taasifame.

¹³⁷Labsii MMHG MNO Irra Deebiin Fooyyessuuf Bahe Lakk.128/99, kew. 5(a-f)

Haa ta'u malee, badii naamusaa kana ilaalchisee itti gaafatamummaan mirkanaa'ee kan hin jirre dha. Kanaafis, akka sababaatti kan ka'e abbootiin seeraa tajaajila bilisaa kennuurraan kan ka'e yeroo barbaadeetti hojii dhiisee deemuu danda'uu isaati.¹³⁸ Qaamni abbummaan manneen murtii kana yeroo yeroon hojii isaanii gamaggamuun kallattii kaa'us hin jiru. Sababa kanaaf itti gaafatamummaa mirkaneessuuf hanqinni kan jiru dha. Kun immoo bu'a-qabeessummaa manneen murtii hawaasummaa gandaa irratti miidhaa qabaata.

Muuxannoo biyyoota akka Keeniyaa fi Zaambiyaa yoo ilaalle yeroo abbootiin seeraa mana murtii dhimmoota xiqiqqaa ilaalan badii naamusaa raawwatan fi hojii irratti laafiinsa agarsiisan kallattiin itti gaafatamummaan isaanii mana murtii waliigalaa biyyittiif ta'a. Kun immoo loogii fi tuttuqaa qaamota adda addaa irraa bilisa isaan taasisuun kaayyoo hundaa'aniif akka galmaan gahan isaan taasisuu danda'a.

3.6. HARIIROO MMHG FI MANA MURTII IDILEE

Manni murtii hawaasummaa dhimmoota muraasa irratti aangoo jalqabaa akka qabaatu labsiin manneen murtii hawaasummaa gandaa kaa'uu isaatiin falmiiwwan kun kallattiin gara mana murtii idileetti akka hin dhiyaanne taasifameera kan jedhu tilmaama fudhachuun ni danda'ama. Dhimmootni sadarkaa duraatti MMHG'tiin ilaalamuun murtiin irratti erga kennamee booda gareen komii qabu oliyyannoon gara mana murtii aanaatti fudhachuu danda'a.¹³⁹ Hojii mana murtii idilee irraa hir'isuun kaayyoo hundeeffama MMHG ta'uun isaa ifaan labsii keessatti ibsamuu baatuus dhimmootni daangaa aangoo mana murtii kanaa jala jiran manuma murtii kanatti xumura argatu yoo ta'e, dhiibbaa hojii mana murtii idilee irraa ni hir'isa jedhamee ni tilmaamama.

Hariiroon MMHG fi mana murtii idilee kallattii lamaan ilaalamuu ni danda'a. Inni jalqabaa, Manni Murtii Hawaasummaa Gandaa dhimma jaarsummaadhaan ilaalanii xumuraa waan jiraniif mana murtii idilee irraa hojii hir'isuu danda'ee jira. Kunis, Manni Murtii Hawaasummaa Gandaa falmii dhagahee murtii kennuudhaan otuu hin taane abbootii dhimmaa jaarsummaadhaan akka araaraman

¹³⁸Afgaaffii Obboo Kamaal H/Huseen, Af Yaa'ii Mana Maree Ganda Araadaa Magaalaa Shaashamannee, Waliin Gaafa 15/05/11 taasifame, Obbo Biraanuu Adii, It/Aana/Af-yaa'ii Aanaa Wandoo, Waliin Gaafa 15/05/11 taasifame, Obbo Shamshaddiin Abdulle, Af Yaa'ii Aanaa Haaromayaa, Waliin Gaafa 06/06/11 taasifame.

¹³⁹Labsii MMHG MNO irra deebiin fooyyessuuf bahe lakk. 128/99, kew. 34

gochuudhaani.¹⁴⁰ Namootni jaarsummaadhaan dhimma isaanii akka xumuratan kan taasifame mana murtiitti erga dhiyaate qofa otuu hin taane abbootiin dhimmaa mana murtii kana irraa amantaa dhabuudhaan kaka'umsa isaanii bakkuma jireenya isaanii wal dhabbi xumurataa jiru kan jedhuu illee ni eerama.¹⁴¹

Inni lammaffaa, dhimmootni jaarsummaan xumuramu hin dandeenyee yeroo MMHG'tiin murtiin kennamu qulqullina dhabuu isaatiin yeroo oliyyannoon ilaalamanitti hojii mana murtiitti baayyiseera kan jedhu dha. Oliyyannoon kennamu fuula, lakkoofsaa fi guyyaa dhabuu,¹⁴² lakkoofsi abbootii seeraa osoo hin guutiin dhaddacha moggaasuun murtii kennuu,¹⁴³ ragaa garee tokkoo sababa gahaa malee dhaga'uu dhiisuu,¹⁴⁴ ragaa bitaafi mirgaa ijoo dubbii garagaraa irratti dhaga'uu,¹⁴⁵ seerummaa gaafatameen olitti murtii kennuu,¹⁴⁶ fi kkf kan mul'atani dha. Akkasumas, dhimma kana ilaalchisee bargaaffii guutameen abbootiin seeraa idilee 60% ta'an manni murtii hawaasummaa gandaa jaarsummaan walcinaa qabamee yoo ilaalamu murtii kennuun isaanii hojii mana murtii idilee irraa hir'isee akka hin jirre eeraniiru. Abbaan dhimmaas MMHG deemuu dhiisuuf jecha dhimma jajallisuun ykn abbaa seerummaa gaafatamu ol kaasuun yeroo gara mana murtii aanaatti himannaa hudeessan ni mul'ata.¹⁴⁷

¹⁴⁰Af-gaaffii Obbo Hirphoo, Perezidaantii MMA Shaashamannee, Waliin Gaafa 14/05/11 taasifame, Obbo Bobboosaa Gammadoo, Af Yaa'ii Aanaa Tulluu Dimtuu, Waliin Gaafa 30/05/11 taasifame, Obbo Buudee Goonaa, Walitti Qabaa MMHG Magaalaa Baatuu Ganda 01, Obbo Kadir Bantii, Abbaa Seeraa MMHG Magaalaa Baatuu Ganda 01, Waliin Gaafa 30/05/11 taasifame.

¹⁴¹Af-gaaffii Obbo Aabbbuu Oosaa, Itti/Ga/Waj/Bulchiinsaa Go/Arsii Lixaa, Waliin Gaafa 13/05/11 taasifame, Obbo Aschaalewu Xilahuun, D/D KTAS MMO G/Baalee, Waliin Gaafa 20/05/11 taasifame, Obbo Mangistuu Dabbabaa, Af-Yaa'ii Aanaa Ada'aa, Waliin Gaafa 27/05/11 taasifame, Obbo Abbaba Addunyaa, Perezidaantii MMA Adaamii Tulluu, Waliin Gaafa 30/05/11 taasifame.

¹⁴²Af gaaffii Obbo Yaasiin Ibraahim, BB perezidaantii MM Aanaa Wandoo, Waliin Gaafa 15/05/11 taasifame, Obbo Abbaba Addunyaa, Perezidaantii MMA Adaamii Tulluu, Waliin Gaafa 30/05/11 taasifame.

¹⁴³Falmii Obbo Damisee Isheetuu fi Suufaa Gaashawu (n-2) Gidduutti taasifamee MMHG irraa ka'ee Dh/I/M/M/W/O lakkoofsa galmee 289645 irratti gaafa 10/03/2011 murtee argate

¹⁴⁴Falmii Obbo Nagaash Taaddasa fi Mohaammad Kadir /n-10/, Mana Murtii Aanaa Sinaanaalakk. Galmee 44750 irratti gaafa 5/02/11 murtee argate.

¹⁴⁵Falmii Obbo Boonaa Bulbulaa fi Girmaa Alamaayyoo, Mana Murtii Aanaa Ada'aa, lakk. Galmee 52487 ta'e irratti gaafa 10/09/08 murtee argate.

¹⁴⁶Falmii Obbo Muusaa Abduu fi H/Kuunii Hasan Gidduutti ta'ee, Mana murtii Aanaa Sinaanaalakk. Galmee 44102 ta'e irratti gaafa 08/02/11 murtee argate.

¹⁴⁷Af gaaffii Obbo Bukaar Kaadiroo, BB MM Olaanaa Harargee Bahaa, Waliin Gaafa 04/06/11 taasifame, Obbo Abbaba Addunyaa, Perezidaantii MMA Adaamii Tulluu, Waliin Gaafa 30/05/11 taasifame, Obbo Yaasiin Ibraahim, BB Perezidaantii MM Aanaa Wandoo, Waliin Gaafa 15/05/11

Akka waliigalaatti, dhimmootni baay'een aangoo MMHG ta'uun kennaman ilaalchisee abbootiin dhimmaa jaarsummaadhaan xumuraa waan jiraniif gara mana murtii aanaatti dhufaa akka hin jirree dha. Dhimmootni adeemsa seeraan MMHG'tti ilaalaman darbee darbee qulqullina kan qaban yoo ta'u,¹⁴⁸ dhimmootni kaan garuu hanqina dandeettii seeraa fi naamusaa dhabuu irraa kan ka'e abbootiin dhimmaa akka dararamanii fi gara mana murtii idileetti ol'iyyannoon dhufan taasiseera.

3.7. GAHEE FI BU'A QABEESSUMMAA JAARSUMMAA DHIMMOOTA MMHG'TIIN ILAALAMAN IRRATTI QABU

Haalli manneen murtii hawaasummaa gandaa murtii kennaa jiru walfakkaataa miti. Manneen murtii hawaasummaa gandaa tokko tokko biratti falmii ragaa bitaafi mirgaa dhaga'uun murtiin yoo kennamu, iddoo birootti immoo ragaa dhaga'uun murtii kennamu baay'ee xiqqaa dha. Bakka tokko tokkotti immoo MMHG ragaa bitaaf mirgaa dhaga'uun murteen kenne kan hin jirre dha. Fakkeenyaaf, manneen murtii hawaasummaa Gandaa Magaalaa Roobee, ganda Odaa Roobee, Magaalaa Baabbilee Ganda 01, Magaalaa Shaashamannee Ganda Araadaa, Magaalaa Wandoo Ganda 01 fi Magaalaa Laga Xaafoo Laga Daadhii fudhachuun ni danda'ama.

Manni murtii hawaasummaa gandaa aanota tokko tokko keessatti hundeeffamanii hojii idilee isaanii hojjechaa kan hin jirre dha. Fakkeenyaaf, Aanaa Maannaa Magaalaa Yabuu. Gama biraatiin iddoo hundeeffamanii jiranittis galmee lakkoofsaan baayyee xiqqaa ta'e ilaalaa kan jirani dha. Fakkeenyaaf, Magaalaa Haromayaa Ganda 01, Gandoota Magaalaa Jimmaa fi Magaalaa Gobbaa Gandaa Gobbaa Bahaa fudhachuun ni danda'ama.

Bakka manni murtii hawaasummaa gandaa lafa hin qabanetti hawaaasni wal dhabbii isaanii jaarsummaan kan fixatanii fi falmiin baay'een gara MMHG'tti dhufaa kan hin jirre ta'uu eeru.¹⁴⁹ Darbee, darbee dhimmoota gara mana murtiitti

taasifame, Obboo Tsaggaayee Dassaalanyi, Perezidaantii MMA Gobbaa, Waliin Gaafa 23/05/11 taasifame.

¹⁴⁸Fakkeenyaaf, Falmii akka Dannaboo Tibbeessoo fi Abbabalinyi Woldee, Mana Murtii Hawaasummaa Gandaa Maagaalaa Baatuu Ganda 02, lakk. 065/09 irratti Gaafa 12/03/09 murtaa'e, Falmii Baayyuu Baqqalaa fi Jamaal Muhaammad, Mana Murtii Hawaasummaa Gandaa Baatuu Ganda 01, lakk. Galmee 10493 irratti gaafa 10/11/09 murtaa'e.

¹⁴⁹Af gaaffii Obbo Hasan Yuuyaa, It/Aa/Af Yaa'ii Aanaa Baabbilee, Obboo Aschaalewu Xilahuun, KTAS Mana Murtii Olaanaa Godina Baalace, Waliin Gaafa 20/05/11 taasifame, Aadde Munaa

dhiyaatanis jaarsummaan xumuramaa akka jiruu fi ragaa bitaafi mirgaa dhaga'uun murtii kennuun baay'ee kan hin baratamne ta'uu ibsu.¹⁵⁰ Abbootiin seeraa tokko tokko iddoo falmiif sababa ta'e qaamaan argamuun wal falmitoota walitti araarsuu,¹⁵¹ ragoollee bitaa fi mirgaa waamaman abbootii dhimmaa walitti araarsu,¹⁵² fi wal falmitoota dhaddachuma jalqabaa irratti araarsaa akka jiran kaasu.¹⁵³

Bargaaffii taasifameenis abbootiin seeraa mana murtii idilee 88.4% ta'aan manni murtii hawaasummaa gandaa adeemsa seera idilee irra jaarsummaan wal dhabbi wal falmitootaa hiikuu irratti milkaa'aa akka jiru ibsaniiru. Abbootiin dhimmaa yeroo MMHG'tti dhiyaatan dhimma isaanii jaarsummaadhaan xumurachuuf fedhii isaanii abbootiin seeraa MMHG yoo sadarkeessan 88.3% olaanaa fi daran olaanaa jedhaniiru.

Akka waliigalaatti, daataan funaaname kan agarsiisu dhimmootni aangoo MMHG'tiin akka ilaalamaniif kaa'aman keessatti sirna idilee irra jaarsummaadhaan gargaaramuun bu'a qabeessa ta'uu agarsiisa. Fedhiin abbootii dhimmaa bira jirus bitaafi mirga ragaa dhiyeessuun murtii barbaaduu otuu hin taane jaarsummaadhaan dhimma xumurachuu dha.

4. GUDUUNFAA FI YAADA FURMAATAA

4.1. GUDUNFAA

Mirgi haqa argachuu lammiilee mirga sadarkaa idila addunyaa fi biyyootaatti haguuggii seeraa argatee jiru dha. Mirkanaa'uu mirga kanaatiif biyyootni

Gizaawuu, It/Aan/Af Yaa'ii, Aanaa Sinaanaa, Waliin Gaafa 22/05/11 taasifame, Obbo Mangistuu Dabbabaa, Af Yaa'ii Aanaa Ada'aa, Waliin Gaafa 27/05/11 taasifame, Obbo Abdiisaa Kamaal, It/Ga/Wa/Bu/Adaamii Tulluu, Waliin Gaafa 30/05/11 taasifame.

¹⁵⁰Af-gaaffii, Obbo Gammachuu Bafataa, Walitti Qabaa A/Seeraa MMHG Araadaa Magaalaa Shaashamannee, Waliin gaafa 15/05/11 taasifame, Obbo Dastaa Galatoo, It/Aanaa Bulchaa Ganda Araadaa Magaalaa Shashamannee, Waliin Gaafa 15/05/11 taasifame, Obboo Huseen Ahimad, Walitti Qabaa A/Seeraa MMHG Magaalaa Baabbilee Ganda 02 fi Aadde Firii Kabbadaa, A/Seeraa MMHG Magaalaa Babbilee Ganda 02, Waliin Gaafa 05/06/11 taasifame.

¹⁵¹Afgaaffii Obbo Huseen Ahimad, Walitti Qabaa A/Seeraa MMHG Magaalaa Baabbilee Ganda 02 fi Aadde Firii Kabbadaa, A/Seeraa MMHG Magaalaa Babbilee Ganda 02, Waliin Gaafa 05/06/11 taasifame, Obbo Biraanuu Abbabaa, Walitti Qabaa A/S MMHG Magaalaa Haromayaa Ganda 01, Waliin Gaafa 06/06/11 taasifame.

¹⁵²Afgaaffii Obbo Abarraa Ayyee, Walitti Qabaa A/Seeraa MMHG Itayyee Magaalaa Wandoo, Waliin Gaafa 15/05/11 taasifame.

¹⁵³Afgaaffii Obboo Buudee Goonaa, Walitti Qabaa MMHG Magaalaa Baatuu Ganda 01, Obbo Kadir Bantii, Abbaa Seeraa MMHG, Magaalaa Baatuu Ganda 01, Waliin gaafa 30/05/11 taasifame.

garagaraa manneen murtii idilee dabalatee manneen murtii biroo kanneen baasii xiqqaa fi adeemsa salphaa ta'een itti dhiyeenyaan lammiiileef tajaajila abbaa seerummaa kennan hundeessaniiru.

Akka Naannoo Oromiyaattis tajaajila abbaa seerummaa dhaqqabamaa ta'e hawaasa sadarkaa gadiitti argamaniif kennuuf Manneen Murtii Hawaasumaa Gandaa hundeessuun Caffeen immoo Mana murtii aadaa hundeessuuf ykn beekkamtii kennuu akka qabu ibsameera. Barbaachisummaa manneen murtii kana walfaanaa hundeessuun ifaa yoo ta'uu baateyyuu galmi isaa tokko akka ta'e hubachuun ni danda'ama.

Kaayyoo hundeeffama manneen murtii hawaasummaa gandaa keessaa tokko jiraattotni tajaajila haqaa itti dhiyeenyaan akka argatan gochuu dha. Kana galmaan gahuu keessatti hanqinaaleen adda addaa akka jiran qorannoo kanaan adda bahee jira. Dandeettii raawwachiisummaa dhabuu, muudamaa fi muudama irraa kaafamuun abbootii seeraa iftoomina dhabuu, miirri tajaajilummaa dhabamuu, hojimaatni idilaa'aa ta'e dhabamuu fi kabaja manneen murtii eegsisuuf abbootiin seeraa aangoo dhabuu irraan kan ka'e uummanni manneen murtii hawaasummaa gandaa irraa amantaa akka hin qabaanne taasiseera.

Rakkoon naamusaa kanneen akka abbootii dhimmaatiif oliyyannoo yeroon kennuu dhabuu fi abbootii dhimmaa deddeebisuun manneen murtii hawaasummaa gandaa biratti calaqqisaa jira. Akkasumas, abbootiin seeraa yeroo ragaa bitaafi mirgaa dhaga'uun murtii yeroo kennan hanqinaalee dandeettii kanneen akka barreessa murtii, ragaa bitaafi mirgaa osoo hin dhaga'iin murtii kennuu, ragaa garee tokkoo qofa dhaga'uun murtii kennuu, ijoo ogeessaan qulqullaa'uu qabu bira darbuu, ijoo dubbii sirnaan adda baafachuu dhabuu, seerummaa gaafatamee ol murtii kennuu fi aangoo seeraan isaaniif kennamee jiru ala bahuun murtii kennuun kan mul'achaa jiru dha. Bilisummaa hojii dhabuu fi itti gaafatamummaa mirkaneessuu dhabuunis rakkolee MMHG keessatti mul'atani dha.

Gahee jaarsummaan MMHG keessatti qabu ragaa dhaga'uun murtii kennuu waliin walcinaa qabamee yoo ilaalamu milkaa'inni fooyya'aan kan jiru dha. Fedhiin abbootii dhimmaa bira jiruus dhimmoota isaanii jaarsummadhaan xumurachuu akka ta'ee dha. Kanaanis walitti dhufeenyi abbotti dhimmaa nageenyaan akka itti fufu gochuu irra darbee hojii mana murtii idilee irraa hir'iseera. Gama biraatiin dhimmoota jaarsummaan otuu hin milkaa'iin ragaa bitaaf mirgaa dhaga'uun murtii argatan ilaalchisee rakkoo dandeettii fi naamusaa irraa kan ka'e hanqina mul'atuuf

oliyyannoof ka'uumsa ta'uun hojii dabalataa mana murtii idileef uumaniiru. Galmeen isaaniis qulqullina dhabuun dhimma mana murtii idilee keessatti akka lafarra harkifatuuf yeroo sababa ta'aan argameera.

Akka waliigalaatti, hanqinaaleen armaan olitti ibsaman jiraachuu isaaniitiin manni murtii hawaasummaa gandaa bu'a qabeessa akka hin taane gochuudhaan mirga baasii xiqqaa fi adeemsa salphaa ta'een tajaajila haqaa argachuu jiraattota gandaa miidhee jira.

4.2. YAADA FURMAATAA

Hanqinaaleen armaan olitti ibsaman jiraachuu isaaniitiin manni murtii hawaasummaa gandaa mootummaa naannoo Oromiyaa tajaajila abbaa seerummaa kennaa jiran bu'a qabeessa akka hin taane taasiseera. Tajaajila abbaa seerummaa bu'a qabeessa ta'e jirattootni gandaa akka argataniif yaadotni furmaataa armaan gadii akeekamaniiru.

- Tajaajila haqaa bu'a qabeessa ta'e jiraattota gandaatiif kennuuf manni murtii aadaa fi duudhaa hawaasaatti daanga'uun tajaajila abbaa seerummaa kennu hundeeffamuu qaba.
- Aangoo mana murtii kanaa ilaalchisee dhimmoota aadaa irratti hundaa'uun ilaalamuu danda'an qorannoo biraatiin adda baasuun barbaachisaa dha. Kunis dandeettii abbootii seeraa filatamuuf jiranii fi sochii hawaasummaa giddu galeessa kan taasise ta'uu qaba.
- Walitti dhufeenyi mana murtii kanaa fi mana murtii idilee akkasumas sirni oliyyannoo haala kamiin ta'uu mala kan jedhu qorannoo biraatin adda bahee kaa'amuu qaba.
- Filannoo fi muudamni abbootii seeraa mana murtii kanaa bifa kutaa hawaasaa keessaa abbootii gadaa fi manguddoota naannoo hammachuu danda'uun gaggeeffamuu qaba. Tarreen raawwii isaatii qorannoo biraatiin adda bahuu qaba.
- Abbootiin seeraa mana murtii kanaa tajaajila kennaniin kaffaltii argachuu kan qaban yoo ta'u gosti kaffaltii fi maddi baajataa akkasumas bulchiinsi isaa qorannoo biraatin adda bahuu qaba. Kunis itti gaafatnummaa mirkaneessuu fi miira tajaajiltummaa gabbisuuf kan fayyadu ta'a.

List of articles, case analysis and reflections published on the first nine issues of Oromia Law Journal

No	Article Title	Contribution Type	Volume & Number	Author/s	Publication year
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2	The Degree of Court's Control on Arbitration under the Ethiopian Law: Is It to the Right Amount	Article	1(1)	Birhanu Beyene	2004/2012
3	Madaallii Raawwii Hojii Abbootii Seeraa Oromiyaa: Barbaachisummaa fi Sirna Raawwii Isaa <i>Corresponding Translation:</i> Judges' Performance Evaluation in the State of Oromia: The Need and the How	Article	1(1)	Teferi Bekele	2004/2012
4	Mediating Criminal Matters under Ethiopian Criminal Justice System: The Prospect of Restorative Justice	Article	1(1)	Jetu Edosa	2004/2012
5	Sadarkaa Mirkaneessa Ragaa Dhimma Yakkaa:Yaadimeewwanii fi Xiinxala Dhimmaa <i>Corresponding Translation:</i> Standard of Proof in Criminal Cases: The Concepts and Case Analysis	Case Analysis	1(1)	Milkii Mekuria	2004/2012
6	Oromia Justice Sector Professionals Training and Legal Research Institute: Major Activities and Achievements	Reflection	1(1)	Milkii Mekuria	2004/2012

7	The Place of Environmental Protection in the Growth and Transformation Plan of the Federal Democratic Republic of Ethiopia	Article	2(2)	Dejene Girma (PhD)	2005/2013
8	Derivation of Rights: Affording Protection to Latent Socio-economic Rights in the FDRE Constitution	Article	2(2)	Amsalu Darge	2005/2013
9	Bu'a qabeessummaa Rifoormiiwwan Manneen Murtii Oromiyaa: Kallattii Si'oomina Abbaa Seerummaatiin Yoo Madaalamu <i>Corresponding Translation:</i> Assessing the Effectiveness of Judicial Reforms from the Perspective of Efficiency: The Case of the State of Oromia	Article	2(2)	Teferi Bekele	2005/2013
10	Cassation Review of Arbitral Awards: Does the Law Authorize It?	Article	2(2)	Birhanu Beyene	2005/2013
11	Determination of Personal and Common Property During Dissolution of Marriage under Ethiopian Law: An Overview of the Law and Practice	Article	2(2)	Silashi Bedasie	2005/2013
12	Perspectives on Common Property Regimes in Ethiopia: A Critical Reflection on Communal Land Holding Rights in Borana Oromo Pastoralists Context	Article	2(2)	Jetu Edosa	2005/2013
13	Federalism in Ethiopia and Foreign Relations: Regional State Diplomacy	Article	3(1)	Tesfaye Assefa	2006/2014
14	Dagannoon Nama Ajjeesuu Ilaalchisee Firiwwan Dubbii Seerichaa Irratti Hundaa'uun Hojjechuun Walqabatee Rakkoowwan Qabatamaan Mul'atan <i>Corresponding Translation:</i> Negligent Homicide: Law and Practice	Article	3(1)	Tolosa Dame	2006/2014
15	Bigamous Marriage and the Division of Common Property under the Ethiopian Law: Regulatory Challenges and Options	Article	3(1)	Jetu Edosa	2006/2014
16	The Chance to Improve the System of EIA in Ethiopia: A Look at the New Investment Proclamation	Article	3(1)	Dr. Dejene Girma	2006/2014

17	Reforming Corporate Governance in Ethiopia: Appraisal of Competing Approaches	Article	3(1)	Hussein Ahmed	2006/2014
18	A Human Rights-based Approach to Counteract Trafficking in Women: The Case of Ethiopia	Article	3(1)	Bahar Jibriel	2006/2014
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38	Allocation of Costs and Fees of Civil Litigation in Federal Supreme Court Cassation Division: 'Does One Approach Really Fit All'?	Article	7(1)	Kahsay Gidey	2010/2018
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