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REFORMING THE ETHIOPIAN ELECTORAL SYSTEM: 
LOOKING FOR THE BEST ALTERNATIVE*

Gebremeskel Hailu Tesfay**

ABSTRACT

Electoral systems are set of rules and procedures which determine how voters cast their votes and how the votes are converted into representative seats.¹ Beyond this, each electoral system has its own impact on how the political system functions. From this perspective, the author has tested the discontents of the Ethiopian electoral system, the first-past-the-post (FPTP) taking the election data of 2005, 2010 and 2015. The research finding showed that the FPTP electoral system is ill devised to the Ethiopian current needs and realities.² In view of such discontents, there should be a genuine concern of reforming the Ethiopian electoral system. The question remains, however, which electoral system best suits the Ethiopian situation from the bulk of alternatives? In choosing the best alternative electoral system, first, a list of criteria are set which sum up what we want to achieve and what we want to avoid or in a broader sense what we want our political system to look like. The possible alternative electoral systems are evaluated against the specific criteria designed. Finally, the evaluation revealed decisively that the mixed electoral system with compensatory seats which maintains the strong attributes of FPTP and PR electoral systems while avoiding at the same time their negative sides is found to be the best to the Ethiopian multicultural federation. This system which combines FPTP and PR systems would produce proportional results, encourage inter-party conciliation, reduce the number of ignored votes, enable geographic representation, ensure fair results for all political parties and the voters behind them, and above all creates cohesive government than the PR system would do alone.

Key words: electoral system, the FPTP, the mixed electoral system, proportional electoral system, and Ethiopia.

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1. INTRODUCTORY REMARKS

Modern democratic societies are governed by a smaller set of public officials whom the people delegate them the task of political decision-making. These representatives are chosen through elections. The question of how votes are casted in an election and how the votes are converted into representative seats are governed by electoral systems.\(^3\) Electoral systems, other than translating votes to seats, have vital effects on a political system as a whole. They determine the number of parties, the ease of forming a stable government, the degree of representation of political parties and the extent of citizens’ interest in politics.\(^4\) Hence, electoral systems are powerful instruments for shaping the content and practice of politics. In this regard, many scholars, including Donald Horowitz and Arend Lijphart argued; “within the range of democratic institutions, there is no more important choice than which electoral system to be used”.\(^5\)

However, each electoral system has its own advantages and disadvantages. No system is perfect, either theoretically or practically. Some electoral systems are preferable to some legal systems while others are not and the vice versa.\(^6\) Therefore, what matters most is, whether the net disadvantages of any system is more tolerable than the net disadvantages of other alternative systems taking into account the context where the electoral system works.

From this vantage point, unlike proportional representation (hereafter PR) electoral systems, majoritarian systems to which the Ethiopian electoral system, first-past-the-post (here after FPTP) belongs is strong in creating cohesive government and ensuring accountability of members at constituency level, among others, but is blamed for misrepresenting smaller parties, failing to create interethnic or intercultural conciliation and affecting multiparty democracy. The author has previously tested this assertion by an empirical research exploring the discontents of the Ethiopian electoral system in light of the nation’s political experience, social plurality and

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\(^3\)Michael and Paul, *Supra* note 1, p. 3.
\(^5\)*Ibid.*
\(^6\)*Ibid.*
constitutional frameworks. The research finding showed with a lot of evidence that the FPTP is ill devised to the Ethiopian needs and realities. Particularly, it has distorted the level of representation and has produced manufactured majority rewarding bigger parties with bonus seats while punishing the smaller ones. This in turn has obstructed the legitimacy of the government. It has affected the behavior of political parties fostering ‘me or never’ or fear mongering political campaigns exacerbating intolerance between the opposition and the incumbent parties and the supporters behind them instead of conciliation and cooperation. It has also affected the multiparty system by denying smaller political parties seats proportionate to their votes.

In the existence of all these problems, there should be a genuine concern of reforming the Ethiopian electoral system. The question remains, however, whether it is possible to devise an alternative electoral system which mitigates the problems of the FPTP? Vast of the literature long established this question positively. In 1990s several democratic states have answered that question in the affirmative. For instance, Japan, Italy, New Zealand, Russia, Hungary and Chile replaced their electoral systems by new ones in response to achieving some objectives which they had missed in the FPTP.

In light of such experiences, this article is intended to investigate whether Ethiopia can do the same? If so, which alternative is best? And what should be the mechanisms employed to select the best alternative? Accordingly, the central focus of this research is searching a viable alternative electoral system which alleviates the problems of the existing electoral system without avoiding its existing virtues.

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7Gebremeskel, Supra note 2.
8Bigger party in the Ethiopian context refers to the EPRDF, while small parties refer to the other parties who are unable to find parliamentary seats in the parliament.
9Ibid.
10Ibid.
11Ibid.
To meet this objective, the results of the previous general elections, the nature and basis of formation of the political parties together with the available literatures and the experiences of other countries are duly considered. Moreover, interviews are conducted with key informants from the opposition and the incumbent political parties and the author’s own observation is contemplated. However, it is good to note that the article is short of analyzing whether or not the existing FPTP electoral system in Ethiopia is practically conducted genuinely, i.e., the process is free, fair, and inclusive. The article rather examines the practical consequences of FPTP even when it is genuinely implemented in Ethiopia.

The structure of this article goes in the following manner. Following this first part, the second part of the discussion tries to review the practical pitfalls of the Ethiopian electoral system to underscore the need for reforming it. The forth part makes a thorough analysis on each of the possible alternatives of electoral systems by setting up established criteria. Finally, in the fourth part conclusions are drawn.

2. BRIEF HIGHLIGHT ON THE DISCONTENTS OF THE ETHIOPIAN ELECTORAL SYSTEM, THE FPTP

As a matter of fact, the FPTP electoral system does have its own strong and weak sides subject to conditions where the system is implemented. The ACE Newsletter\(^{14}\), however, underscored the importance to realize that a given electoral system will not necessarily work in the same way in different countries. Although there are some common experiences in different regions of the world, the effects of a particular type of electoral system depend to a great extent on the socio-political context in which it is used. What matters most is, therefore, the context where the electoral system is supposed to work. Regarding the Ethiopian context, save its positive results, the following discussion tends to show the problems of this electoral system.

2.1. THE EFFECT OF FPTP ON REPRESENTATION PARTIES

Pursuant to the FPTP, a party who won in each electoral constituency is returned to the parliament. The literature widely blames this system for hampering fair representation of parties and the views behind the parties. In this regard, let’s test this assertion by taking the 2005 and 2010 Ethiopian general elections.

**Table 1: Results of the 2005 Ethiopian general election**

<table>
<thead>
<tr>
<th>No.</th>
<th>Party</th>
<th>Popular vote</th>
<th>Seats on the basis of</th>
<th>Discrepancy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>FPTP</td>
<td>PR</td>
</tr>
<tr>
<td>1</td>
<td>EPRDF</td>
<td>10,260,413</td>
<td>327</td>
<td>274</td>
</tr>
<tr>
<td>2</td>
<td>CUD</td>
<td>4,594,668</td>
<td>109</td>
<td>123</td>
</tr>
<tr>
<td>3</td>
<td>UEDF</td>
<td>1,741,670</td>
<td>52</td>
<td>47</td>
</tr>
<tr>
<td>4</td>
<td>OFDM</td>
<td>454,435</td>
<td>11</td>
<td>12</td>
</tr>
</tbody>
</table>

*Source: Abrha Kahsay cited at infra foot note No. 24.*

In the 2005 Ethiopian competitive general election, 35 political parties took part. Of which 4 parties from the opposition and one independent have managed to get parliamentary seats. EPRDF won 327 seats using the FPTP electoral system. If we make electoral simulation using PR instead of the FPTP, the EPRDF would have won 274 seats which reduce its share by 53 seats. The Coalition for Unity and Democracy (CUD) would have had secured additional fourteen seats from 109 seats it secured using FPTP had the system in use been PR electoral system. The Oromo Federalist Democratic Movement (OFDM) which got 11 seats would have had secured one additional seat. On the contrary, United Ethiopian Democratic Forces (UEDF) would have lost five seats from the 52 seats it achieved using FPTP had the system in use been PR electoral system.
On balance 43 seats would have been distributed to other parties who failed to get any seat on the basis of FPTP electoral system. That shows, the votes which had been polled to the smaller parties and which could have earned 43 seats are wasted and the smaller parties are left misrepresented.

One more instance; let’s examine the results of the 2010 general election for Addis Ababa City Administration which is represented by 23 seats at the national parliament.

*Table 2: Results of the 2010 Ethiopian general election*

<table>
<thead>
<tr>
<th>No</th>
<th>Party</th>
<th>Popular vote</th>
<th>Seats on the basis of</th>
<th>Discrepancy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>FPTP</td>
<td>PR</td>
</tr>
<tr>
<td>1</td>
<td>EPRDF</td>
<td>564,821</td>
<td>22</td>
<td>13</td>
</tr>
<tr>
<td>2</td>
<td>Medrek</td>
<td>380,329</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>3</td>
<td>EDP</td>
<td>39,786</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>4</td>
<td>AEUP</td>
<td>19,622</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>5</td>
<td>CUD</td>
<td>14,108</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>


Out of total 1,041,180\(^{15}\) (one million forty one thousand and one hundred eighty) votes, EPRDF received 564,821(five hundred sixty four thousand and eight hundred twenty one) votes\(^{16}\) which accounts 54.2% of the total votes. However, using the FPTP electoral system, it won 95.6% of the seats (22 out of 23 seats). But, had the system in place been PR electoral system, it would have had entitled to 54.2% of the seats (13 out of the 23 seats). Hence, in actual terms 41.4% of the votes casted against EPRDF are wasted or are

\(^{15}\)The Ethiopian National Electoral Board (ENEB) Report for the 2010 General Election, available at the library of the ENEB, September 2010.

\(^{16}\)Ibid.
left unrepresented. Instead, as a result of the FPTP electoral system, EPRDF got additional 9 more seats (41.4% of the total seats).

Medrek, a coalition of different parties, got 380,329 out of the 1,041,180 votes which amounts to 36.5% of the total votes but received only a single seat (4.4% of the seats). Nevertheless, had it been a PR electoral system, it would have been entitled to 36.5% or 8 seats and it actually lost 7 seats (32.1% of seats). In other words, 32.1% of votes which are casted to Medrek are left unrepresented.

In the same manner, Ethiopian Democratic Party (EDP) and All Ethiopian Unity Party (AEUP) would have been entitled each to a single seat, had the system been proportional representation but owing to the FPTP electoral system they got nothing.

Overall, the above discussion reveals that the existing electoral system is distorting the allocation of votes to seats thereby misrepresenting the minor parties. The FPTP greatly benefited the EPRDF compared to others and this substantiated the theory which states FPTP inherently benefits bigger parties and puts the smaller ones and the voting population behind them disadvantaged.

2.2. THE EFFECT OF FPTP ON MULTIPARTISM

Ethiopia is experiencing an infant democracy striving to bring about multiparty democracy only since barely a couple of decades ago. The country had been characterized by absence of accommodation for almost all of its history. As a result of that gloomy reality, the country was in prolonged civil wars, which were basically the off-shoots of the different views that could have been peacefully resolved had there been multiparty system in the country.

For multipartism to triumph, the electoral system should be accommodative, representative, and fair to all. However, it is an established fact that FPTP

17Ibid.
19Ibid.
electoral system is against multiparty democracy in diversified societies. It rather encourages larger parties to the disadvantage of the smaller ones leading to two party systems in most cases.

From the election data presented by Ethiopian National Electoral Board (herein after ENEB) from 1995-2015, the number of contending parties is increasing. Nevertheless, in the last two elections, the ruling party and its allies won 99.9 % and 100 % of the seats in the House of Peoples’ Representatives (HPR). This result left substantial number of votes given to the opposition parties unrepresented in the HPR. Obviously, this trend ultimately affects the multiparty democracy for parties are losing hope of receiving parliamentary seats let alone winning government positions. The lion’s share of this problem goes to the existing electoral system which rewards larger political parties at the expense of smaller ones.

2.3. THE EFFECT OF FPTP FOR OR AGAINST CONCILIATION

In Ethiopia, the aforementioned analysis reveals the existence of serious misrepresentation in the parliament. The opposition is left unrepresented despite receiving substantial votes. Because of the winner take all nature of the FPTP electoral system, political parties consider each other as enemies and not allies. They each preach themselves as ‘good’ and their competitors as ‘evil’ in their election campaigns. The author’s observation from the previous elections reveals pre-election campaigns were not held among programs but rather were inclined to hate mongering propagandas. The

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20 Andrew Reynolds et al, supra note 4.
21 To illustrate this by way of example, let’s take the case of New Zealand; New Zealand had long experienced a two party system until it switched to a MMP from the FPTP. Despite its two party experiences, the first contest under MMP has involved 34 parties resulting in the election of six and a coalition government. See, Pippa Norris, Choosing Electoral Systems: Proportional, Majoritarian, and Mixed Systems, International Political Science Review (1997), Vol. 18, No. 3, Sage Publications ltd.P. 299, available at: http://www_hks_harvard_ edu / fs/pnorris/ Acrobat /Political%20Studies%20Twilight.pdf <as accessed on October 10, 2016>.
22 In the electoral periods from 1995-2015, it was 57, 49, 35, 63 and 58 respectively, see NEBE Bulletin of the 2010 Election, supra note 18.
incumbent and the opposition parties blame each other for every political failure even arising from their own internal affairs.

During the eves of election campaigns, especially at the later three elections (2005, 2010 and 2015) both the ruling and the opposition parties tried to use scare-mongering campaigns rather than their alternative policies.\(^\text{24}\) Their content of campaigning is ‘me’ or ‘never’ which resulted from the desire to take the single seat available in a constituency contemplating the ‘winner takes all’ scenario. If this is taken back to the political history of the state, it is adding fuel to the already polarized political culture.

The opposition parties further blame one another tagging some of their members as ‘weyanie’ or otherwise allies of the ruling party. They deny legitimacy to the government and the institutions created by the latter. Understandably, the weak political culture of tolerance and compromise is one of the causes for such behavior.\(^\text{25}\) However, such problems might have been dealt by a properly designed electoral system. To say the least, the plurality electoral system is escalating the mistrust among political parties. So, we can say, the existing electoral system does not help the political parties to negotiate and make political compromise or consensus on Grand National issues and interests.

### 2.4. THE EFFECT OF FPTP ON GOVERNMENT LEGITIMACY\(^\text{26}\)

Legitimacy requires the broadening of representation of social groups in governmental decision making roles.\(^\text{27}\) In this regard, it would be compelling to ask whether FPTP in Ethiopia enhanced representation of diverse views

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25Ibid.
26In his Second Treatise of Government, John Locke (1632-1704) argues that legitimate government is a limited government based on consent, in which the majority rules but may not violate people’s fundamental rights. Furthermore, John Rawls, in Political Liberalism (1993), accessible on http://plato.stanford.edu/entries/legitimacy/ presents legitimacy in this way: On the broadest view, legitimacy both explains why the use of political power by a particular body—a state, a government, or a democratic collective, for example—is permissible and why there is a pro tanto moral duty to obey its commands.
and interests. As we have seen from the election data discussed above, FPTP created ‘manufactured majority’ in which a single party received more seats than its popular votes. The more votes are wasted the more illegitimate the elected government would be.

To make the discussion practical, some instances from the general election of 2005 and 2015 should be presented. In the 2005 election, EPRDF undeservedly got 53 additional seats because of the FPTP. The post-election violence of 2005 is one signal questioning the legitimacy of the elected government as huge numbers of people are left unrepresented.28

When it comes to the 2015 general election, EPRDF and its affiliates had won the parliament without any opposition. However, months after the victory, widespread opposition protests were seen which triggered the government to declare a state of emergency. The same situation had arisen after the 2005 election. The EPRDF understood them as a ‘protest votes’ for there was problems of good governance and the issue of justice and high expectation of development.29 But in the 2016 protest, EPRDF higher officials openly admitted the non-representation of the opposition in the parliament to be reconsidered by reforming the existing electoral system.30

Because of these facts, there seems a consensus to reforming the Ethiopia electoral system. The upcoming discussion is interested to search for alternative electoral system to the Ethiopian multiethnic federation.

3. CHOOSING AN ALTERNATIVE ELECTORAL SYSTEM TO THE ETHIOPIAN MULTIETHNIC FEDERATION

In the preceding discussion, the author tried to show the discontents of the Ethiopian electoral system, FPTP. Cognizant of such problems, the author is

28The same thing was witnessed in many countries. For example, the exceedingly disproportionate nature of the FPTP caused popular frustrations in Lesotho after the May 1998 elections, resulting in violent demonstrations by supporters of the losing parties a few days after the announcement of the results, Denis K. Kedima, Choosing an Electoral System, Alternatives for the Post-war Democratic Republic of Congo, Journal of African Elections Vol. 2, No. 1, P.40.
29Interview with Bereket Simon, Member of the Executive Committee of the EPRDF, Addis Ababa, 12 April 2008, as cited in Abrha Kahsay, supra note 24.
30Bereket Simon, an EPRDF key man, addressing on live broadcasting on EBC concerning the mass protests and oppositions, August 2016.
convinced that this system needs to be reformed. The question, however, is what other alternatives do we have? To address this question, like most electoral system designers do, we have to set criteria relevant to the Ethiopian reality on the basis of which the possible alternative systems are going to be evaluated.

The choice of an electoral system is considered useful if it is evaluated with reference to some criteria which the political system can employ through a sensible decision-making process. Among other things, the choice must be simple and easy both to implement and understand. However, if it is cumbersome, to the point that the political system cannot reasonably manage it, the solution is not considered to be viable.

To this end, the choice of a workable alternative electoral system to the Ethiopian multi ethnic federation should start with a list of criteria which sum up what we want to achieve and what we want to avoid as a political system. The following discussion is interested to identify such criteria before heading to the actual evaluation.

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32 Ibid.

33 For instance, one may want to encourage the growth of strong political parties and at the same time to provide opportunity for independent candidates to be elected. A system which gives value to both desires may result in a highly complicated ballot paper which causes difficulties for less educated voters. Hence, the task in choosing electoral system is to prioritize the criteria that are most important and then assess which electoral system or combination of systems best maximizes the attainment of these objectives. See, Andrew Ellis, Head of Electoral Processes International IDEA Stockholm, Sweden, *Principles of Electoral System Choice*, Presented at Workshop VI: Representative Democracy, Participatory Methods and Capacity Development for Responsible Politics Sixth Global Forum on Reinventing Government Seoul, Republic of Korea 24-27 May 2005, retrieved from [http://unpan1.un.org/intradoc/groups/public/documents/un/unpan020458.pdf](http://unpan1.un.org/intradoc/groups/public/documents/un/unpan020458.pdf) <as accessed on June 2, 2015>. In almost all cases the choice of a particular electoral system has a profound effect on the future political life of the country concerned, and electoral systems, once chosen, often remain fairly constant as political interests solidify around and respond to the incentives presented by them. The choices that are made may have consequences that were unforeseen as well as predicted effects. Electoral system choice is a fundamentally political process, rather than a question to which independent technical experts can produce a single ‘correct answer’. The consideration of political advantage is almost always a factor in the choice of electoral systems. However, calculations of short-term political interest can often obscure the longer-term consequences of a particular electoral system.
3.1. NORMATIVE CRITERIA FOR EVALUATING ALTERNATIVE ELECTORAL SYSTEMS

Technocrats of electoral systems use different criteria for choosing alternative electoral systems based on the goals that electoral systems tend to achieve.\textsuperscript{34} Some of these are mutually compatible, but some others are mutually incompatible, which is why it is so important to be clear about what one is choosing. Here are the possible goals of electoral systems which are employed as evaluating criteria for choosing the best alternative systems:\textsuperscript{35}

1. Easy to understand and administer
2. Accountability to constituents
3. Proportionality of seats to votes
4. Interethnic or intercultural conciliation
5. Effective parliament/opposition oversight
6. Stable and efficient government
7. Minimize wastage of votes

Before making the actual evaluation on the basis of these criteria, it would be important to conceptually clarify each of them in the following manner.

3.1.1. Easy to Understand and Administer

All features of an electoral system should be easily comprehended by those citizens who will be using it to elect a representative assembly.\textsuperscript{36} Elections are meant little if they are difficult to vote. The ease of voting is determined by factors such as how complex the ballot paper is, and how easy to cast a vote is.\textsuperscript{37} Moreover, the choice of any electoral system is dependent on cost

\textsuperscript{34}Donald L. Horowitz et.al, Electoral Systems and Their Goals: a Primer for Decision-Makers (Duke University, 2003), P.3.
\textsuperscript{35}Ibid.
\textsuperscript{37}Ibid
and administrative capacities. A sustainable political framework takes into account the resources of the country both in terms of the availability of people with the skills to be election administrators and in terms of the financial demands on the national budget. In any account, electoral systems should not be more complex to understand and administer. In this regard, while FPTP and the closed list PR systems are simple to vote and administer, the Single Transferable Vote and the Alternative Vote systems are more complex, requiring high level of literacy and numeracy.

3.1.2. Accountability to Constituents

Under most electoral systems, legislatures are elected as representatives of particular segments of the territory. Members of parliament (MPs) are seen as having important roles representing the views of local constituency and promoting their interests as well as acting as local ombudsman for individual and group issues and concerns. Territorial representation reinforces accountability, one of the basic principles of democracy. For instance, if a

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38 Ibid.
39 Ibid.
41 In the late 1980s and early 1990s, popular discontent with politics led to a push for major political reform in Italy, New Zealand, and Japan. In each country, there was agreement that the government lacked accountability, and reformers promoted electoral system change to address the problem. All three countries enacted variants of “mixed member” electoral systems, and all three included systems in which voters cast two ballots: one for a candidate in a single-member district (SMD) and one for a party in proportional representation (PR). There was hope that reform would create tighter links between the wishes of voters and the government elected to office. In all three cases, the public was disappointed by the results of the first elections under reform, but now that more than a decade has passed, it is easier to offer a more measured analysis of the new systems. Overall, these reforms instituted a major improvement in the level of government accountability, Ethan Scheiner, Does Electoral System Reform Work? Electoral System Lessons from Reforms of the 1990s, Annual Review of Political Science, Vol.11, P162.
MP of certain territory failed to perform the promises he made during an election campaign or demonstrates incompetence, the electorate reacts to that failure by denying votes in the next election or the latter can use the right to recall him.

The issues of size of the constituency and the population have their own effects on representation and accountability. The larger the constituency in area or population, the greater its heterogeneity and therefore, the greater the problem of identifying local views and a legislature faces difficulties being made aware of the wide range of issues and interests contained within it.42

Electoral systems like the FPTP are praised for ensuring effective constituency representation and thereby accountability of members of the parliament. But PR electoral systems fail to do this for candidates will not be elected on the basis of constituency. PR uses the nation as a whole or sometimes the regions as a constituency. As a result, there are neither local representatives nor local accountability.

### 3.1.3. Proportionality of Seats to Votes

The proportionality of election results measures the degree to which the parties' share of seats corresponds to their share of votes. Legislatures are supposed to mirror the composition of the society represented through different political parties or independent candidates.43 The political parties which represent the various segments of the electorate should be entitled to fair representation of seats proportionate to the votes they received.

Majoritarian systems provide disproportionally exaggerated seats to a winner party or a party in first place, while penalizing others at the same time.44 The results of this measure suggest that the average winner's bonus under majoritarian systems is 12.5 percentage points, compared with 7.4 under mixed systems, and 5.7 under proportional representation. Hence under

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42Simon Hix et al., Supra note 40.
majoritarian electoral systems a party which won 37.5% of the vote or more could usually be assured of a parliamentary majority in seats, whereas under PR systems a party would normally require 46.3% of the vote or more to achieve an equivalent result.45 For this reason, minorities in diversified societies are underrepresented if majoritarian electoral systems are employed while PR electoral systems generally foster the election of parties who might otherwise be underrepresented in majoritarian electoral systems.46 Failing to grant proportional seats cause alienation and exclusion from the political system which in turn causes anti-system movements.

3.1.4. Interethnic or Intercultural Conciliation

Electoral systems can be seen not only as ways to constitute governing bodies but also as a tool of conflict management within a society.47 In

45Ibid.

46Pippa Norris, Electoral Engineering, retrieved from http://www.hks.harvard.edu/fs/pnorrisk/Acrobat/ Institutions/ Chapter%203.pdf<as accessed on October 10, 2016>, P 6. This author also noticed the following “It is well established that certain social groups are over-represented in elected office, with parliamentary elites commonly drawn from predominant ethnic groups, men, and those of higher occupational status. While there are substantial variations worldwide, overall women constitute only one sixth (14.4 percent) of national legislators worldwide, with women usually lagging furthest behind in national parliaments using majoritarian electoral systems. Reformers have considered various strategies designed to widen opportunities for women and minorities, including legally binding candidate quotas, dual-member constituencies designated by minority group or gender, and affirmative action for candidacies and official positions within party organizations. Some of these mechanisms can be adopted in single-member districts, for example in the mid-nineties the British Labor Party adopted all-women shortlists for nomination in half its target seats. But, advocates argue that affirmative action can be implemented most easily when applied to balancing the social composition of party lists, for example by designating every other position on the candidate list for women. These mechanisms, proponents suggest, can also increase the number of regional, linguistic, ethnic or religious minorities in parliament, although their effects depend upon the spatial concentration of each group. Socially diverse representation can be regarded as intrinsically valuable for consensus democracy, by improving the range of voices and experience brought to policy discussions, and also because the entry of minority representatives into public office can increase a sense of democratic legitimacy and develop leadership capacity. Proponents argue that it is important to maximize the number of ‘winners’ in elections, particularly in divided or heterogeneous societies, so that separate communities can peacefully coexist within the common borders of a single nation-state”.

47Sonia Alonso and Rubén Ruiz, Political Representation and Ethnic Conflict in New Democracies, European Journal of Political Science (January 2005), P.1. “Democratization,
heterogeneous societies where citizens are divided by socio-cultural basis such as race, ethnicity, language, religion, or region, there remains a question as to how the electoral system may contribute to the peaceful coexistence of different social groups within the same democratic polity. Some systems encourage political parties to make inclusive appeals for electoral support outside their own core vote base.\textsuperscript{48} For instance, even if a party draws its support primarily from region one voters, a particular electoral system may give it the incentive to appeal to region two or other regional voters. Thus, the party’s policy platform would become less troublesome and less exclusionary and more unifying and inclusive.

Similar electoral systems might give the incentive for the formation of national parties which will be less ethnically, regionally, linguistically or ideologically exclusive.\textsuperscript{49} Such electoral systems can encourage voters to look outside their own group and think of voting for parties which traditionally have represented a different group. Hence, such voting behavior breeds accommodation and community building.\textsuperscript{50} The PR electoral systems particularly the STV are good at attracting such incentives while the majoritarian electoral systems specifically, the FPTP works for the formation of parties on the basis of the cleavages. The Ethiopian experience is a good example for the latter.

\textsuperscript{48}Ibid, creatively crafted electoral systems, such as the alternative vote, have gigantic effects on making compromises and conciliation among diverse political parties. One core strategy as advocated by Donald Horowitz is to design electoral rules that make politicians reciprocally dependent on the vote of members of groups other than their own. To build support from other groups, candidates must behave moderately and accommodatively on core issues of concern. Hence, designing electoral rules that enable politicians to campaign for the ‘second choice’ votes of electors are crucial as they will enable the creation of parties with conciliatory policy positions so as to pick up such second votes than parties who choose to maintain a narrowly focused, sectarian approach. See, \url{http://books.google.com.et/books?id=CHLvGawRmEwC&printsec=frontcover&q=electoral+engineering+pdf&hl=en#v=onepage&q=electoral%20engineering%20pdf&f=false} \textsuperscript{49} accessed on December 18, 2015.

\textsuperscript{49}Ibid.

\textsuperscript{50}Ibid.
3.1.5. Effective Parliamentary Oversight

The weight of evidence from both established and new democracies suggest that long term democratic consolidation requires the growth and maintenance of strong and effective political parties and the electoral system should not promote party fragmentation.\(^{51}\) Meanwhile, the development of strong parties helps strong opposition in the parliament to help oversee the activities of the executive.

Effective governance relies not only on those in powers but almost as much, on those who oppose and oversee them.\(^{52}\) Hence, the electoral system should help ensure the presence of available opposition critically assessing legislation, questioning the performance of the executive, safeguarding minority rights and representing its constituency effectively. The opposition should have enough representatives to be effective and be able to present a realistic alternative to the existing government. While the strength of the opposition depends on many other factors, the choice of electoral system is one important consideration. If the system itself makes the opposition impotent, democratic governance is inherently weakened. Therefore, in a plural society, a consensus blows towards avoiding a FPTP system which limits the representation of the opposition in the parliament which further leaves the government blind to others views, needs, and desires.

3.1.6. Stable and Effective Government

The prospects for stable and efficient government are not determined by the electoral system alone, but the results of a system can contribute to stability in a number of important aspects. The key question is whether voters perceive the system to be fair, whether government can efficiently enact legislation and govern and whether the system avoids discriminating against particular parties or interest groups.\(^{53}\)

The question whether the government can enact legislation efficiently is partly linked to whether it can assemble a working majority in the legislature, and this in turn is linked to the electoral system. The system

\(^{51}\text{Ibid.}\)
\(^{52}\text{Gerard Newman, supra note 43, P. 6}\)
\(^{53}\text{Ibid.}\)
should, as far as possible, act in an electorally neutral manner towards all parties and candidates; it should not openly discriminate against any political groupings.

As a general but not universal rule of thumb, majoritarian electoral systems are more likely to produce legislatures where one party can outvote the combined opposition, while PR systems are more likely to give rise to coalition governments. Even though, plurality electoral system is assumed to give rise to stable and effective government, it may not always bring about this result if some segment of the society perceived it as unfair and feel misrepresented.

3.1.7. Minimize Wastage of Votes

Voters who cast their ballots to a losing candidate are considered to have their votes disregarded or wasted. Though it is difficult to avoid disregarded votes, it’s important to minimize this problem to the greatest extent possible. The phenomenon of disregarded votes has contributed to strategic voting in which voters cast their ballots for a party that they do not prefer, simply to prevent a more disliked alternative from winning a seat. Some other voters may not get the incentive to go to vote if they consider their preferred candidate does not have the chance to win or it is unlikely to lose. This ultimately reduces the level of turnouts and also affects popular participation, a cardinal aspect of democracy. On the basis of this element, FPTP is poor in minimizing wastage of votes. But, PR effectively manages wastage of votes.

54Ibid.
56Ibid.
58Ibid.
3.2. EVALUATING THE ALTERNATIVE ELECTORAL SYSTEMS

The previous discussion has established criteria distinguishing the important goals to be achieved and the important pitfalls to be avoided in designing electoral systems. The next task tries to evaluate the potential alternative systems against these criteria. Nonetheless, the evaluation is not extended to those majoritarian electoral families for the very reason that our previous conclusion proved that majoritarian electoral systems including FPTP are not healthy choices to diversified societies, like ours.59 Hence, the evaluation is going to be made against those electoral systems which are deemed workable in diversified societies.

In this regard, as far as which electoral system is best to Ethiopia, most academicians60 and the opposition parties61 prefer the PR electoral system. Ethiopian academic writings propose the PR electoral system. However, this author is interested to investigate the PR and the mixed electoral systems on the basis of the above criteria. This is because in the recent academic discourses there are arguments and controversies as to whether PR electoral system or the mixed ones are best in diversified societies, like Ethiopia.62 Furthermore, the conclusions in either way are not straightforward by themselves but rather have to be tested regard to the context where they are

59The pros and cons of different types of electoral systems have been widely discussed in our previous Section. There is no one-size-fits-all solution regarding electoral systems, neither for Africa nor for any other region. Yet, there are some general insights which should guide any decision about electoral law: the so-called winner takes all or first past the post systems, popular in Anglo-Saxon countries, are highly problematic for segmented societies; they will easily turn ethnic and religious divisions into a zero-sum competition; those groups that loose will feel excluded from the political process and all the benefits it offers; the risk of violence and even civil war will be high. See, Winrich Kuhne, The Role of Elections in Emerging Democracies and Post-Conflict Countries, Key Issues, Lessons Learned and Dilemmas, retrieved from http://library.fes.de/pdf-files/iez/07416.pdf <as accessed on September 10, 2015>, P. 5.
60Among others the following authors propose PR electoral system: Getachew Assefa, supra note 12 and Beza Dessalegn, the Right of Minorities to Political Participation under the Ethiopian Electoral System, Mizan Law Review (September 2013), Vol. 7, No.1,P.100.
62In this regard Solomon Gosu has extensively reviewed the views of various Ethiopian constitutional law authors on whether the existing electoral system should be revisited or not. For further reading see Solomon Gosh, Supra note 23.
supposed to work. Hence, the following evaluation tries to concentrate on the PR and mixed electoral systems and the systems which fulfills most of the criteria compared to one another is said to be the best alternative to the Ethiopian federation.

3.2.1. The PR Electoral System

The PR electoral system has two variants—the list PR and the Single Transferable Vote (STV).\(^{63}\) Unlike the list PR, the STV is the most complex electoral system both to understand and administer requiring high level of literacy and numeracy. Therefore, from the outset, it is not feasible to the Ethiopian situation where the level of literacy and numeracy is low\(^{64}\). So, the following evaluation shall emphasize on the list PR electoral system.

Under a list PR system each party or grouping presents a list of candidates for multi-member electoral districts. The voters vote for a party and parties receive seats in proportion to their overall share of votes.\(^{65}\) The PR electoral system can be employed either in the form of closed list or open list. In closed list PR, the winning candidates are taken from the list in order of their position on the party lists. If the lists are open, the voters can influence the order of the candidates by making individual preferences.\(^{66}\)

Under this system, all major groups and their leaders will continue to have a stake in the system and the risk of groups feeling excluded is much lower as it ensures proportionality of seats to votes and minimizes the wastage of votes common under FPTP. Depending on the available threshold, all major parties would be fairly represented in the parliament. For this reason, effective opposition oversight is highly likely.

On whether PR electoral system creates stable and effective government, there is a large body of both theoretical and empirical research suggesting that, the more fragmented and dispersed a legislature, the less its government

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\(^{63}\) Andrew Reynolds, *Supra* note 4, P.57.

\(^{64}\) According to *country meters* estimates 48.93% of adult population (aged 15 years and above) in Ethiopia are able to read and write and 51.07% adults are illiterate, available from [http://countrymeters.info/en/Ethiopia](http://countrymeters.info/en/Ethiopia), visited on December 12, 2016.

\(^{65}\) *Ibid.*

\(^{66}\) *Id.*, P.60.
is likely to be effective.67 The question of whether a given government can enact legislation effectively is linked to whether it can assemble a working majority in the legislature. The conventional wisdom in this regards goes to state that plurality electoral systems are more effective than PR systems because they are supposed to be less fragmented and therefore more decisive.68 Proportional systems, on the other hand, are supposed to encourage the multiplication of parties, and, as a result, they are more prone to give rise to coalition governments and to be less effective in a country where the level of political tolerance and compromise is not yet developed.69 Scholars argue that some form of proportional representation is needed in divided societies.70 For this and other reasons, most major transitional and post-conflict elections in recent years have utilized some form of PR.71 Nonetheless, PR systems provide tiny geographic connection between voters and their representatives and thus create difficulties in terms of accountability and responsiveness of elected politicians to the voters.72 Nevertheless, many new democracies particularly those in agrarian societies have much higher demands for constituency service at the local level than they do for representation of all shades of ideological opinions in the legislature.73 For this reason, it has increasingly been argued in South Africa, Cambodia and elsewhere that the proportional systems used at the first elections should be modified to encourage a higher degree of territorial

68 Ibid.
69 Ibid.
70 Ibid.
72 Ibid.
73 Ibid, a more serious problem is that in the context of societies with large rural populations, PR reduces the opportunities for face to face dialogue and linkage between legislatures and citizens and especially the accountability by the former to the latter. In Namibia for instance, where nearly 90% of the population resides in the Northern fifth of the country, 300 miles north of the capital, few citizens ever see a member of parliament because MPs have no geographic constituency to which they are accountable. A similar situation exists in South Africa. In such countries, there appears to be clear tradeoff between achieving proportionality and the loss of accountability.
accountability by having members of parliament represent territorially defined districts and service the needs of a constituency.  

The party list PR usually reposes great power in party leaders to decide which candidate will have better chances of being elected from the already set list and the sovereignty of the voter is thought to be impaired. Even though the list PR uses open list where the voter influences which candidate is to be elected, there are no usually geographic or territorial representatives. Therefore, as the PR electoral system fails to link MPs to the constituent territory which in turn affects accountability to the electorate, it would not be suitable choice to the Ethiopian federation in which 80% of its population lead an agrarian life.

Electoral systems that produce proportional results or accountability to constituents or effective governments may or may not foster interethnic or intercultural conciliation. One way to think about electoral systems and interethnic conciliation is to ask whether a given system provides politicians an incentive to hold moderate behavior or moderate policy platforms for an electoral success. The PR electoral systems and specifically the STV are good at crafting moderate policy platforms which will be inclusive to different ethnic or cultural groups. However, the FPTP is poor at creating such conciliatory schemes because moderate policies may not help parties for an electoral success if the diversities are territorially concentrated, similar to the Ethiopian situation.

3.2.2. Mixed Electoral Systems

Mixed electoral systems provide voters two votes-one for the legislature from the party in a list PR tier and the other for a candidate representing a constituency in FPTP tier. All mixed electoral systems share one defining common attribute, a portion of the seats in parliament are assigned on the basis of some plurality method, usually, FPTP in single member

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74 Ibid.
constituencies and the other seats are determined by a party’s share of the popular votes (regionally or nationally) on the basis of PR.\textsuperscript{76}

However, on how the two electoral systems function, there are two types of mixed electoral systems; the Mixed Member Majoritarian (MMM) and the Mixed Member Proportional (MMP). In the MMM system, the two tiers of seats, each determined by its own electoral formula, are independent of each other.\textsuperscript{77} That is, no attempt is made to use the PR component to balance for distortions in the constituency vote. The two electoral systems, the PR and FPTP, operate independently.

But, when it comes to MMP, the two tiers of electoral systems are linked. It provides compensatory list seats from the PR component to parties that are underrepresented in the constituency based FPTP contest.\textsuperscript{78} A political party that passes certain threshold of the votes gets a share of the seats in parliament that is about the same as its share of the party vote. For example, in total parliamentary 100 seats, if a party gets 25\% of the party votes, it will get roughly 25 MPs in Parliament. If that party wins 15 electorate seats in the constituency, it will have ten (10) list MPs in addition to its constituency MPs. On the other hand, if a party does not win a seat in the constituency but got 20\% of the party votes, it will be entitled to 20 parliamentary seats on the basis of the list PR.

Let’s take an example to illustrate how the MMP works: People cast votes on a double ballot. First, they vote for a district representative. This part of the ballot is a single-member district FPTP contest to see which person will represent the district in the legislature where the person with the most votes wins. The list PR votes are counted on a national or regional basis to determine the total portion of seats that each party deserves.

The following table illustrates how this process works for a hypothetical election. Assume party-A won 40\% of the party list votes in the 100-member state legislature, so they would be entitled to a total of 40 of the 100 seats. Since they already get 28 seats in the district elections, they would then add

\begin{table}
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
\textbf{Party} & \textbf{District Seats} & \textbf{List Seats} & \textbf{Total Seats} \\
\hline
A & 28 & 10 & 38 \\
B & 15 & 5 & 20 \\
C & 10 & 3 & 13 \\
\hline
\end{tabular}
\caption{Illustration of MMP process}
\end{table}

\textsuperscript{76}Law Commissions of Canada, \textit{Supra} note 55, Pp. 90-92.
\textsuperscript{77}\textit{Id.}, P.85.
12 more from their national or regional party lists to come up to their quota of 40 legislative seats.

Allocation of Seats in MMP Electoral System with 100 Parliamentary Seats (50 members elected using FPTP and the other using list PR)

<table>
<thead>
<tr>
<th>Political parties</th>
<th>Number of districts won</th>
<th>Percentage of the national party vote</th>
<th>Total number of seats deserved by party</th>
<th>Number of seats added from party list</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party-A</td>
<td>28</td>
<td>40%</td>
<td>40</td>
<td>12 (40-28)</td>
</tr>
<tr>
<td>Party-B</td>
<td>18</td>
<td>36%</td>
<td>36</td>
<td>18 (36-18)</td>
</tr>
<tr>
<td>Party-C</td>
<td>4</td>
<td>18%</td>
<td>18</td>
<td>14 (18-4)</td>
</tr>
<tr>
<td>Party-D</td>
<td>0</td>
<td>6%</td>
<td>6</td>
<td>6 (6-0)</td>
</tr>
<tr>
<td>Total</td>
<td>50</td>
<td>100%</td>
<td>100</td>
<td>50 (100-50)</td>
</tr>
</tbody>
</table>

Source: https://www.mtholyoke.edu/acad/polit/damy/BeginningReading/howprwor.htm with some modification.

As you can see from the above table, the election results in MMP electoral systems are proportional and fair. As a result of this, most nations that have reformed their electoral systems in the past decade have opted for some version of mixed electoral systems. These systems are thought to combine the “best of both worlds” the accountability and geographic representation that is one of the strengths of FPTP, along with demographic representation

79 Id., Pp. 79-80; 141-146.
and the fairness of proportional systems.\(^81\) Examples of these systems are found in Germany, Scotland, and New Zealand.\(^82\)

The German style electoral system has become a best seller in the charts of the electoral reforms since 1990s.\(^83\) Mixed systems are introduced as a compromise between the two extreme forms of PR and plurality vote and they are best in situations where the contending elites could fail to agree on choosing one of them.\(^84\) They are perceived to allow modest and better outcomes in many varied dimensions of political representation and party system moderation.

Lessons taken from the above stated countries reveal that the MMP is superior. It is fair to supporters of significant political parties and likely to provide more effective representation of minorities. It is likely to provide a more effective parliament and opposition and also has advantages in terms of voter participation and reducing wastage of votes through the compensatory seats. It encourages plurality of ideas in the parliament. Moreover, it inspires a fair level of geographic representation and enhances accountability of individual candidates and the government to a certain degree.\(^85\)

When it comes to the Ethiopian context, Ethiopia is composed of a diversity of ethnic groups, languages, cultures and religions. Its history has been characterized by political disturbance, massive violations of human rights, civil wars, lack of tolerance and concession. Such a diverse and divided

\(^{81}\)The Law Commission Canada, Supra note 55, Pp.90-93.

\(^{82}\)In Germany 50% of the seats in the Bundstage are based on constituency elections and the other 50% are list seats. In New Zealand, 58% of the seats are single member constituencies elected by means of FPTP and the remaining 42% are list seats. In Scottish parliament, which consists of 129 members 57% is elected in constituencies by means of FPTP and the remaining 43% are awarded to regional lists, ibid.

\(^{83}\)Daniel Bochsler, supra note 80.

\(^{84}\)This was the case in Bulgaria, Hungary and Croatia, where the contending elites hold two extreme options; mixed electoral system has served as a mid-solution thereby flourished the praised virtues of this system. That it fostered the democratic principles of representation and accountability. Moreover, it hampered the excesses of the two extreme systems. See, Daniel Bochsler, Supra note 80.

society needs an electoral system which would ensure a fair representation of political and ethnic groups, political stability, and conciliation for nation building without still overstating the virtues of the existing electoral system.

In a country like ours, where there are regionally concentrated ethnic or cultural groups, opting for plurality electoral system would stimulate the emergence of regionally based parties and this encourages the parties to craft policy platforms which only appeal to such ethnic groups and may become hostile to others.

However, the inclusion of PR type electoral system to the status quo would encourage political parties to seek voters and membership across different communities. This limits the attractiveness of mono-ethnic politics and therefore prevents political instability which would have resulted from feelings of exclusion. Furthermore, the inclusion of PR enables the representation of widely dispersed ethnic groups for their votes would not be disregarded as it happens in the FPTP electoral system. Hence, the inclusion of PR would foster issue based campaigning and voting rather than lining up to ethnically or regionally organized parties.

The MMP electoral system gives voters maximum choice and flexibility; it frees them from the prison of having to suffer an unwanted candidate for the constituency in order to get desired government. It helps minimize the disregarded vote phenomenon that is characteristic of the FPTP system. In view of this, the MMP is best alternative to the Ethiopian federation.

To sum up, the subsequent table shall be closely observed which tries to simplify the argument as to which electoral system is the best alternative to Ethiopia.

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86To substantiate our argument, look at the following political parties which are created regionally or ethnically: Tigray Peoples’ Liberation Front (TPLF), Amhara National Democratic Movement (ANDM), Oromo Peoples’ Democratic Organization (OPDO), Southern Ethiopian Peoples’ Democratic Movement (SEPDM), Oromo Federalist Democratic Movement (OFDM), Benshangul-Gumuz Peoples Democratic Unity Front (BGPDUF), Afar National Democratic Party (ANDP), Gambela Peoples Democratic Movement (GPDM), Argoba National Democratic Organization (ANDO), Harrari National League (HNL) and ShekoMejenger Peoples Democratic Unity Organization (SMPDUO)

87Ibid, interestingly, in the first mixed member proportional election held in New Zealand in 1996, 37% of the voters split their ticket a high level by international standards.

88Ibid.
Table 3: Comparative assessment of electoral systems vis-à-vis some electoral goals:

<table>
<thead>
<tr>
<th>No</th>
<th>Electoral system goals</th>
<th>FPTP</th>
<th>PR Systems</th>
<th>Mixed Systems</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>STV</td>
<td>SNTV</td>
</tr>
<tr>
<td>1</td>
<td>Accountability to constituency</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Easily understood and administered</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>3</td>
<td>Proportionality of seats to votes</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>4</td>
<td>Interethnic/intercultural conciliation</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>5</td>
<td>Effective parliamentary oversight</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>6</td>
<td>Stable and effective government</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Minimize wastage of votes</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

From the table, it is vivid that the MMP will perform well in all the criteria. Therefore, the author is convinced that this system is best to the Ethiopian multi-ethnic federation. However, since electoral systems need to be tested on the ground, we should not expect that the new system will cure all the democratic problems rather it is the best compared to others. On the other hand:

89 Note: the arrow shows strengths or potential strengths. The absence of it, however, does not suggest a total lack of it but rather the experience of countries with such systems to conform to it widely.
side of the coin, it is clear from the table that the first-past-the-post electoral system is the least in achieving some of the democratic values we need most as a nation.

Nonetheless, despite all these advantages, there are also arguments forwarded against the MMP electoral system. There is fear that under MMP coalition governments may instable a system, increase in administrative costs, and create two warrior classes of parliaments. But, empirical studies have been made by different researchers and electoral reform commissions and their conclusion found little or no connection between the alleged impacts and the MMP. ⁹⁰

4. CONCLUSIONS

This article has tried to evaluate the electoral options to the Ethiopian multi-ethnic federation on the premises that the existing electoral system is no more desired. In doing this, certain criteria against which the choices are going to be evaluated are selected. Evaluation is made against these criteria. Accordingly, we concluded that adding an element of proportionality to our electoral system, as inspired by some systems like Germany, New Zealand, and Scotland would be the most appropriate model for adoption. MMP, while it retains the proportionality benefits of proportional representation systems, it also ensures that voters have geographical representation. They also have the luxury of two votes, one for the party and one for their local MP. This system would produce satisfactory results when compared to the other alternative systems. MMP which adds PR tier to the existing system is expected to produce proportional election results, to reduce the number of wasted votes, to encourage interethnic or intercultural conciliation and to increase the representation of the opposition thereby giving us a strong parliamentary oversight over the actions of the executive.

⁹⁰The Law Commission of Canada, Supra note 55.
ABSTRACT

Illicit trade adversely affects socio-economy of a nation. Particularly, it shrinks government revenue, distorts market, collapses local industries, and endangers health, safety and security. Ethiopia is one of the nations that are challenged by illicit trade for which it has devised controlling mechanisms such as enacting appropriate laws and establishing law enforcement agencies. Justice sectors (the judiciary, the prosecutors, and the police) are the chief law enforcement agencies that interpret the laws, render decisions, and enforce the same. They are principally empowered to seize, prosecute and adjudicate illicit trade activities and control illicit trade and its effects. However, the Oromia Regional National Government Justice Sectors are, as the situation demands, not controlling, prosecuting, and adjudicating illicit trade activities for different reasons. For instance, inadequate awareness of justice sector professionals of the region on trade regulations, customs and standards, the absurdity and uncertainty of the federal and regional laws, underperformance of criminal investigations, imprecision and incompleteness of prosecutions, delay and unfairness of court decisions, and wanting cooperation and undetermined efforts of the pertinent government agencies have made some contribution to the escalation of illicit trade undertakings. It is certainly known that without the effort required to be made by the justice sectors the attempt to control illicit trade could not be made possible. Therefore, it is mainly important to enable the justice sectors render services that combat illicit trade. Accordingly, among other things, it is advisable to raise the justice sectors professionals’ awareness of the relevant laws specifically of the trade competition and consumers protection, coffee quality control and marketing, and customs proclamations as to jurisdiction, to clarify the discrepancy between the federal and regional laws, to improve investigations, prosecutions and adjudications, and to advance professional and ethical behaviors of the professionals.


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1. SEENSA

Hojiin daldalaa guddina dinagdee biyya tokkoo dhugoomsuu keessatti gahee olaanaa taphata. Sekteerri dinagdee kun akka misoomu taasisuuf gochoota hojichatti gufuu ta’an adda baasanii irratti hojjechaa deemuun barbaachisaa dha. Gochoota misooma hojjii daldalaa quucarsan keessaa tokko gocha daldala seeraa alaa dha. Daldala seeraa alaa jechuun meeshaa yookaan tajaajjila aka ittiin hin daldalamme daangeffaman/dhorkaman daldaluu akkasumas meeshaa yookaan tajaajilaittiin daldaluun hin dhorkamne ulaagaalee yookaan adeemsa seerii teechisee jiru cabsanii daldaluu dha. Daldalli seeraa alaa dinagdee biyyaa, fayyaa, nageeyyaa fi duudhaa uummataa irratti miidhaa heeddoo dhaqqabsiisa.¹

Tooftaaleen daldala seeraa alaa hambisuuf hojiirra oolan baay’ee dha. Isaanis, miidhaa daldalli seeraa alaa dinagdee, hawaasummaa fi siyaasa irratti dhaqqabsiisaa uummata bal’aa hubachiisuu, sirna sassaabbi galii gibiraa cimsuu, mootummaalee ollaa wajjiin hariiroo fi qindoomina gaarii uumuu, dhammoota daldala seeraa alaa gaggeessuuf sababa ta’an adda baasuu, fi seerota seerummaa daldalaa bitan cimsuu fi hojiirra oolmaa isaanii mirkaneessaa deemuun isaan ijoodha. Tooftaalee caqasaman kaneen keessaa seerota gochoota daldala seeraa to’atan baasuu fi hojiirra oolmaa isaanii mirkaneessaa adeemuun murteessa waan ta’eef, Mootummaan Federaalaa fi Naannoo Oromiyaa seerota seerummaa hoojii daldalaa mirkaneessanii fi gocha daldala seeraa alaa to’atan heeddoo tumuu hojiirra oolchaniiru.² Hojiirra oolmaa isaanii mirkaneessuufis hojjechaa jiru.

Qaamolee mootummaa adda durummaan seerota gochoota daldala seeraa alaa to’atan hojiirra oolchan keessaa tokko qaamolee haqaa ti.³ Qaamoleen haqaa gocha daldala seeraa alaa to’annoo jala oolchu fi seerummaa gochicha qulqulleessuun, himannaa mana murtiitti dhiyeesuuf fi murtii saffinaa fi qulqullina qabu kennuu gocha daldala seeraa alaa to’atu.

² MoFED, Annual Progress Report For Fiscal Year of 2011/12, on Growth and Transformation Plan of Ethiopia, March 2013, F37
Qaamoleen kanneen gocha daldala haqa-qabeessa faallessu, mirga fayyadamtootaa miidhuu fi galii mootummaa xiqqessu seeratti dhiyeessanii adabuu, dinagdee fi nageenya biyyaa akkasumas fayyaa fi eegumsa mirga fayyadamtootaa kabachiisu.

Haa ta’u malee, hojiin to’annoo gocha daldala seeraa alaa irratti qaamolee haqaatiin taasifamu bu’aa barbaadamu argamsisurratti hanqina qaba. Hanqinni gama kanaan jiru akka uumamu wantootni taasisan hedduu dha. Fakke nyaaf, ulaagaalee hojii daldalaa tokko seeraa ala taasisan irratti oggessotni hubanno waliigelaa dhabuu, tumaaleen seeraa dhimmi ilaalu iftoomina gahaa dhabuu, murtii barsiisaa ta’ee fi si’oomina qabu kennuurratti hanqinni jiraachuu, fi qindoominaa fi wal-hubannoon qaamolee haqaa fi sekteroota bioo gidduu jiru laafa ta’uu akka fakke nyaatti eeruun ni danda’ama. Gabaabaatti, raawwiin hojii qaamolee haqaa gama kanaan jiru akka laafu sababootni taasisan lama: hanqina seeraa fi hanqina hoj-maata qaamolee haqaa keessatti mul’atani dha. Haaluma kanaan, barruun kun aangoo qaamolee haqaa naannoo bifa yaada keessa galcheen, gocha daldala seeraa alaa to’achuu keessatti hanqinaalee gama seeratiin jirani fi raawwi hojii gocha daldala seeraa qabuu, qorachu, himachu fi murtii kennuu irratti mul’atan sakatta’uun kallattii furmaataa akeeka.

Barruun kun mata-dureewwan gurguddoo shan jalatti qoodamee jira.Mata-
duree kanatti aansee mata-dureen lammaaffaa, maalummaa fi miidhaa daldala seeraa alaa ibsuu irratti xiyyeeffata.Hojojin daldalaa fi ulaagaaleen seerummaa hojii daldalaa mirkanessan mata-duree sadeffaa jalatti haguuggii argatanii jiru.Yakka daldala seeraa alaa qabuu, qorachu fi himachu akkasumas kennaas murtii dhimmoo daldala seeraa alaa mata-
dureewwan itti aanani jirat jalatti ibsamaniru.Dhuma irratti, yaadotni gudunfaa fi furmaataa teeche amaniiru.

2. MAALUMMAA FI MIIDHAA HOJII DALDALA SEERAA ALAA

2.1. MAALUMMAA DALDALA SEERAA ALAA

Daldali seeraa alaa yaadrimee dhimmoota hedduu of keessatti hammate waan ta’eef hiikko tokkoon gaalee kana ibsuun ulfaataa dha. Hiikkoon Dhaabbannii Fayyaa Addunyaay jecha daldala seeraa alaajedhuuf kenne
hiikkoo qaamoleen biroo kennan caalaa simatamaa dha. Dhaabbitni kun *daldala seeraa alaa* jechuun,

*Any practice or conduct prohibited by law and which relates to production, shipment, possession, distribution, sales or purchase including any practice or conduct intended to facilitate such activity*⁴ jechu akka ta’etti hiikee jira.

Hiikkoo kana irraa hubachuun kan danda’amu daldalli seeraa alaa gocha ykn amala seeraan dhorkame tokko oomishuu, geejibsisuu, qabachuu, raabsuu, gurguruu ykn bituu akkasumas gochaa fi haala hojii akkanaa mijeessuuf yaadaman hunda kan dabalatu dha.

Gama biraatiin, barreeffamni tokko daldala seeraa alaa yammuu ibsu, daldalli seeraa alaa sochii daldalaa gosa kamiiyyuu ta’ee seera, dambii fi qajeelfamoota hayyamaa, sirna taaksii fi sirna biyyi tokko daldala ittiin gaggeessitu, lammiiileef eegumsa taasiftu, haala jireenya hawaasa fi duudhaa nanusa ittiin hooggantu kamuu kan faallessu jechuun kaasuun ni danda’ama jechuun ibsee jira.⁵ Akka waliigalaatti, daldalli seeraa alaa, gocha oomishaalee fi tajaajiloota seeraan dhorkaman daldaluu akkasumas oomishaalee seera qabeessa ta’an tumaalee seera daldaalaa cabsanii daldaluu of keessatti kan hammaduu dha.⁶ Dabalataan, daldalli seeraa alaa maallaqaa, meeshaa akkasumas bu’aa gocha seeraa alaa fi al-naamusaaawaa ta’an dabalata. Hima biraan, gochii kun namoota seeraa ala dadabarsuu, yakkoota eegumsa naannoo raawwachuu, seeraa ala qabeenya uumamaan daldaluu, mirgoota kalaqa sammuu sarbuu, oomishaalee fayyaa fi nageenya hawaasaa miidhаниi daldaluu, qorichoota dhorkamaniin akkasumas sochiwwan maallaqaa seeraa alaa kan of-keessatti dabalatu dha.⁷

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⁶Akkuma yaadannoo Lak.5⁵ffaa, F 8.

⁷Akkuma ⁶ffaa.
2.2. MIIDHAAWWAN DALDALA SEERAA ALAA
Daldalli seeraa alaa miidhaaalee hedduu biyya irratti dhaqqabsiisa. Miidhaaaleen kanneen bakka gurguddaa afuritti qoodamuu danda’u. 8 Isaanis,
- Miidhaa dinagdee
- Miidhaa fayyaa
- Miidhaa nageenyaa
- Miidhaa eegumsa naanno

2.2.1. Miidhaa Daldalli Seeraa Alaa Dinagdee Irratti Dhaqqabsiisu
Daldalli seeraa alaa sochii daldala al-ergii (export), ol-galchii (import) fi biyya keessaa (inland) irraa galii mootummaan argachuu qabu dhabsiisa. Xiqqaachuun/dhabamuun galii gama kanaan argamu, ijaarsa bu’uuraalee misoomaa mootummaan gabbageessu irratti dhibba mata isaa qabaata; kun ammoo sochiin guddina dinagdee akka hin saffisne gufuu ta’a.

Daldaltootni seeraa alaa gibira mootummaa waan hin kaffalleef akkasumas baasii kan biroollee waan hin baafneef, daldaltoto seera qabeessaa caalaa carraa gabaa ofitti harkisuu qabu.Kanaaf, daldalli seeraa alaa daldaltootni bu’uura seeraatiin hojetan akka kasaaran gochuun gabaa keessaa akka bahan taasisuu danda’a. 9 Gabaa keessaa bahuun dhaabbilee daldalaa ammoo invastimantiin akka hin jajjabaanne akkasumas carraan hojjii bal’inaan akka hin uumamne kan taasisu waan ta’eef, miidhaa dinagdee guddaa biyyarratti dhaqqabsiisa.10 Dabalataanis, oomishaaleen kalaqa sammuu salphumatti waraabamanii karaa seeraa alaatiin waan daldalamiif kalaqtootni bu’aa argachuu malan akka hin arganne gochuun fedhiinkalaqummaa akka hin gabbanne taasisa.11

8Akkuma 7ffaa,
9 Olitti yaadannoo lak.5, FF 11-12.
11 Akkuma 10ffaa.
2.2.2. Miidhaa Daldalli Seeraa Alaa Fayyaa Irratti Dhaqqabsiisu

Oomishaalee qulqullinni isaanii hin eegamnee fi faayidaa irra ooluuhin qabnehuumataaफ़क्का दल्दाली सेरा हिंग आफ़ाया इराती द्वारा अधिकारिक
का dhiaatan waan taasisuuf, daldalli seeraa alaa fayyaa hawaasaa balaaf saaxila. Kessattuu, qorichoonni karaa seeran alaatiin oomishaman makaay dogoggora ta’e (wrong dose of active ingredient) ykn makaa barbaachisu kan hin qabnehyn makaay addaa kan hammataan akka faayidaa irra oolan waan taasisuuf miidhaa fayyaa daldalli seeraa alaa dhaqqabsiisu olaanaa dha.\textsuperscript{12}

2.2.3. Miidhaa Daldalli Seeraa Alaa Nageenya Biyyattii Irratti Qabu

Daldaltoonni seeraa alaa gocha daldala seeraa alaa raawwatan babal’isuuf jecha garee namooata meeshaa waraanaa hidihaanii hojii seeraa alaa sanaaf haala mijeessan uumuun, nagaa fi tasgabbii biyyaa akka jeeqamu taasisu.\textsuperscript{13} Gama biraatinis, daldalli seeraa alaa daddabarsa meeshaaalee waraanaa kan dabalatu waan ta’eef, yakkooonni akka raawwatamaniif haala mijataa uumuun nageenya biyyaa irratti dhiibba dhaqqabsiisa.\textsuperscript{14}

2.2.4. Miidhaa Daldalli Seeraa Alaa Eegumsa Naannoo Irratti Qabu

Oomishaaleen karraa seeraa alaa taatiin oomishaman qajeelfamoota seeraan taa’an kan hin kabajne ta’uu waan danda’uuf, haallii oomishaa fi balfa ittiin dhabamsisiisna aanoo irratti dhiibbaa guddaa qabaata. Balfii fi keemikaalli gadi lakkifaman faalama qilleensaaf gumaacha guddaa qabaatu. Fakkeenyaafta, daldaltoonni seeraa alaa balfii fi keemikaalli miidhaa guddaa naannoo irratti geessisuuf danda’anii fi of-eegganno addaatiin dhahamsiifamuq qaban of-eegganno barbaachisu osoo hin taasisiin naannootti gadi akka lakkifaman taasisuun naannoon akka faalamu godhu.\textsuperscript{15} Dabalataanis, gochi kun qaabeenya uumamaan seeraa ala daldaluukan

\textsuperscript{12} Olitti yaadannoo Lak5\textsuperscript{f/Q}, F23.
\textsuperscript{13} Akkuma 12\textsuperscript{f/Q}.
\textsuperscript{14} Olitti yaadannoo Lak 4\textsuperscript{f/Q}.
\textsuperscript{15} Akkuma 14\textsuperscript{f/Q}.
dabalatu tu’uun daldala seeraa alaa rakkoolee akka manca’iinsi bosonaa akka uumamu gochuun naannoon akka miidhamu taasisa.

3. HOJII DALDALAA FI ULAAGAALEE SEERUMMAA HOJII DALDALAA MIRKANEESSAN

3.1. HOJII DALDALAA (COMMERCIAL ACTIVITIES)


Seerri daldalaa keenya hojii daldalaa alkallattiin daldalaatti fayyadamee ibsuu yaala. Fakkeenyaaaf, labsiin lakk. 980/2008, kwt 2(3) hojiin daldalaa hojii daldalaan hojjetu ta’uu ibsa. Seerri daldalaa kwt 5 hojiixwuwan daldalaan hojjetu tarreessee kan jiru yoo ta’u, al-kallattiin hojiixwuwan keewwata kana jalatti ibsamanii jiran hojii daldalaa ta’uu isaanii akeeku. Seera keenya keessatti hojiixwuwan daldalaa ibsuu ilaalchisee dhimmi akka ijoo falmiitti

16Peter Winship, Background Document of the Ethiopian Commercial Code of 1960, F 34.
17Yaadni qopheessaay seerichaa tuutota ijoo lamaan caqafaman kameen qofarratti kan daanga’e hin turre; tuuta sadaffaa ni qaba ture: jiraachuu interpiraayizii. Seerichi gara Afaan Amaraaas ta’e Afaan Ingiliziitii yeroo hiikamu jechi interpiraayizii jedhu biraa hafeera. Yaadni jechi interpiraayizii jedhu jiraachuu qaba jedhu yaadrimee Sirna Seeraa Ardii Auurooppaa (Continental Legal System) keessatti baay’ee barbaachisaa dha.
ka’u tokko hojiin daldaalaa hojiiiwwan Seera Daldaalaa kwt 5 jalatti tarreeffamani jiran qofa ta’uu yookaan ta’uu dhabuu isaanittii. Tumaan seera kanaa akka agarsiisutti, namootni hojiiiwwan keewwaticha dalji tarreeffamani jiran akka ogummaatti fudhatanii galii argachuuf hojjetan daldaaltoota jedhamu waan jedhuf, ogessotni baay’een hojiiiwwan keewwaticha dalji tarreeffamani jiran qofatu bu’uura seera keenyaatiin hojjii daldaalaa ta’anii fudhatamu jedhu.

Haa ta’u malee, gama biraatiin, akka hiikkoo lammaffaatti yaadni dhiyaatu akka jedhutti, hojiin tokko tarree kwt 5 keessatti kan hin ibsamne yoo ta’ellee seerota daldaalaa boodarra bahan keessatti ibsamnaan hojjii daldaalaa ta’ee fudhatama. Wixineessaan seerichaa ibsa kwt 5 irratti akka kkenanitti, ulaagaalee sadiitu qindoorniin daldaalaa tokko ibsusu. Isaanis, ogummaan hojjechuu, galii argachuuf hojjechuu fi dhaabbata daldaalaa beekamti argatan keessaa tokkotti fayyadamanii hojjechuu yoo ta’an hojiiiwwan daldaalaa tarreeffaman ammoo akka agarsiisutti qofatti kan barreeffaman ta’uu dubbatu.18 Labsiileen boodarra bahan kan akka Labsii Galmee fi Hayyama Hojji Daldalaa Lakk.980, kwt 2(2) akka tumanitti hojiin tokko hojjii daldaalaa jidadhamee seeraan yoo ibsame hojiiiwwan kwt 5 jalatti ibsamaniitti dabalamuun hojjii daldaalaa ta’ee fudhatama. Haaluma kanaan, hojiin daldaalaa hojiiiwwan seera daldaalaa kwt 5 jalatti tarreeffamani jiran qofa soo hin taane hojiin tokko seera boodarra bahuun akka hojjii daldaalatti kan ibsame taanaan hojjii daldaalaa ta’anii fudhatamuun serri daldaalaa kan irratti raawwataman keessaa tokko ta’a jechuu dha. Barruuun kun bu’uura hiikkoo lammaaffaa kanaatiin hojjii daldaalaa hubachuuf fi ibsuum gochi daldaal seeraa alaa haala kamiin to’atamuu akka qabu kallattii agarsiisuu yaala.

3.2. ULAAGAALEE SEERUMMAA HOJII DALDALAA MIRKANEESSAN

Sirni dingadee gabaa bilisaa biyiyi keenya hordoftu, mootummaan ulaagaalee dhaabbileen daldaalaa fi hojjii daldaalaaittiin gaggeeffaman seera tumuun hojjirra akka oolchu kan gaafatu yoo ta’u, seerummaa/seeraalummaa hojjii daldaalaa tokko adda baasuuf ulaagaalee seeraa tumaman hubachuuf gaafata.19

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18 Olitti yaadannoo lak 4, F50.
Biyyi keenyas ulaagaalee seerummaa hojii daldalaa mirkaneessan hedduu tumuuun hojiirra akka oolan taasiftee jirti. Kanaafuu, biyya keenya keessattis seerummaa hojii daldalaa mirkaneessuu keessatti ulaagaalee tajaajilan hubachuuf fi hojiirra oolchuun hedduu barbaachisaa dha. Ulaagaaleen kanneen gabaabinaan akka armaan gadiitti ibsamaniiru.


- Namni kamiyyuu hayyama hojii daldalaa seera duratti fudhatama qabu osoo hin qabaatiin hojii daldalaa hojjechuu akka hin dandeennyee seerri ni ibsa.21 Hayyama hojii daldalaa seera duratti fudhatama qabu jechuun hayyama bara baajataa sana keessatti kenna, haareffame, ykn bu’uura labsichaatiin adabbii malee haareffamuu danda’u jechuu dha.22 Hayyamni hojii daldalaa bu’uura Gulantaa Ibsituu Hayyama Hojii Daldalaa Itophiyaatiin kan kennamu yoo ta’u, sadarkaa qinxaabootti hojjii baay’ee of-danda’anii hayyama mata mataatti barbaadu. Namni hayyama hojii daldalaa baafate tokko mirga daangaa hayyama kennameef keessatti hojjechuu, odeeffannoo argachuu, maqaa daldalaa fi hayyamicha jijjiiruu kan qabu yoo ta’u dirqamoota akka hayyamaa, gattii meeshaalee fi akaakuu tajaajila kennu tarree barreessuun bakka ifa ta’eetti rarraasuu, yeroo hunda tajaajila kennuu, odeeffannoo rogummaa qabu qaama dhimmi ilaaluuf kennuu fi kkf bahuutu irraa eegama.

21 Labsiin Galmee fi Hayyama Hojii Daldalaa, Kwt 22(1).
22 Labsiin Galmee fi Hayyama Hojii Daldalaa, Kwt 2(12).
▪ Ulaagaan biraa hayyama ogummaa hojii daldalaa dha. Hayyamni ogummaa hojii daldalaa ulaagaalaa seerummaa hojii daldalaa kan akka kenniinsa tajaajila ogummaa fayyaa, seeraa, injinariingii fi barnootaa hojjechuuf dabalaataan hayyama barbaachisu dha.23 Namni tokko hojiiiwwan daldalaa caqasaman kanneen hojjechuuf dursa hayyama ogummaa erga argatee booda, hayyama hojii daldalaa baafachuun gara hojiitti seena.

▪ Hayyama hojii daldalaa baafachuuf dursa hayyama gahumsa hojii baafachuun barbaachisaa dha. Fakeenyaaf, namni buna dhiyeessu, alatti argu, jiimlaa gurguru, qopheessuu fi kuusu hayyama hojiiiwwan kanneen hojjechuuf baafachu dura hayyama gahumsa hojiiiwwan kanneen hojjechuu isa dandeessisu qabaachuu kan agarsiisu hayyama baafachu qaba.24

▪ Hojjiwwan daldalaa hayyama gahumsa barbaadan ilaalchisee hayyama daldalaa baafachuun dura qaama dhimmi ilaalu irraa hayyama gahumsa argachuun akka barbaachisu labsiileen adda addaa tumanii jiran. Fakkeenyaaf, namni dhaabbata tajaajila fayyaa kennuu ykn dawwaa daldaluu barbaadu kamiyyu hayyama gahumsa hojii qaama aangoo qabu irraa baafachuq qaba.25 Namni buna dhiyeessuu fi biyya alaatti ergu hojii kana osoo hin eegaliin dura, hayyama gahumsa hojii baafachu qaba.26 Seerri dhimmi ilaallatu hayyama gahumsa hojjii baafachuun barbaachisaa dha yamnuu jedhu hayyama kana osoo hin baafatiin hojii daldalaa kana hojjechuun seeraa ala; itti-gaaafatamummaa yakkaa kan hordofsiisu ta’a jechuu dha.27

▪ Seerummaa hojii daldalaa mirkaneessuu keessatti ulaagaa seerri teechisu keessa tokko ragaa hayyama darbiinsaa (waraqaa fe’umsaa) dha. Seerummaa sochii meeshaalee daldalaa al-ergii ta’anii fi

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23 Labsii To’annoo Dawwaa, Nyaata, fi Bulchiinsa Eegumsa Fayyaa, Lak. 661/2002, Magalata Federaalaa, Bara 16ff Lak 9, kwt. 33.
24 Dambii To’annoo Qulqullinaa fi Daldala Bunaa Federaalaa, Lak. 161/2000, kwt 8
25 Labsii To’annoo Dawwaa, Nyaata, fi Bulchiinsa Eegumsa Fayyaa, kwt 42(1)
26 Labsii To’annoo Qulqullinaa fi Daldala Bunaa Federaalaa, Lak 602/2000, Magalata Federaalaa, Bara 14ff, Lak 61, kwt 6, 7 fi 8.
27 Fakkeenyaaf, Labsii To’annoo Dawwaa, Nyaata, fi Bulchiinsa Eegumsa Fayyaa, Lak 661/2002, kwt .33, hidha kwt 53(1m).
meeshaalee daldalaa bu’uuraa faayidaa uummataa guyyaa guyyaatiif oolan mirkaneessuu keessatti ragaan hayyama darbiinsaa murteessaa dha. Ragaan kun hayyamoota biroo irraa adda bahee kan ilaalamuu fi of-danda’ee kan dhaabatu yoo ta’u, hanga, bakka fi yoom meeshaan daldalaa fe’amee deemaa jiru kan ibsu; akkasumas, meeshichi garamitti akka adeemuu kan agarsiisuu dha.  

- Oomishaalee daldalaa biyya keessatti oomishamanis ta’ee alaa gara biyyaa seenaan galmeessisuun tooftaalee seerummaa hojji daldalaa ittiin to’atan keessatti ramadama. Galmeessi oomishaalee, qullqullina oomishaalee sakatta’uu fi oomishaaleen karaa seeraa alaatii gabaan keessa aka hin galle ittisuuf kan tajaajiluu dha. Fakkeenyaaf, dawwaan/qorichi biyya keessatti oomishaman yookaan biyya alaa gara biyya keessatti galan osoo hin galmeessii uummatni akka itti fayyadamuuf dhiyeessuun dhorkaa dha.


- Seerummaa hojji daldalaa mirkaneessuu keessatti haalli qabiinsa qullqullina meeshaalee daldalaa aka ulaagaa tokkotti bakka itti dhiyaatu jira. Fakeenyaaf, qullqullina gogaa fi kaloo akkasumas bunaa gochoota miidhhuu danda’an raawwachuu fi haala qullqullina isaanii miidhhuu danda’uun geejibuu seerummaa daldala meeshaalee sanaa adda baasuuf keessatti kan gargaaruu dha.

28 Fakeenyaaf, Labsii Beeyiladaa Lak.819/2006, Magalata Federaalaa, Bara 20ffaa, Lak 30, kwt.17 (9); Dambii Beeyiladootaa, Lak. 341, kwt.12 (6).

29 Labsii To’annoo Dawwaa, Nyaata, fi Bulchiinsa Eegumsa Fayyaa, kwt. 7 fi 14.

• Dandeettiin seeraa (legal capacity) ulaagaalee seerummaa hojji daldalaa mirkaneessuf gargaaran keessatti ramadama. Fakkeynyaaf, namni umuriin gaheessa hin taane hojji daldalaa hojjechuu hin danda’u.31 Haaluma wal-fakkaatuun, namni sababa rakkina sammuitii yookaan murtii yakkaatiin hojji hawaasummaa hojjechuu hin danda’u jedhamee itti murtaa’e, akka dhamma isaatti, hojji daldalaa hojjechuu irraa seeraa daangeffameera. Akka seera daldalaatti, namootni utuu umuriin 18 hin guutii gahoomanillee, qaamni dhammi ilaalu waa’ee daldala hojjechuu isaanii yoo mirkaneesse malee hojji daldalaa hojjechuu hin danda’an32. Namootni gaheessa hin ta’iiin tumaa seeraa kana darbanii hojji daldalaa kan gaggeessan yoo ta’e, hojji isaan raawwatan diigamuu akka danda’u seerri teechisee waan jiruu33, hojjiwwan daldalaa namootni kanneen hojjetan, yakka ta’uu yoo baatellee, seeraa ala jechuun ni danda’ama. Haa ta’u malee, namni lammii Tophiyaa hin taane biyya keessatti hojji daldalaa beeyilada bitanii gurguruu irratti osoo hirmaatuu yoo qabame yakkaan akka adabamu labsiin Beeyiladaa Lakk. 819/2013 kwt 17(5) ni tuma.

• Karaa hayyamameen biyya seenuu yookaan biyyaa bahuu akkasumas daandii hayyamamee qofarra geejjibamuu meeshaaleerratti hundaa’uun daldalli tokko seera qabeessa ta’uu yookan ta’uu dhabuunsaa kan adda bahu ta’a. Labsiin Gumuruukaa kwt 6(1) akka tumutti meeshaaleen al-ergii (export), as-gali (import) fi daddarbii (transit) karaa buufata doonii hayyamamee yookaan daandii gumuruukaan biyya alaa gara keessatti galuu akkasumas biyya keessaa gara biyya alaatti bahuu qabu; meeshaaleen kanneen yeroo biyya seenaa jiranis ta’e biyyaa bahaah jiran daandii hayyamame qofa irra geejjibamuu qabu. Kanaaftuu, namni kamiyyuu meeshaalee al-ergii, as-gali fi daddarbii bakkaa fi karaa hayyamame malee yoo seenisise yookaan yoo baase akkasumas yoo geejjibe daldala seeraa alaa gaggeessaa jira jechuun ni danda’ama.

31 Seera Daldalaa Bara 1952, kwt 11(1) fi Seera Hariiroo Hawaasaa, kwt 199(3).
33 Seera Daldalaa Bara 1952, Kwt 11(2)).
Meeshaalee dhorkaman yookaan daangaan irra kaa’ame biyya alaa galchuu yookaan daldaluun gocha daldala seeraa alaa raawwachuu dha. Kaffaltii barbaachisaa ta’e utuu hin kaffaliin meeshaa daldalaa tokko miliqsanii gabaa keessa galchuun gocha daldala seeraa allaati. Fakkeenyaaf, meeshaalee gara biyya keessaatti akka hin galle dhorkamani fi meeshaalee daangaan irra kaa’ame akkasumas kaffaltii barbaachisaa ta’e utuu hin raawwatiin meeshaa biyya keessa galchanii daldaluun seera cabsanii hojii daldalaa raawwachuu waan ta’uuf, daldala seeraa alaati jechuun ni danda’ama.34

4. YAKKA DALDALA SEERRA ALA QABUU, QULQULLEESSUU FI HIMACHUU

4.1. YAKKA DALDALA SEERRA ALAA QABUU

Daldallii damee bal’ina qabu ta’uu irraa kan ka’e to’annoon gocha daldala seeraa alaa qaamoolee adda addaatiiif kennamee jira. Fakkeenyaaf, daldala bunaa fi qulqullina isaa ilaalchisee Waajjira Qonnaa, daldala ol-galchii fi alergii ilaalchisee Abbaa Taayita Galiwwanii fi Gumruukaa, daldala akka waliigalaatti Biiroo Daldalaa fi Misooma Gabaa, kenna tajaajila fayyaan walqabatee Biiroo Eegumsa Fayyaaf kennamee jira. Haaluma kanaan, bifa bu’a-qabeessa ta’een daldala seeraa alaa to’achuuf qindoomina ol’aanaa qaamoolee adda addaa kan barbaaduu dha. Haa ta’uu malee, to’annoon gocha daldala seeraa alaa irratti taasifamu laafaa akka ta’u sababootni taasisaa jiran hedduu dha. Haan, seerota daldala to’achuuf bahan irratti hubannoo gahaan jiraachu dhabuu, waajjirraaleen dhimmii ilaalu tarkaanfii seeraa yerootti fudhachuu dhabuu, ragaa barbaachisu kennuu irratti keessumaa ragaa ogummaa bahuu ilaalchisee qaawwi hedduu mul’achuu, rakkoo iftoominaa, wal-amantaa dhabuu, hanqina qindoominnaa, hanga dhumaatti ciminaan itti deemuu dhabuu, qaamolee mootummaa xalayaa adda addaa barreessuun dhimmichi lafarra akka harkifatu taasisuu, sekterootni biroo tokko tokko ragaa kennuu irratti saffisoo ta’uu dhabuu, fi gocha daldala seeraa alaa qabuu dihiisuu akka fakkeenyaatti caqasuuun ni dana’aama.35

34 Labsii Gumuruka Federaalaa Lak.859/2007, Magalata Federaalaa, Bara 20ffaa Lak. 82.
35 Yaada cuunfa bar-gaafii irraa fudhatame.

Daldala seeraa alaa qabuu keessatti rakkoone inni biraa qindoominni qaamoolee hirtaa jidduu jiru laafaa ta’uu isaati.Gama kanaan, ogeessoota bar-gaaffii guutan qindoominni qaamoolee hirtaa gidduu jiru yoo madaalan namoota 69 keessaa namoonni 7 ol’aanaa ( 9.86% ) yammuu jedhan, namoonni 40 (56.34%) jiddu galeessa, namoonni 22 (30.99%) gad-aanaa jedhaniiiru. Ogeeeyyiin kunniin yaadota bar-gaaffii keessatti ibsan keessatti rakkooleen wal amantaa kan hin jirreef seektaroota hirtaa keessatti hanqinni qindoominnaa jirachuu ibsanii jiru. Qabxiin biraa daldala seeraa alaa walqabatee akka rakkootti ibsamuu, miseensoni poolisii tokko tokko

36Fakkeenyaaaf, af-gaaffii obbo Gaarummaa Adabaa raawwataa hojii too’anmoo qulqulina bunaa BDMGO, obbo Kadiir Hammuu ogeessa seeraa BDMGO waliin gaafa guyyaa 04/05/08 taasifame, Adde Tsiyon Admaasu Abbaa Taayitaas Galiitwannii fi Gumruukatti I/A/abba alangaa muumme, obbo kabbadaa dhaabaa Al/Abangaa Abbaa Taayita Galiitwannii fi Gumruukaa Itoophiyaa wajjiin gaggeeffame kaasuun ni danda’aama.
yammuu meeshaa daldala seeraa alaa qabanitti namoota shakkaman waliin dhiyeessuu dhabuudha. 37 Dhiibbaa hooggansaa sadarkaan jiru daldala seeraa alaa too’achu keessatti hudhaa mataa isaa uumee jira. 38

4.2. YAKKA DALDALA SEERAA ALAA QULQULLEESSUU
Gochi daldala seeraa alaa miidhaa hedduu biyya irratti kan dhaqqabsiisu ta’uu fi moootummaan xiyyeeffannoo guddaa kan itti kennu ta’uu irraa kan ka’e haala quulqullinaa fi saffina qabuun qoratamee seeratti dhiyaachuu qaba. Ha’a ta’u malee, qabatamaatti gocha daldala seeraa alaa qorachuu wal-qabatee hanqinaleen hojii keessaatti mul’atan hedduu dha. Fakkeenyaaaf, namoota itti gaafatamummaa qaban hunda irratti qorannoog gaggeessuu dhabuu 39 fi eeroo ragaan deeggarama dhiyaatetti xiyyeeffannoo kennuun qoratani furmaata seeraa akka akka argatu gochu dhabuu akka rakkoo guddaa tokkootti kan caqasamu dha. 40 Ijoo kana irratti dhimma qabatamakaa tokko akka fakkeenyaatti haa ilaalu. Galmee shakkamaa Amiin Saadiq Raabsaa irratti w🚘 qorannoon irratti gaggeeffamee seeratti akka dhiyaatuuf xalayaa lakk DMG/HHD-3/98 gaafa

37 Af-gaaffii obbo Tafararraa Wondee, I/G/Waj Haqaa G/A/O/N/F; obbo Ijennaan Gizaw, Ab/Ad/Qor/Yakkaa fi Murtii Haqaa Kennissiisa Waj. haqaa G/A/O/N/F waliin gaafa guyyaa 10/05/08; obbo Isheetu Asaffa, I/Gaafatama Wajjira Haqaa Magala Sabbataa waliin gaafa guyyaa 12/05/08 gaggeeffame.

38 Af-gaaffii obbo Kabbadaa Yaa’ii, I/Gaafatama Wajjira Waqaa Godina Baalee waliin gaafa guyyyya 25/05/08; Ins. O.Taariku Laggasaa, Ab/Ad/Qor/Yakkaa fi Murtii Haqaa Kennissiisa Qajeelechaa Poolisii Magaala Shashamanne waliin gaafa guyyaa 20/05/08 fi obboo Hedatoo Fayyissaa, I/Gaafatamaa, Wajjira Haqaa Aanaa Shashamanne waliin gaafa guyyaa 19/05/08 gaggeeffame.

39 Fakkeenyaaf, af-gaaffii Gammachiis Geetahun, Abbaa Alangaa, Aanaa Gimbi, Amajjii 9, 2008 fi Kom. Abbabaa Tashooma, Qajeelechaa Poolisii Godina Adda Oromiyaa Naamawa Finfineetti Ab/Ad/Qor/yakkaa fi Murtii Haqaa Kennissiisa waliin gaafa guyyaa 06/05/08 gaggeeffame.

40 Fakkeenyaaf, af-gaaffii Obbo Hirkisas Dhinsaa, Ogeessa kabaachiisa mirga fayyadamtoota BDMGO; obbo Kadiir Hammuu ogeessa seeraa BDMGO; obbo Masaratuu Lammaa Ab/Ad/Hoji Too’annoo fi Itti Fayyadama Calla Guddistuu Biirro Qonnaa Oromiyaa waliin gaafa guyyaa 04/05/08 taasifame ilaaluun ni danda’ama.


Yakki daldala seeraa alaa namoota qabeynya qabaniin akkasumas gareedhaan kan raawwatamu ta’uun isaa dabalataanis abbootii taayitaa waliin walitti hidhaminsa kan qabu ta’uun isaa namoota kana haala salphaa ta’een to’achuun ergasii illee qorannoo gaggeessuuf irratti dhibbaan guddaa jiraachuun isaa yakkoonni kunniiin haala barbaadamuun akka hin qoratamne


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41 Af-gaaffii Insp. Fayyisaa Hojisaa, Qajeelcha Poolisii Godina Adda Oromiyaa Naannawa Finfineetti qorataa yakkaa waliin gaafa guyyaa 06/05/08; obbo Ibsaa Camadaa A/Alangaa Wajjira Haqaa G/A/O/N/F waliin gaafa guyyaa 10/05/08 gaggeeffame.
42 Af-gaaffii obbo Alamayyoo Uumaa, A/seeraa fi B/B Pireezidaantii Mana Murtii Aanaa Sabbataa Hawwaas waliin gaafa guyyaa 12/05/08; Obbo Abdiisa Ganamoo A/seeraa fi Qindeessaa Garea Yakkaa Mana Murtii Aanaa Arsii Nageellee waliin gaafa guyyaa 15/05/08, obboo Ismaa’eel Muhaammad, A/seeraa fi Qindeessaa Garea Yakkaa Mana Murtii Aanaa Shaashamannee waliin gaafa guyyaa 20/05/08 taasifame.
43 Af-gaaffii obbo Aminn Aadam, I/Gaafatama Waajjira Haqaa Godina Arsii Lixaa waliin gaafa guyyaa 18/05/08; obboo Hedatoof Fayyisaa, I/Gaafatamaa Wajjira Haqaa Aanaa Shashamannee waliin gaafa guyyaa 19/05/08 taasifame.
45 Haaluma wal-fakkaatuun Labsii Oomishaa fi Daldala Xaa’oo lakk.137/1991 keessatti dhimmoota dhooorkaman tarreeessuun itti gaafatamummaa hordofsiiisan bira darbuun, adeemsi daldala dhiyeessii labsii keessatti hayamamée ture hojmaata haarawa kanaan faalla (dhiyeessiin xaa’oo waldaa hojjii gamtaan ta’uun) daldala xaa’oon wal-qabatee naannoo Oromiyaa keessatti xaa’oo seeraan alaa jechoh qabuun ala qorannoo yakkaa gaggeessanii bu’uur labisichaa himachuun baay’ee rakko uumee jira.
raawwatiinsa qabaata kan jedhu irratti wal-falmiin yeroo uumamu ni mul’ata.\(^{46}\)


**4.3. YAKKA DALDALA SEERAA ALAA HIMACHUU**

Hojiin daldalaa ulaagaalee ada addaa bu’uureffatee kan gaggeeffamuu fi ulaagaalee sana cabsanii hojii daldalaa hojjechuun yeroo baay’e itti gaafaatamummaa yakkaa kan hordofiisu waan ta’eef, himannaan yakkaa gama kanaan dhiyaatu ulaagaalee cabsan ifa baasee agarsiisu kan danda’u ta’uu qaba. Itti dabalees, ulaagaaleen kanneen akka dhimma isaatti labsiilee adda addaatiin ragga’anii kan jiran waan ta’eef gocha raawwatamee fi seera rogummaa qabu xiyyeefannoon wal-simsiisuun barbaachisaa dha.

Haa ta’u malee, gama kanaan hanqinni raawwi keessatti mul’atu hedduu dha. Hanqinni tokkoffaan, ulaagaalee seerummaa hojii daldalaa

\(^{46}\)Af-gaaffii kom.Dastaa Mokonnin, Hoogganaa Qajeelcha Poolisii Magaalaa Sabbataa waliin gaafa guyyaa 13/05/08 taasifame.

Ragaalee fi seera wal-simsiisani himannaa sirrii hundeessu irratti hanqinajiru sakatta’uuf bar-gaaffii poolisoota fi A/Alangaaaf dhiyaate irratti namoota 130 debbii kennaas keessaa, namootni 63(48.77%) hanqinni akka jiru yammuu ibsan, namootni 67(51.33%) rakkoon hin jiru jedhanii debisaniiru. Namootni hanqinni jira jedhan A/Alangaa seeraa fi ragaa dhiyaate irratti hunda’anii himata dhiyeessu irrira dhiibbaa adda addaatii himata qulqullina hin qabne hundeessuu, namoota himatamuu qaban hunda himachu dhabuu, ragaalee hunda duguuganii fayyadamuu dhabuu,

47A/Alangaa Aanaa Seeruu fi Sheek Abdallaa Ismaaeeel, Mana Murtii Aanaa Seeruu, Galmee Lak. 07978
dhimmoota hunda duguuganii himachuu dhabuuf fi seera rogummaa hin qabne jalatti himata hundeessuu akka rakkootti kaasanii jiru.

Ragaalee fi seera wal-simsiisanii himata gocha daldala seeraa alaa dhiyeessuu irratti gahumsi A/Alangaa maal akka fakkaatu sakatta’uuf bar-gaaffii abboostii seeraa waliin taasifameennamoota 58 keessaa namootni 8 (13.79%) ol’aanaa, namootni 38 (65.51%) jiddu galeessa, namootni 12(20.69%) ammoo gad-aanaa jedhanii jiru. Namootni kanneen hanqina himannaa irratti gama kanaan jiru akka ibsanitti keewwata rogumma hin qabne caqasuun himachuw,ragaa hunda duguuganii fayyadamuu dhabuu, seera adabbii gad-aanaa qabu filachu, dhimmoota himachuu qaban adda baasanii himachu dhabuu, dhimma ijoottoo irratti himata adda addaa hundeessuu fi kkf himannaa irratti akka calaqqisu kaasaniiuru. Akka waliigalaattii, yaadota bar-gaaffii fi af-gaaffii; akkasumas, dhimma armaan olli dhiyaaate irraa akka hubatamutti, himatni gocha daldala seeraa alaa irratti dhiyaataa jiru hanqinaailee akka seera adabbii gad-aanaa qabu filachu, himata keessatti ijoowwan seeraa fi firiiwan dubbii guutamanii dhiyaachuu qaban hunda guutanii dhiyeessuu dhabuu, seera rogumaa hin qabne fayyadamuu fi ragaalee duguuganii fayyadamuu dhabuun bal’inaan kan mul’atu ta’uu agarsiisa.48

5. KENNIINSA MURTII DHIMMA DALDALA SEERAA ALAA
   5.1. DHIMMOOTA DALDALA SEERAA ALAA
      IRRATTI MURTII KENNUU

Manni murtii adeemsa murtii kennuu keessatti, to’annoo gocha daldala seeraa alaa mirkaneessuuf seerota kallatti sirri ta’een hiikee dhimmoota irratti raawwachiisuu qaba.49

48Af-gaaffii obbo Hirphoo Irreessoo, Pirezidaantii Mana Murtii Aanaa Shashamannee waliin gaafa guyyaa 18/05/2008 taasifame.
49Labsii Manneen Murtii Naannoo Oromiyaa Iraa Deebi’anii Hundeessuuf Bahe,Lak 141/2000, Magalata Oromiyaa Bara 16th/Lak 10, kwt 3(c); Qajeelfama Koree Deeggarsa Misooma Oomishaalee Eksipoortii Naannoo Oromiyaa, Waxabajjii 2006, Lakk. 6.1.4, F12.
5.1.1. Aangoo Mana Murtii Idilee fi Qaamolee Biroo Adda Baasu


5.1.2. Labsii Dorgommii Daldalaa fi Eegumsa Mirga Fayyadamtootaa


Labsi kwt. 34 jalatti tokkoo tokkoon naannolee akka barbaachisummaa isaatti qaama abbaa seerrummaa fi mana murtii dhimmoota bulchiinsa eegumsa mirga fayyadamtootaa irratti ol’iyannooh dhaga’u hundeesuu akka danda’an aangessee jira. Dhaddachi hundeeffamuu danda’u kun aangoo dhaddachi dorgommii daldalaa fi eegumsa mirga fayyadamtootaa Federaala dhimma eegumsa mirga fayyadamtootaa irratti qabu wajjiin wal-qixa waan ta’uu, dhimma eegumsa mirga fayyadamtootaa ilaalchisee

50Labsii Dorgommii Daldalaa fi Eegumsa Mirga Fayyadamtootaa lakk.813/2006, kwt 32(1 a & b, fi c), Magalata Federaala, Bara 20ffaa Lak 28 wal-bira qaba ilaalaay.
falmii beenyaa irratti murtii kennuu danda’a. Haa ta’u malee, adabbii yakkaa murteessuuf aangoo hin qabu.

Labsicha kwt 36 jalatti Abbaan Taayitaa Dorgommii Daldalaa fi Eegumsa Mirga Fayyadamtoota dhimma dorgommii daldalaa guutuu biyyattii keessatti raawwatamee fi dhimmoota eegumsa mirga fayyadamtootaan wal-qabatee magaala Dirree Dawaa fi Finfinnee keessatti raawwatame qorachuuf akka aangeefame ni tuma. Kana jechuun immoo dhimmoota eegumsa mirga fayyadamtoota wal-qabatee naannoolee keessatti raawwataman qaamolee haqaa naannootiin kan ilaalamuu danda’ani dha.

5.1.3. Labsiilee Sirna To’annoo Qulqullinaa fi Daldala Bunaa


Gama biraatiin, bu’uuruma tumaa seeraa kanaatiin gocha yakkaa qulqullinaa fi daldala bunaa irratti raawwatamu manni murtii aanaa (naannoo) ilaaluuf aangoo qaba jechuun kan hojiirra oolchan jiru. Labsiin Manneen Murtii Federaalaa Lak 25/88 aangoo manneen murtii Federaalaa adda baaseera. Labsiichi kwt 4 jalatti dhimmoota yakkaa aangoo Manneen Murtii Federaalaa ta’an adda baasee tarreessee kan jiru yoo ta’u yakkoota qulqullinaa fi daldala bunaa irratti raawwataman garuu tarree sana keessatti

51Fakkeenyaaaf, falmiilee A/Alangaa fi Meeri W/Yohanaisfaa(No 3), M/Murtii Ol’aanaa Godina Wallagga Lixaa, lakoofaas galmee 16360, A/Alangaa fi Muhamad Sule faa, Mana Murtii O’aanaa Godina Arsii, gamee lakk.40087 gaggeeffame ilaaluun ni danda’aama.
hin hammachiifne. Kanaafuu, gochi yakkaa qulqullinaa fi daldala bunaa irratti raawwatamu aangoo mana murtii federaalaa miti. Gochi yakkaa kun aangoo mana murtii federaalaa waan hin taaneef, Mana Murtii Sadarkaa Jalqabaa Federaalaatti dhimmichi ilaalama waan jedhame qoфаaf bу’uura Heeera Mootummaa kwt 80 (4) tiin naannotti mana murtii olaanaatti kan ilaalamu hin ta’u. Haala hiikkoo kanaatiin, Labsii Bunaa Federaalaa irratti hundaa’uun himannaan Mana murtii aanaatti dhiyaachaa tures jira.52


5.2. AANGOO KOREEWAN ADDA ADDAA FI MANA MURTII IDILEE: MEESHAA DALDALAA QABAME IRRATTI MURTII KENNUU


Aangoon waajjiraalee olitti eramaniiif kenneame akkuma jirutti ta’ee, qaamoleen adda addaa walitti dhufanii koree uumuun bakka tokkotti dhimmoota olitti eramanirratti murtii akka kenneen ta’ee jira. Haaluma kanaan, meeshaalee daldalaa bu’uuraa ta’an ilaachisee hordoffii fi to’annoo akka taasisuu fi gochoota eegumsa mirga fayyadontoottaa sarban irratti murtii akka kenneuf Koreen Gabaa Tasgabbeessituu sadarkaa Biiroo, Godinaa fi Aanaatti hundeeffameera.54 Bifuma walfakkaatuun waajjiraaleen moottummaa qaama raawwachiiftuu ta’an 15 bakka tokkotti walitti qabamanii Koree Deeggarsa Misooma Oomishaalee Eksipoortii ta’ani hundeeffamuu oomishaalee madda sharafa biyya alaa ta’an yeroo qabaman seera qabeessummaa isaanii waliin akka murteessaniif ijaaramaniiiru.55

Meeshaan daldala seeraa alaa jedhame tokko gaafa qabamee kaasee hanga guuyaa shaniitti abbaan qabeenyichaa gocha daldala seeraa alaa hin raawwanne kan jedhu yoo ta’e komii isaa koree yookaan waajjira

54Qajeelfama Sirna Raabsaa Meeshaalee Bu’uuraa Lak. 1/2004, kwt 11(1g).


Mana murtti idileetiif aangoon adda durummaaan kenname gochi raawwatame yakka moo miti jedhee murteessuu fi adabbii kennu dha.59 Murttiin kun murtti gocha daldaa seeraa alaa irratti kennamu yoo ta’u, namni gochicha raawwate hidhaan akka adabamu, meeshaan gochi daldaa

56 Dambii Saliixaa fi Boloqqee 178/2000, kwf 23(3), fi Dambii Buna, kwf 22(3) ilaalaa; Labasii fi Dambiin Beeyiladaa Lakk.819/2006 kwf.16(8) fi 17 akka akeekanitti namni meeshaan daldaaa isaa jalaa qabamee murtti biiroo daldaa fi mistooma gabaa ykn koreee deeggarsa mistoomaa oomishaalee eksipoortii irratti o’iiyyaanoo mana murttiitti fudhachuura hanga dhimmichi yakaan himatamee murtti argatuu ee chuuutu irraa ee gama.

57 Isheetuu Kabbadda fi Waajjira Daldaa fi Mistooma Gabaa Aanaa Gimbichuu faa (N 2), Mana Murtti Waliigala Oromiya, Dhaddacha Baha, Galmee Lak. 151226

58 Mahaammad Musaa fi Waajjira Poolisi Aanaa Guutoo Giddaa, Mana Murtti Olaanaa Godina Wallaggaa Baha, Galmee laakk.35957.

59 Akka fakkeenyaaatti agarsiisuuf, Labsiin Sirna To’annoo Qulqullinaa fi Gabaa Buna Oromiyaaw kwf 24 gocha yakkaa daldaa fi qulqullina bunaarratti raawwatu himata sadarkaa jalqabaarraa kaasee ilaaluu kan danda’a mana murtti idlee akka ta’etti akeekee jira.
seeraa alaa irratti raawwate akaa dhaalamuu fi kkf taasisa. Meeshaalee 
daldala seeraa alaa qabaman irratti muttii koreewwan kennanii fi manni 
murtii kennu bakka tokko tokkotti gargar yoo ta’an ni mul’atu. 
Fakkeenyaaaf, koreen meeshaan qabame seera qabeessa jedhee yoo 
murteessu manni muttii himannaal yakkaa meeshaa qabame kanarratti 
hundaa’ee dhiyaate irratti gochi yakkaa raawwatameera jedhee yeroo muttii 
itti kennu jira. Fakkeenyaaaf, falmii Abbaa Alangaa Aanaa Gimbii fi Tufaa 
Ayyalaa gidduu ture ilaalchisee himatamaan zayitii nyaataa Magaalaa 
Naqamtee seeraa ala fe’ee Gimbii gara Calliyatti osoo socho’a’aa jiru waan 
qabameef Labsii Lakk 813/2006 kwt 43(4) jalatti himatameera. 

Himatamaan jecha amantaa fi waakkii isaa bu’uura s/d/f/y kwit 35 kan 
kennee fi ragaan abbaa alangaa irratti waan mirkanesesseef manni muttii 
aanaa hidhaa waggaa sadii fi qarshii 1000 adabeera.60 Koreen gaba 
tasgabbeessituu magaalaa Gimbii ammoo gocha himatamaan raawwate 
seeraa ala miti jedhe murteesse. Manni muttii Olaanaa Godinichaag aama 
isaatiin manni muttii idilee aangoo hin qabu jechuun muttii jalaa diigee 
himatamaa bilisa gaggeesseera.61

Armaan olitti aka ilaalle manni muttii himannaal gocha daldaa seeraa alaa 
irratti dhiyaate simatee keen arabaamayessa yoo ta’u, koreewwan adda 
addaa ammoo meeshaan daldaa qabame bu’uura qajeelfama jiruutiin 
qabamu qulqullessee akka dhaalamu yookaan abbaaf aka deebi’u 
murteessa. Haaluma kanaan, yeroo tokko tokko koreen seerummaa meeshaa 
qabame qulqullessee osoo hin mutreessin meeshaa qabame irratti gochi 
daldala seeraa alaa raawwatameera jedhaamee himannaal yakkaa mana 
murtiti dhiyaata. Meeshaan qabame seera ala, haa dhaalamu jedhee koreen 
yoo murteesse muttii manni muttii gama lamaanittuu kennamuu rakfoo hin 
uumu. Manni muttii gochi himatamaan raawwate yakka kan jedhu yoo ta’e 
murtii kana irratii hundaa’amee meeshaan qabames battulamatti dhaalama 
waan ta’eef muttii koree wajjiin wal sima.62 Koreen meeshaan qabame 
seera qabeessa kan jedhu yoo ta’ee fi manni muttii ammoo gochi 
himatamaa yakka kan jedhu yoo ta’e murtiileen lamaan gargar bahan jechuun 
dha. Murthiiwawan kanneen keessaa isa kamtu olaantummaa argachuu qaba?

60Abbaa alangaa fi Tufaa Ayyalaa, Mana Murtii Aanaa Gimbii, galmee lakkofsa 11670. 
61Afgaaffii obbo Waqgaararii Sanbataa, Abbaa Adeemsaa Hojii Qorannoo Yakkaa fi Murtii 
Haqaa Kennisisisuuf, Af-gaaffii gaafa 9, 2008 taasifame. 
62Labsii Dorgommii Daldalaa fi Eegumsa Mirga Fayyadamtooataa, kwt 43(4), Labsii Sirna 
To’annoo Qulqullinaa fi Daldala Bunaa Oromiyaa, kwt 23 (4), fi kkf

5.3. MURTII ATATTAMAA KENNNUU: MIRGA WABII EEGUU KEESSATTI XIYYEEFFANNOO BARBAACHISAA KENNNUU

Dhimmootni daldala seeraa alaa gara mana murtii dhufan akkuma dhimmoota biroo haqa kan barbaadan waan ta’eef, yerootti murtii argachuu qabu. Haala addaan ammoo dhimmootni daldala seeraa alaa dhimmoota atattamaan murtii argachuu qaban keessaa isaan ijoo akka ta’e qajeelfamnii koreee deeggarsaa misooma al-ergii ni tuma. Itti dabalees, dhimmootni kanaan dhimma sharafa alaa argamiisuu, qabeenya jiru qixa bu’a-qabeessa ta’een hojiirra oolchuu, misooma industriirii babal’isuu, meeshaallee fi tajaajiloota fayyaa uummataa miidhoo danda’an irraa baaaroo, fi galii moottummaa guddisu wajjiin kallattiin walitti hidhata gudda dha qaban sababa ta’aaniff xiyyeefannoo addaan yeroo gabaabaa keessatti keessummeeffamnii furmaata argachuu qabu. Keessumaa, gufuuwwan sharafa alaa xiqqessen kamiiyyuu (gocha daldala seeraa alaa) irratti haala qulqullinnaa fi saffina qabuun hojjechuun baay’ee barbaachisaa dha.

64 Mootummaan dhimmoota GTP II keessatti xiyyeefannoo guuddaa keessaf keessaa tokkoo qulqullinaa fi baay’ina meeshaaalee al-ergii dabaluun galii sharafa alaarraa argamu waggattii gara doolaara biliyoonaa 16tti ol guddisu dha. Haalotni qulqullinaa fi baay’ina meeshaaalee al-ergii midhan baay’een isaanii gochoota seerota sirra to’anno daldala cabsanii cabsanii wajjiin kan wal-qabatanii dha (Mulukken Yewondwossen, High Expectations Set for GTP II, Capital Gazette, Monday, 06 July 2015).
66 Ethiopia: Curbing the Foreign Trade Barriers, the Ethiopian Herald, 20 March 2016.

Haa ta’u malee, hoj-maatiini mana murtii tokko tokko akka agarsiisutti haalaa fi amala namoota gocha daldala seeraa alaa keessatti hirmaatan giddu-galeessa godhachuun wabii gahaa waamsisu dhabuu irraa kan ka’e, namootni gocha daldala seeraa alatiin himatamanii wabiin bahan deebi’anii guyyaa beellamaatti akka hin dhiyaanne taasisaa jira.

67 Cuunfaa yaada bargaaffii.
68 Seera Adeemsa Falmii Yakkaa Itoophiyaa, kwt. 63(2).
69 Seera Adeemsa Falmii Yakkaa Itoophiyaa, kwt 69(2a, b, fi c).
70 Af-gaaffii I/A/Insp.Ballaxaa Isheetuu/I/Gaafatama Wajjira Poolisii Magaala Arsii Nageellee, fi Saj.ol Antanah Ingidaa, Ab/ad/Qo/Yakka fi Murtii Haqaa Kennesisaa Wajjira Poolisii Magaala Arsi Nageellee waliin gaafa guyyaa 15/05/08 taasifame.
Dabalataanis, manni murtii mirga wabii irratti murtii yoo kennu gochi raawwatame mirga wabii kan hin dhorkisiifne ta’uu qulqulleessuu cinatti dirqama wabummaa scene kan guutu, yakka biroo kan hin raawwannee, fi ragaa kan hin balleessine ta’uu shakkamaa adda baafachuq qaba. Hima biraattiin, manni mirga wabii gaaachaajda jiru qajeelfama manni murtii kennu kan kabaju ta’uunsaa shakkisiisa yoo ta’e; akkasumas, ragaa isa irratti dhiyaachuu jedhu ni balleessa jedhamee kan shakkamu taanaan wabii gahaalle yoo dhiyeesse manni murtii mirga wabii isaa daangessuun irra jiraata.

5.4. SEEROTA HOJIMAATA DALDALAA BITAN KALLATTII SIRRIIN HIIKUU HOJIIRRA OOLCHUU

Seerota to’annoo fi qulqullina daldalaa bitan hiikanii hojiirra oolchuu irratti hanqinni manneen murtii keessatti mul’atan bal’aa dha. Hanqinni kunis seera iftoomina guutuu qabu jallisuu (micciiruu) fi kanneen iftoomina gahaa hin qabne ammoo haala kaayyoo waliigala seerichaa galmaan gahuu danda’uu hiikanii raawwachsisee dhabuun calaqcisuu kan danda’uu dha. Bu’uuruma kanaan, rakkoowwan gama kanaan jiran bakka lamatti goodnee ilaalu yaa. Rakkoon gama kanaan jiru inni jalqabaa rakko tumaaleen seeraa ifagalaa ta’an hiikanii hojiirra oolchu dhabuun dha. Ergaa keewwatni seeraa tokko dabarsu ifaa fi guutuu yoo ta’e (hanga heera mootummaa hin faallessinetti), abbaan seeraa tumaa seerichaa akkuma jiritu raawwachsisee qaba.

Manneen murtii keenya biratti garuu yaada bu’uura seera hiikuu kana hojiirra oolchu dhabuun tuma seeraa ifa-galaa ta’an kallattii barbaadamuu hojiirra oolchu irratti hanqinni jiru guddaa dha. Akka fakkeenya atti caqasuuuf, Mnni murtii falmii nagahee dabalataa kennu dhabu irratti

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71 Seera Adeemsaa Falmii Yakkaa Itoophiyaa, kwt 67.
72 Seera Adeemsaa Falmii Yakkaa Itoophiyaa, kwt.67.
73 Cuunfaa yaada bar-gaaftii


Daldalaan nagaaheey galii dabalataa kennuu qabu tokko akkuma meeshaa ykn tajaajila gurgureen nagaaheey galii dabalataa kennuu akka qabu seerri bifa ifaan tumee osoo jiruu sababoota adda addaatii hirkisuun daldaltoota badii raawwatan itti-gaafatamummaa seeraa jalaa baasuu manneen murtii keenya biratti ni mul’ata. Fakkeenyaaf, falmiwwan Abbaa Alangaa A/Taayitaa Galiiiwwanii fi Indiriis Mummad Adam gidduutti gaggheefameex⁷⁶ fi Abbaa Alangaa A/Taayitaa Galiiiwwanii fi Gumuruukaa fi Fadiluu Nuurii gidduu

⁷⁵ Falmii Abbaa Alangaa Galiiiwwanii fi Gumuruukaa Itoophiyaa, Damaa Kibba Lixaa fi Baroon Bizinas Waldaa Dhuunfaa I/G/Mu, Mana Murtii Olaana Godina Jimmaa, Galmeex Lak 30682.
⁷⁶ Falmii Abbaa Alangaa Waajjira Abbaa Taayitaa Galiiiwwanii fi Indiriis Mummad Adam, Mana Murtii Olaanaa Godina Harargee Bahaa, Galmeex Lak.30955.
ture irratti\textsuperscript{77}, gurgurtaa fi nagahee galii dabalataa kennuun dhimma al-takkaa (wal-faanaa) raawwatamu qabu ta’uusaa hubatanii raawwachiisuu irratti gama mana murtii keenyaan hanqinni akka jaru akeeku.

Gama biraatiin, tumaalee Seeraa iftoomina gahaa hin qabne guutummaa seerichaa dubbisuun bifa kaayyoo waliigala seerichaa galmaan gahuu danda’uun keewwatoota hiikanii raawwachiisuu dha.\textsuperscript{78} Haa ta’u malee, manneen murtii Oromiyaa tumaalee seera daldalaa iftoomina gahaa hin qabne tokko tokko haala kaayyoo waliigala seerichaa galmaan gahuu danda’uun hiikanii hojiirra oolchuu irratti hanqinni mul’ata.

Falmii tokko irratti\textsuperscript{79} himataan boloqqee kuntaala 100 osoo geejibsiisaa jiruu himatamtootni seeraa alaa na jalaa qabanii gurguran waan ta’eef gatiis isaa akka naaf kaffalan jedhe himate. Himatamtootni akka deebii kennanitti himataan ragaa hayyama darbiinsaa fi hayyama hoji daldalaa osoo hin qabaatiin boloqqee seeraa alaa geejibsiisaa osoo jiruu waan qabameef daldala seeraa alaa raawwateera jedhan. Manni murtii akka xinxaletti, \textit{bu’uura dambii bittaa-gurgurtaa saliixi fi boloqqee adii lakk 178/2002 kwt 23(1) namni boloqqeen isaa jalaa qabame guyyoota hoji shan keessatti komii isaa qaama dhimi ilaallatutti dhiyeeffachuu akka qabu tuma; himatamtootni ammoo guyyoota hoji lama qofa eeguun boloqqicha gurguruun isaanii seeraa ala waan ta’eef boloqqeen qabame akka deebi’uu ykn tilmaamnii isaa akka kanfalamu murteesse.}

Bu’uura Dambii Lakk.178/2002 kwt 13(6)tti namni hojjii daldalaa saliixi fi boloqqee adiirratti bobba’u kamiyyuu hayyama hojjii daldalaa fi ragaa gahumsa hojjii qabaachuu cinatti meeshaalee daldalaa kana seeraan fe’ee bakka tokkoo gara bakka biraa deemaa jirachuu isaa kan agarsiisu waraqaa darbiinsaa qabachuu qaba. Haaluma kanaan, himataan ragaa hayyama darbiinsaa soo hin qabaatiin fe’ee deemuun isaa daldala seeraan alaa gaggeessuu isaa waan ta’eef qabamuu isaa seera qabeessa. Haa ta’u malee, himataan komii qabu akka dhiyeeffatuuf guyyoota hoji shaniif qaamni dhimmii ilaalu komii isaa eeguu qaba. Hima biraan, boloqqee fi saliixiin

\textsuperscript{77} Falmii Abbaan Alangaa A/Taayitaa Galiiwwanii fi Gumuruukaa fi Fadiluu Nuurii, Mana Murtii Olaanaa Godina Jimmaa, Galmee Lakk.30460.

\textsuperscript{78}Government of Western Australia, Department of the Attorney General, How to Read Registration: A Beginners’ Guide, May 2011, F15.

qabame guyyoota hojii shaniin booda malee gurguramuu hin qabu jechuun akka danda’amu dambichi kwt 23(1) fi (2b) irraa ni hubatama. Hiikoon kwt 23(1)tti kennamu garuu ergaa guutuu kwt 23 haala galmaan gahuun ta’uu qaba. Falmii kana keessatti dhimmi ijoo ta’ee ilaalamuu qabu meeshaan qabame seera qabeessaan geejjibamaa jira moo hin jiruu malee himatamtootni adeemsaa jiru eeguu dhabuusaanii miti. Keessumattuu, kwt 23(3), namni meeshaan isaa jalaal qabame mana murtiitti himata dhiyeeffachu kan danda’u kallattiin osoo hin ta’iin murtii koreen kenne irratti hundaa’ee ol’iyyannoo dhiyeeffata.Kanaaf, turtii yeroo seeraan kaa’ame cabsuun meeshaa seeraa ala daldalamaa jiru tokko gurguruun qaama dhimmi ilaal ilaa gochicha seera qabeessa hin taasisu. Kanaafuu, manni murtii tumaa keewwata tokko yeroo hiiku guutummaa kaayyoo seerichaa wajjiin bifa deemu danda’uun ta’uu osoo qabuu keewwata tokko luqqisanii ilaaluun sirri miti.

5.5. MURTIIILEE GOCHA DALDALA SEERAA ALAA IRRATTI KENNAMAN DAANGESSUU

Murtii adabbii ykn raawwii isaa daangessuuuf tumaalee seeraa dhimma murtii adabbii daangessuu ilaalachisee tumamanii jiran hunda ilaaluun hojiirra akka oolan taasisuun dirqama. Haa ta’u malee, murtiiwwan adabbii fi raawwii isaa dhimma gocha daldala seeraa alaa irratti kennaman yeroo baay’ee kan daangeffaman yoo ta’an, haalli daangeffama isaanii tumaaalee seera yakkaa waa’ee murtii adabbii daangeessuu tumanii jiran bifa yaada keessa galcheen miti.80

5.6. RAGAA MADAALUU

Dhimma daldala seeraa alaa irratti murtii kennuun walqabatee gochi akka danqaa guddaatti ka’uu danda’u tokko dhiyeessa ragaa sobaati. Fakkeenyaaf, buna seeraa alaa jedhamee qabame irratti qorannaan gaggeeffamee xumuramuun himatni mana murtitti erga dhiyaatee booda himatamtootni ragaa amanumummaa hin qabne barreessisanii dhiyeessu. Ragaaleen barreeffamaa dhiyaatan kanneenis, fakkeenyaaf, xalayaa bunni qaama dhimmii ilaallatu gahuusaa ibsu (Goods Received Notice), waraqaa gaggeessitu (waraqaa darbiinsaa), hayyama gahumsa hojii, fi kkf wajjiin kan wal-qabatanii dha81. Itti dabalees, yeroo tokko tokko ragaa seera qabeessa al tokkotti tokko qofaan kennamuu qabu lama yooakaan sadii taasisanii kennuun daldalli seeraa alaa akka ittiin gaggeeffamu haalli itti taasisan ni mul’ata.82

Gocha daldala seeraa alaa irratti murtii kennuun wal-qabatee rakkinni ragaa sobaa ballinaan kan jiru yoo ta’ellee, amanumummaa ragaa dhiyaatanii madaaluun murtii haqa-qabeesa kennuu irratti hanqinni gama mana murtii mul’atu gudda dha. Dhimmoota qabatamaan rakko kana ibsan fakkeenyaanaa kaasnee haa ilaallu. Falmii Abbaa Alangaa fi Shawwaan


6. YAADOTA GUDUNFAA FI FURMAATAA

6.1. YAADOTA GUDUNFAA

Daldalli seketeroota guddina dinagdee mirkaneessuu keessatti gahee olaanaa guamaachan keessaa isa tokko dha. Seektera kana cimsaa deemuuf, mootummaa seerota adda addaa tumuun daladala seeraa alaa fi miidhaa gama kanaan dinagdee, fayyaa, fi nageenya biyyaa irra gahuu danda’u

\textsuperscript{83}Abbaa alangaa fi shawwaa Bejawu mandafiroo, Mana Murtii Aanaa Baabboo Gambeel, Galmee Lakk.03403

\textsuperscript{84}Fakkeenyaaaf, dhimma A/Alan Enga Aanaa Shaashamnnee fi Zarihuun Abarraa fa’aaa (N-2) jidduu ture irratti himatamtoonni bu’a Bosonaa waraqa darbiinsa ossoo hin qabaatiin seeraan ala geejibanii jedhamanii himatamani himatamtoota irratti ragamee akka ofirra itisaa erga ajajameen booda ragaa waraqa darbiinsa lama dhiyeessanii bakka jirnatti manni

murtii dhugummaa ragaalee ossoo hin ququlquleesin himatamtoota bilisaan gaggeesssee jira.
xiqqeessuuf tattaaffii guddaa taasisaa jira. Seerotni gama kanaan bahani jiran ulaagaalee seerummaa hojii daldaalaa mirkaneessuu danda’an kan akka galmeey daldaalaa irratti galmaa’uu, hayyama hojii daldaalaa baafachuu, hayyama gahumsa hojii baafachuu, waraaqaa darbiinsa qabaachuu, sadarkaa qulqullina meeshaaalee eeguu, gatii gurgurtaa meeshaaalee bitattootaa beeksisuu, meeshaaalee daldaala bu’uuraa gatii itti gurguramuq qabanitti yookaan hanga hayyamame qofatti gurguruu, gibira moo tummaa yerootti kaffaluu fi kkf jedhaman teechisanii jiru. Ulaagaalee seerummaa hojii daldaalaa ee raman kanneen cabsanii hojii daldaalaa hojjechuu gocha dallalaa seeraa alaa raawwachuu yoo ta’u, gochoonti kanneen yeroo baay’ee tarkaanfii bulchiinsaa fi/ykn adabbii yaakkaatiin kan adabsiisani dha.

Waajjiraaleen moo tummaa adda addaa gocha daldaalaa seeraa alaa to’achuuf keessatti hirmaannaa garagaraa qabu. Fakkeenyaaf, qaamoleen haqaa gocha daldaalaa seeraa alaa qabuu, qorachuu, himachuu, adabuu fi murtii adabbii raawwachiisuu gochi daldaalaa seeraa alaa akka hin raawwatamne ittisu; seerotni seerummaa hojii daldaalaa eegsisuuf bahan akka hin cabne taasisuun hojiirra oolmaa seerota kaneenii mirkaneessuu jechuu dha. Haa ta’u malee, hojii to’annoo daldaalaa seeraa alaa keessatti qaamoleen haqaa Oromiyaa hanqinaalee adda addaa qabu. Fakkeenyaaf, daldaalaa seeraa alaa qabuu keessatti hubannoq seerota daldaalaa to’achuuf bahan irratti jiru laafaa ta’u, qindoominni poolisiin seektaroota daldaalaa to’achuuf seeraan aangeeffaman waliin jiruu dadhabaa ta’u; akkasumas, kanfaltii komishinii irratti hubannoq gahaa dhibuu dhimmoota to’annoo daldaalaa seeraa alaa irratti dhiibbaa uumaa jirannii dha.

Gama biraa tiin rakkoon naamusaa poolisoota biratti calaqqisan gocha daldaalaa seeraa alaa akka hin qabamneey fi qorannaa gahaa akka hin gaggeessine sababoota taasisan keessaa isa tokkoo dha. Kunis gocha daldaalaa seeraa alaa raawwataamaa jiru osoo arganii qabuu dhabuu, qabani seeratti osoo hin dhiiyeessin gad-lakkisu, dal dalli seeraa alaa miidhaa akka waliigalatti biyya irratti geessisu hubachuu dhabuu fi gochicha akka madda galii ta’eetti fudhachuu akka fakkeenyaatti kaasuun ni danda’amaa.

Yakkoota daldaalaa seeraa alaa qorachuuun wal-qabatee rakkoowwan mul’atan baay’ee dha. Isaanis, eeuuuwwan dhiiyaatan irratti hanga dhumaatti deemanii ragaa lee barbaachiso ta’an walitti qabuu dhabuu, qaamoleen daldaalaa seeraa alaa to’atan ragaa sobaa kennu irratti hirmaachu, ragaa lee yerootti.
qindeessanii dhiyeessuu dhabuu, namootni gocha daldala seeraa alaa erga qabanii booda ragaa barbaachisaa kennuu dhabuu isaa dhimmootaaf xiyyeefannoor barbaadamu akka hin kennaan sababa ta’ee jira. Himata bu’uureessuun walqabatee A/Alangaa himannaa seeraa fi keewwata rogummmaa hin qabneen himachu, ragaa hunda duguuganii fayyadamuu dhabuu, seera adabbii gad-aanaa qabu filachuu, dhimmoota himachuq qaban hunda duguuganii adda baasanii himachuq dhabuu, dhimma ijoo tokkoo irratti himata adda addaa hundeessuu wantoota akka rakkootti ka’anii dha. Abbootiin seeraa seerota dhimmoota kanneen irratti hedдумminaan bahanii jiran haala barbaadamuu hiikanii raawwachiisuu ilaalchisee hubannoo isaan qaban gita barbaadamuu gadi akka ta’e abbootiin seeraa ni ibsu. Murtiileen dhimmoota daldala seeraa alaa irratti murteeffaman tokko tokkos abbootiin seeraa seerota daldalaa irratti hanaqina hubannoo akka qaban ni akeeku.


Dhimmootni gocha daldala seeraa alaa mana murtiitti dihyataan yeroo gabaabaa keessatti furmaata argachuq akka qaban seerri ni akeeka. Haa ta’u malee, dhimmootni daldala seeraa alaa wajjin wal-qabatanii manneen murtii Oromiyaatti dihyachaa jiran atattama barbaadamuu furmaata argachaa hin
jiran. Dhimmoonni akka sababaatti dhiyaatan hedduu dha. Fakkeenyaaf, xiyyeeffannoo gahaa osoo hin kennii mirga wabitiin shakkamtoota gad-lakkisuuf fi ragaa bitaa-mirgaa deddeebisuuf, fi shakkamtoota wabiin bahanii dhiyaachuu didan yerootti qabanii dhiyeessuu dhabuu dha.


Murtiileen gocha dalddala seeraa alaarratti kennaman tumaalee seera yakkaa dhimmis isaa ilaallatu bu’uura osoo hin godhatiin daangeffamaa jiru. Murtiileen gama kanaa kennamanii daangeffaman namni gocha yakka dalddala seeraa alaa hojjate badii raawwateef akka itti hin gaafatamne fi gochi dalddala seeraa alaa akka hin xiqqaane taasisuu keessatti gahee guddaax taphataa jira.

6.2. YAADOTA FURMAATAA


- Daldala seeraa alaa qabuu, qulqulleessuu, himannaa hundeessuu fi murtii kenuu keessatti hakkoo naamsuusaa ogeeyyii qaamolee haqaab biratti mul’atu hambisuuf Komishiniin Poolisi Oromiyaa, Biiroon Haqaa Oromiyaa fi Manni Murtii Waliigala Oromiyaa hordoffii fi to’annoo naamsuusaa taasisuun barbaachisaa dha.

- Hoojin qorannoo yakkaa daldala seeraa alaa irratti gaggeeffamaa jiru namoota gochicha keessatti hirmaatan hunda irratti gaggeeffamaa kan hin jirre, raagaaleen hundi funaanamaa fi haala barbaachisuun xinxalamaa waan hin jirreef, hooji qorannoo yakka daldala seeraa alaa irratti gaggeeffamuu bifa hunda-galeessa fi qulqullina qabuun akka gaggeeffamu gochuu irratti hojjechuun barbaachisaa dha.

- Mirga wabii namoota gocha daldala seeraa alaan shakkaman/ himataman kabajuu dura namootni sun yeroon barbaadamanitti akka dhiyaatan kan isaan taasisu wabii gahaa waamisisuusaa isaa manni murtii mirkaneeffachuu qaba. Itti dabalees, dhimmoota daldala seeraa alaa yeroon gabaabaa keessatti ilaalanii furmaata kennuuun gocha daldala seeraa alaa to’achuu keessatti gumaacha guddaa waan qabuuf shakkamaa mirga wabiin gad-lakkiisu dura yeroon gabaabaa keessatti dhimmichi akka furmaata argatu gochuu yaaluun barbaachisaa dha.

- Ragaalee falmii daldala seeraa alaa irratti dhiyaatan haala rogummaa qabuun madaaluu fi ragaa sobaa adda baasu irratti raawwiin jiru hanqina kan qabu waan ta’eeef dhimma kana irratti xiyyeeffanoo barbaachisaa ta’e kennuun gaarii dha.

VOLUNTARY INTEREST ARBITRATION IN THE ETHIOPIAN LABOR PROCLAMATION: THE PROBLEMS IN ITS DESIGN AND A WAY TO FIX THEM

Birhanu Beyene Birhanu*

ABSTRACT

Some of the objectives of the Ethiopian Labor Proclamation No.377/2003 are “to maintain industrial peace, to guarantee employers and workers’ right to engage in a collective bargaining and to lay down the procedure for the expeditious settlement of labor disputes, which arise between workers and employers”. These objectives can be attained if various types of labor conflicts get recognized and less costly dispute resolution methods are put in place to handle them. Recognizing interest dispute and allowing the submission of such dispute to arbitration has a benefit of avoiding costly measures such as strikes and lock-outs. Therefore, in this expository work, for any individual or policy maker’s use, it is shown how disputes of interest and interest arbitration are recognized by the Labor Proclamation No.377/2003. The work’s main thrust is actually describing the way interest arbitration is designed in the Proclamation and identifying the problems in the designs and proposing a way to fix the problems.

Key Terms: Ethiopian Labor Law; Interest Arbitration; Labor Disputes; Interest Disputes.

INTRODUCTION

The Ethiopian Labor Proclamation, enacted by the House of People’s Representative in 2003 with an official name “Labor Proclamation No. 377/2003” (henceforth shortly referred to as the Proclamation), is applicable on both the federal government and the states. Of course its applicability does not extend to all employment relations. Such employees as civil servants, policemen, judges, prosecutors and so on are excluded from its ambit.1 Some of the objectives of the Proclamation are “to maintain industrial peace, to guarantee employers and workers’ right to engage in a

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1 See, the Proclamation, Art. 3.
collective bargaining and to lay down the procedure for the expeditious settlement of labor disputes, which arise between workers and employers”.2

To achieve these objectives, there is a need to extend recognitions to various labor conflicts and to set-up a mechanism whereby the conflicts can be handled in a less costly way. At a work place, a dispute arises not only because an existing collective agreement or law is violated or needs interpretation, but also because there could be a desire to change the existing rules. The latter kind of dispute is known as interest dispute. A labor law which fails to recognize interest disputes cannot achieve its objective of maintaining industrial peace or others. Recognizing a dispute often leads to setting up a mechanism by which it is handled. So, is interest dispute (a dispute about changing the existing rules or creating future rights) recognized in Ethiopia?3 Arbitration is considered as one of the dispute settlement mechanisms appropriate to handle labor disputes whenever there is willingness between the parties to make use of it.4 Then the question is: Does the Proclamation provide voluntary arbitration to resolve interest disputes as a dispute settlement mechanism? To put it differently, does the Proclamation, in its menu of labor dispute settlement mechanisms5, provide for voluntary interest arbitration? Hence, the objective of this work is to show how interest dispute and voluntary interest arbitration are recognized in the Proclamation and how voluntary interest arbitration is designed to work and how the design needs improvement.

Voluntary interest arbitration is used when employers and employees could not reach agreement but impasse after a long bargaining process6. Thus, it has the benefit of avoiding strikes7 or lock-outs8 which are usually very costly methods to break collective agreement impasse, because it allows, in the event of the impasse, neutral third parties (arbitrators) impose a binding

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2 See, the Proclamation, the preamble.
3 For more on interest disputes, see infra section (I) and accompanying discussion in text.
4 Arbitration is an alternative dispute resolution method in which disputants submit their dispute to neutral third parties (known as arbitrators) who are usually appointed by them and give a binding decision after examining disputants’ arguments and evidences.
5 The Proclamation provides for various dispute settlement methods such as conciliation (see, Arts, 136(1), 141-143), through courts (see, Arts.137-140) and labor relation board (see Arts.144-156).
6 For the definition of collective bargaining, See, the Proclamation, Art.124 (2).
7 See, the Proclamation, Art.136 (4).
8 See, the Proclamation, Art.136 (5).
decision on the matter. That decision is going to be complied by both sides—employers and employees. Despite such a benefit of voluntary interest arbitration, there are no scholarly works on the Proclamation regarding voluntary interest arbitration. This work will have a significance of bringing forth voluntary interest arbitration to the attention of lawyers, employees, employers, their respective associations and to whomever interested in labor disputes and labor dispute settlement mechanisms by describing how it is recognized in the Proclamation; how it is designed to work and by proposing a way by which its design can be improved and thus made usable.

In this work, the following questions are answered: is interest dispute recognized in the Proclamation? Is voluntary interest arbitration recognized in the Proclamation? How is it designed to work? Is there a problem in the design? How can it be fixed? Examination of the provisions of the Proclamation is not enough to get an answer for the questions, so the Ethiopian Arbitration Law, which means Arts.3325-3346, the Civil Code, 1960 (hereafter referred to as C.C); and Arts. 244(2(g)), 315-319 and 350-357, the Civil Procedure Code, 1965 (hereafter referred to as CPC.) and the design of interest arbitration in foreign jurisdiction (which are selected haphazardly) are also examined.

This work is organized into five sections. Section one shows the recognition of disputes of interest in the Proclamation. Section two deals with the recognition of voluntary interest arbitration. Section three describes the design of interest arbitration as laid down in the Proclamation and identifies the problems in the design. In section four, a way by which the problems can be fixed is suggested. Finally, there is a conclusion and recommendation in section five.

1. THE RECOGNITION OF DISPUTES OF INTEREST IN THE PROCLAMATION

Labor disputes are generally categorized as “individual” and “collective”. This categorization is recognized in the Proclamation.9 “[A] dispute is individual if it involves a single worker, or a number of workers as individuals (or the application of their individual employment contracts). It

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9See, the Proclamation, Art 136(3), 138(1) and 142(1).
becomes a collective dispute if it involves a number of workers collectively.”

Labor disputes are also classifiable as “disputes of right” and “disputes of interest”. A dispute of right concerns with “the violation of or interpretation of an existing right (or obligation) embodied in a law, collective agreement or individual contract of employment or custom and practice. At its core is an allegation that a worker, or group of workers, have not been afforded their proper entitlement(s).”

A dispute of interest “arises from differences over the determination of future rights and obligations, and is usually the result of a failure of collective bargaining. It does not have its origins in an existing right, but in the interest of one of the parties to create such a right through its embodiment in a collective agreement, and the opposition of the other party doing so.”

Does the Proclamation recognize this distinction and thereby disputes of interest?

The answer is “yes”. The Proclamation defines labor dispute as follows:

"[L]abour dispute" means any controversy arising between a worker and an employer or trade union and employers in respect of the application of law, collective agreement, work rules, employment contract or customary rules and also any disagreement arising during collective bargaining or in connection with collective agreement.

(The emphasis is mine).

This definition obviously recognizes both disputes of right and disputes of interests. As explained in the above paragraph, disputes of interest (they are also known as “economic disputes”) are not based on the rights or entitlements already recognized in the labor laws, collective agreements, contracts, or customs and practices, rather they are about creating new rights or entitlements, about trying to get them in a collective agreement. For example, during a collective bargaining, workers (or their unions) may

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11 Ibid.

12 Ibid.

13 The Proclamation, Art. 136(3).

14 See, the Proclamation, Art. 124( 2)( "Collective Bargaining" means a negotiation made between employers and workers’ organizations or their representatives concerning conditions of work or collective agreement or the renewal and modifications of the collective agreement).
negotiate with employers to have in a collective agreement a new entitlement or right to a paid leave, not provided in the Proclamation or other relevant laws. If employers refuse to agree for the inclusion of the new entitlement in the collective agreement in the face of workers’ insistence on its inclusion, it means the collective bargaining is taking the employees and the workers nowhere near to a settlement agreement – that means the parties are thrown into a dispute. This dispute is going to be a dispute of interest and such a dispute is recognized in the Proclamation (please see again the italicized part of the definition of labor dispute in the Proclamation as reproduced above).

If a certain type of dispute is given recognition, then a dispute settlement mechanism which fits to handle the recognized dispute must be set-up. And arbitration is a dispute settlement mechanism. Now therefore the question is: in the menu of dispute settlement mechanisms set forth in the Proclamation, do we find arbitration among them for interest disputes? In other words, does the Proclamation recognize interest arbitration?

Remember, from the discussion on interest disputes in the above paragraphs and the fact that interest disputes usually result from a failure of collective bargaining, it must be noted that Interest arbitration is, thus, an arbitration which happens when collective bargaining yields no result leading to a collective agreement.

2. THE RECOGNITION OF VOLUNTARY INTEREST ARBITRATION IN THE PROCLAMATION

A cumulative reading of Arts.143 (1), 141(1) and 142(1) of the Proclamation leads us at the conclusion that interest arbitration (arbitration on a dispute of interest) is recognized in Ethiopia. Art.143 (1) of the Proclamation states that “Notwithstanding the provisions of Article 141 of this Proclamation parties to a dispute may agree to submit their case to arbitrators … for settlement in accordance with the appropriate law”(the emphasis is mine). It means disputes referred under Art.141 (1) of the Proclamation can be submitted to arbitration if parties agree to that effect. Actually disputes referred under Art. 141(1) are those disputes enumerated under Art.142 (1) of the Proclamation and this enumeration includes disputes of interests such as disputes over “
new conditions of work”\textsuperscript{15} and “the conclusion, amendment, duration and invalidation of collective agreements”\textsuperscript{16}. Therefore, disputes of interest are allowed to be submitted to arbitration upon the consent of parties – it means that interest arbitration (i.e., arbitration for the settlement of dispute of interest which usually arises from a failure of a collective bargaining) is recognized in the Proclamation.

Note that what is recognized under Art.143 (1) of the Proclamation is voluntary interest arbitration. Meaning, unless there is an agreement between employees and employers, when a collective bargaining leads to an impasse (to no mutual agreement), they are not forced to submit the interest dispute to arbitration. If they were forced, that would be compulsory interest arbitration.\textsuperscript{17} And compulsory interest arbitration is usually unfavorable. To point out one crucial point why it is usually unfavorable is that it goes against the right to strike. When employees bargain with employers for a new working conditions which is going to be a right in the future by making it a part of a collective agreement, and when the bargain leads them to no agreement or to an impasse, they may go on strike to force their employer accept their demand. This right to strike, which is guaranteed in the FDRE Constitution\textsuperscript{18} and in the Proclamation\textsuperscript{19}, will be in jeopardy if employees are forced to submit themselves to arbitration whenever a collective bargaining breaks down (i.e. when a dispute of interest arises).

However, remember that compulsory interest arbitration is provided by laws of various countries including Ethiopia in relation to specific sectors where strikes are prohibited. The Proclamation prohibits employees of “essential

\textsuperscript{15}See, the Proclamation, Art. 142 (1) (b).
\textsuperscript{16}See, the Proclamation, Art.142 (1) (c) and see how interest disputes are described in section (1).
\textsuperscript{17}If the difference between voluntary and compulsory interest arbitration is not yet clear to a reader, remember that voluntary interest arbitration involves a joint agreement between the employer and the employees to submit specific collective bargaining issue on which they could not agree on to a third party (known as an arbitrator) for a binding decision. Voluntary arbitration is different from compulsory arbitration in that the respective parties are free to accept or reject this procedure as a means to resolving a collective bargaining dispute. In compulsory arbitration, when the collective bargaining fails to produce agreement on the issue, employers and employees do not have another option (such as strikes or lock-outs) but submit the issue to arbitration.
\textsuperscript{18}See, the FDRE Constitution, Art.42 (1(a)).
\textsuperscript{19}See, the Proclamation, Art. 157 (1).
services” from striking.20 If a dispute arises in these sectors, it must be submitted to conciliation and if the conciliation is not successful, it must be submitted to an ad hoc board.21 The ad hoc board cannot be understood to mean otherwise than compulsory arbitration. Since compulsory interest arbitration in the Proclamation is outside of the objective of this work, let us turn back our attention to the voluntary interest arbitration in the Proclamation.

The recognition of voluntary interest arbitration in the Proclamation is very commendable. Unlike, compulsory interest arbitration, it does not have an automatic corrosive effect on worker’s right to strike, yet it prevents employers and employees from very costly actions such as strikes and lock-outs. Because once they agree for arbitration, whenever a collective bargaining fails, they submit the issue for arbitration which is going to impose a binding decision on the issue, they will not need to resort to strike or lock-outs to resolve the issue which the collective bargaining has failed to resolve. “When both parties stand to lose too much through a strike or lock-out, they look to viable alternatives.”22 “Interest arbitration thus offers an alternative mechanism to break deadlock between parties engaged in collective bargaining.”23 For providing and recognizing this option, the Proclamation is commendable. But, is it designed properly to be actually utilized by employers and employees who are parties to an interest dispute?

3. THE DESIGN FOR VOLUNTARY INTEREST ARBITRATION IN THE PROCLAMATION AND ITS PROBLEMS

In the Proclamation, interest arbitration is designed to work “in accordance with the appropriate law”24. The question now is “which law is being cross-referred here?” There is no arbitration law in Ethiopia specifically designed for labor disputes. So it means what is cross-referred here is the Ethiopian Arbitration Law which consists of Arts.3325-3346, the C.C; and Arts.244

20 See, the Proclamation, Art.157 (3).
21 See, the Proclamation, Arts.144 (2), 142(3), 152.
23 Ibid.
24 See, the Proclamation, Art. 143 (1).
(2(g)), 315-319 and 350-357, the CPC. However, designing interest arbitration to work on the rules of the Ethiopian Arbitration Law without being selective is a poor design since the basic rules of this law are not suitable to the unique nature of interest arbitration. It is not surprising at all that as these rules are intended for arbitration in general, not specifically designed for interest arbitration, so some of the rules of this law are found to be incompatible or falling short of giving solutions to the unique problems of interest arbitration. In this work, three significant problems are identified which one can face when rules of the Ethiopian Arbitration Law are applied to interest arbitration. Let us discuss them turn by turn.

3.1. WHAT IS TO BE THE BASIS OF ARBITRATORS’ DECISION IN INTEREST ARBITRATION?

Interest arbitration is on interest disputes and interest disputes, unlike right disputes, are not about applying or interpreting existing rules, they are about changing existing rules or creating new rules.25 It means arbitrators in interest arbitration cannot find a solution in the existing law for the interest dispute before them. However, the Ethiopian Arbitration Law dictates arbitrators to render an award based on the law.26 If arbitrators render an award applying other criteria than legal rules, they may be deemed to have exercised power in excess of their mandate and the award can get set aside.27 In UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006 (hereinafter referred to as the UNCITRAL Model Law)28, it is stated that “… The arbitral tribunal shall decide exaequo et bono or as amiable compositeur only if the parties have

25See, the discussion on section (I).
26 See, CC, Art.3325 (1) (It reads: “The arbitral submission is the contract whereby the parties to a dispute entrust its solution to a third party, the arbitrator, who undertakes to settle the dispute in accordance with the principles of law”) and see, CPC, Art.317(2)(it reads: “The tribunal shall in particular hear the parties and their evidence respectively and decide according to law unless by the submission it has been exempted from doing so”-the emphasis is mine.)
27 See, CPC, Art.356 (1).
28 The UNCITRAL Model Law is “Designed to assist states in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration.” For more, visit: http://www.uncitral.org/uncitral/en/uncital_texts/arbitration/1985Model_arbitration.html.
expressly authorized it to do so.” In Ethiopian Arbitration Law, no explicit provision likes that of the UNCITRAL Model Law authorizing arbitrators to use other criteria than the law as a basis for an award. Despite the fact that Art.317 (2), CPC seems to imply it, writers questioned if arbitrators in Ethiopia can decide as *ex aequoet bono* even if an authorization by the disputants is there.

Therefore, it is a poor design of the Proclamation for indiscriminately cross-referring the Ethiopian Arbitration Law to be applied for interest arbitrations without being selective of unfit rules such as Art.3325(1) of the C.C. which requires arbitrators to apply “the principles of law” for their decision. Even if the rule in the Ethiopian Arbitration Law dictating arbitrators to apply the “law” for their decision is considered as a default rule which can be avoided by the agreement of parties, it still is illogical. The law still falls short of providing a meaningful solution on interest disputes.

How can we logically say that in Ethiopia, interest arbitrators are required to apply the law to resolve an interest dispute unless they are authorized by the parties to use other criteria? In general, the Ethiopian Arbitration Law, at best, does not provide the appropriate measure which arbitrators can apply for their decision; at worst it forces them to apply a wrong measure for their decision, viz.; the law. Either way proves the Proclamation’s indiscriminate cross-reference to the Ethiopian Arbitration Law for interest arbitration is a poor design.

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29See, UNCITRAL Model Law, Art.28 (3).

30 CPC, Art.317 (2) reads: “The tribunal shall in particular hear the parties and their evidence respectively and decide according to law *unless by the submission it has been exempted from doing so*”-the emphasis is mine.)


32A law could have been considered as providing a meaningful solution if it had a provision which goes like: “Unless there is an otherwise agreement, arbitrators in interest arbitration shall adopt as their decisions the final offer of one of the parties as a total package. Arbitrators, among other things, shall consider such factors as *affordability* (employer’s ability to pay), *comparability* (award is comparable to like workplaces or sectors), *replication* (award is reasonably what could have been achieved had bargaining continued until an agreement was reached) and *demonstrated need* (party has made a case for its positron) to adopt a final offer of the employees over that of the employers or vice versa.”
3.2. WHAT IS TO BE THE PROCEDURE OF INTEREST ARBITRATION?

Again the Proclamation prescribes for interest arbitration a procedure which is prescribed in the Ethiopian Arbitration Law. A rule in the Ethiopian Arbitration Law provides the procedure of arbitration to be the same as that of the civil court.\textsuperscript{33} The rule is such a default one that parties, through agreement, can set a different procedure so long as basic principles of procedure like fairness are not violated.\textsuperscript{34} Obviously, the stance of the Ethiopian Arbitration Law on the procedure for arbitrations in general does not squarely fit for interest arbitration. Interest arbitration is on disputes of interest and such disputes are on issues not covered by existing labor laws, contracts and rules, and thus inappropriate to be handled by courts which are supposed to resolve disputes by applying existing legal rules. Therefore, a typical procedure for civil courts cannot be a typical one for interest arbitration. In other words, it is illogical to prescribe as a default rule a court procedure for a dispute which is not suitable for a court process.

Note that courts, which are supposed to apply existing legal rules for their decision, are not appropriate forums of handling interest disputes,\textsuperscript{35} which are not about the interpretation of existing rules rather about changing them. But, as discussed above under section (2), such disputes are made arbitrable by the Proclamation. This situation gives the Proclamation a special place for introducing to the Ethiopian legal system such an arbitration called interest arbitration.

3.3. WHAT IS TO BE COURT’S CONTROL ON INTEREST ARBITRATION?

In the Ethiopia Arbitration Law, there are four avenues by which courts can exercise control on arbitration; viz, appeal, cassation, setting aside and refusal. Of these avenues, appeal and cassation authorize courts to review an award on the merits and both are held to be too much intervention of the

\textsuperscript{33}See, CPC, Art.317 (1).
\textsuperscript{34}See, \textit{Gebre Korre vs Amdeyo Fidreche} (Decisions of the Federal Supreme Court, Cassation Division, Vol.12, Federal Supreme Court, 303-305, 2011).
\textsuperscript{35}See Section (1) for the description of interest disputes.
courts into arbitration.\footnote{Birhanu Beyene, \textit{The Degree of Court’s Control on Arbitration under the Ethiopian Law: Is It to the Right Amount?} Oromia Law Journal (2012), Vol.1, No.1 and Birhanu Beyene, \textit{Cassation Review of Arbitral Awards: Does the Law Authorize It?} Oromia Law Journal (2013), Vol.2, No.1.} Obviously for interest arbitrations, these avenues are not only too much but also bizarre. Regular courts can review and pass down decisions doing what they are good at - by interpreting the law, but interest arbitrations are not about interpreting existing rules rather creating a new one which are going to be the part of a collective agreement. Therefore, it is a poor design that the Proclamation, by its indiscriminate cross-referring of the Ethiopian Arbitration Law for interest arbitration, is allowing regular courts to review interest arbitrators decision on the merit by way of appeal (unless it is waived by agreement) and cassation.

\textbf{4. A WAY TO FIX THE PROBLEM}

In section three, it is shown that the Proclamation does indiscriminate cross-referencing to the Ethiopian Arbitration Law to be applied on interest arbitration- meaning interest arbitration is designed to operate only on the rules of the Ethiopian Arbitration Law. However, this design is flawed as discussed in section three. In three crucial areas, the rules of the Ethiopian Arbitration Law are found either providing a wrong solution or even forcing the wrong solution for interest arbitration. Therefore, to fix the problem in the design, what is needed is, not to indiscriminately cross-refer the Ethiopian Arbitration Law, rather to be selective and to weed out the unfit rules and substitute them with the appropriate ones for interest arbitration.

The first unfit rule identified in section (3.1) is the rule which requires arbitrators to apply the law for their decision. This rule is fit for what is called conventional arbitration (which on whether an existing right is violated or not), not for interest arbitration, which is on a dispute for creating a future right. This rule of the Ethiopia Arbitration Law is arguably not escapable even through the agreement of disputants.\footnote{See, Aschalew, supra note 31.} Meaning arbitrators can not give a decision based on other consideration than the law whether or not the parties authorize them to do so. Thus arbitrator’s decision which is based on other considerations than the law can be invalidated for the reason

\begin{quote}
37 See, Aschalew, \textit{supra} note 31.
\end{quote}
that arbitrators have exercised in excess of their power.\textsuperscript{38} In interest disputes, the law does not have any solution-one example of interest dispute could be employee’s demand for a higher salary and requiring arbitrators in interest arbitration to apply only the law for their decision is like forcing them to use a wrong apparatus which is incapable of solving the problem at hand. Therefore, this rule must be substituted by another one which is fit for interest arbitration.

In other jurisdictions, arbitrators in interest arbitration may decide the dispute at hand following either of such approaches as “final offer” or “the arbitrators own formulation” or “hybrid”. In “final offer” interest arbitration, the arbitrators are required to adopt the final offer of one of the parties for their decision. The arbitrators have no any other discretion than that. In “the arbitrators own formulation” interest arbitration, arbitrators are required to evaluate the parties’ proposals and render an award which they deem appropriate. In a “hybrid” approach, “depending on the characterization of a proposal or contract term as ‘economic’ or ‘non-economic,’” the above approaches can be combined and modified to create a “hybrid” approach. For instance, final offer interest arbitration may be adopted for all economic items, while “the arbitrators own formulation” may be used for all non-economic items.”\textsuperscript{39}

“Final offer” approach can also be further divided and in one document the sub-divisions of this approach are described as follows: \textsuperscript{40} 

\textbf{Final Offer – Issue By Issue:} Allows the arbitrator the freedom to find in favor of one party on some of the issues and for the other party on the remaining issues. It may encourage parties to keep all issues on the table – even fairly nominal contractual terms – under the realization that they have nothing really to lose. This tends to keep the issues broad in number and may lead to costly and time consuming proceedings.

\footnotesize{\textsuperscript{38} See, CPC, Art.357.\textsuperscript{39}Amy Moor Gaylord, \textit{Interest Arbitration –Pros, Cons and How Tos}, available at http://www.americanbar.org/content/dam/aba/administrative/labor_law/meetings/2010/am/gaylord.authcheckdam.pdf <last visited June 8, 2016>\textsuperscript{40}Ibid.}
Final Offer – Total Package: The true “winner-take-all” approach to interest arbitration. Each party submits as a complete package its final offer on all issues in dispute, and the arbitrator must adopt one or the other package in its entirety. It may encourage parties to narrow the issues considerably and lead to shorter, more efficient proceedings.

“Nighttime Baseball”: A variation on final offer interest arbitration, in this type of proceeding, the arbitrator does not know the parties’ final offers. The arbitrator’s post-hearing decision that is closest to the undisclosed (to the arbitrator) party’s last offer will result in that offer being deemed the award of the arbitration.

Now the question is which approach will be appropriate to be adopted by the Proclamation to fix the unfit rule? When employer and employees want to create a new working condition or salary adjustment or something like that, they hold negotiation (collective bargaining). If the collective barging ends up in a deadlock, rather than a settlement agreement, each side may engage in an economic warfare such as strike or lock-out. This option is costly, though. The less costly option is to put the matter to arbitrators who are going to give binding decisions on them. Here it must be noted that the ideal method of dealing with labor conflicts is settling them through a collective bargaining proceedings, because it allows employees and employers to look at issues in depth and to have a full rounded understanding of them and to reach a mutually acceptable solution—there is no a stranger third party imposing his will on them. Thus interest arbitration must not have a “chilling” effect on collective bargaining. It must work as an extension of the collective bargaining process.

41 See, supra section 3.1 about the unfit rule.
However, what we have called “the arbitrators own formulation” approach has the potential of creating a “chilling” effect on collective bargaining. If employer and employees agree to submit a matter to interest arbitration at the event of impasse in a collective bargaining and if they know that arbitrators are required to give a decision using whatever criteria which they deem appropriate, the employers and employees, at the bargaining table, are going to offer each other extreme claims in the hope that arbitrators will finally simply split the differences of their respective offers. It means, rather than trying hard to search for a mutually acceptable agreement in the collective bargaining, both sides will simply hang on irrational position expecting that the bargaining will end in a deadlock and then the matter will be submitted to arbitration in which differences are to be split –up.

“Final offer” interest arbitration has, nonetheless, the potential to induce the two sides take a rational position, because they know that at the end of the day arbitrators will adopt as their decision the final offer of the party which is rational and reasonable, not the one with extreme offers. When each side tries hard to come up with a rational offer, then they may get closer and closer over the issues and then arrive at a mutually acceptable solution and thereby they may avoid the interest arbitration. Thus “final offer” approach is an incentive for honest bargaining and must be adopted by the Proclamation. It is also argued that “[t]he final offer approach seeks to increase the cost to the parties of failing to reach agreement by eliminating the arbitrator's ability to compromise issues, and substituting a winner-take-all outcome.”

As discussed above “final offer” interest arbitration has its own varieties and each variety has its own benefits and weaknesses. For this writer, “final offer- total package” is better as it relatively saves time. But, parties may find the other varieties more fit to their particular situation, so the rule we need to adopt must be a default one. In other words, the way to fix the unfit rule of the Ethiopian Arbitration Law and make it suitable for interest arbitration, the Proclamation should include a provision which goes like

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44 Id., Pp 843 -844.
“unless otherwise provided in parties’ agreement, arbitrators shall adopt the final offer of one of the parties as a total package for their decision.”

One important point that needs to be added here is that the Proclamation should also give instruction to arbitrators as to the factors that they need to take in to account to adopt a final offer of the employees over that of the employers or vice versa. Therefore, the Proclamation should explicitly provide that in addition to any other relevant factors, arbitrators must consider the following factors:

- Past collective agreement between the parties including the bargaining that led up to such collective agreements.
- Comparison of wages, hours and conditions of employment of the involved employees with those of other employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- The ability of the employer to finance economic adjustments and the effect of such adjustments on the consumers.
- The cost of living.45

In other words, arbitrators must apply the criteria of *affordability* (employer’s ability to pay), *comparability* (award is comparable to like workplaces or sectors), *replication* (award is reasonably what could have been achieved had bargaining continued until an agreement was reached) and *demonstrated need* (party has made a case for its positron).

The second unfit rule of the Ethiopian Arbitration Law identified in section (3.2) is the one on procedure. Unlike the rule for arbitration decisions, this rule can be fixed by parties’ agreement.46 But an optimal rule of arbitration law would ensure parties’ autonomy and provides an optimal solution whenever parties’ agreement is silent on the issue. The rule of the Ethiopian Arbitration Law on procedure is good that it ensures parties’ autonomy by

45This list is adapted from the *"Public Employment Relations Act"* of Iowa which is available: https://coolice.legis.iowa.gov/cool-ice/default.asp?category= billinfo&service= iowacode& ga= 83&input=20#20.22<last visited 8th June, 2016>.
46A look at Art.317(1), CPC and *GebruKorre vs Amdeyo Fidreche* (Decisions of the Federal Supreme Court Cassation Division, Vol.12, Federal Supreme Court, 303-305, 2011) make this point clear.
allowing them to come up with their own if they want. Unfortunately, the solution it provides when there is no agreement between the parties on the procedure is not optimal for interest arbitration. Thus to fix this problem, the Proclamation should provide an optimal solution for the procedure for interest arbitration maintaining parties’ autonomy. The Proclamation should have a provision on the procedure of voluntary interest arbitration which goes like the following:

- The conduct of the arbitration proceeding shall be under the exclusive jurisdiction and control of the arbitrator.
- The appointed arbitrator may mediate or assist the parties in reaching a mutually agreeable settlement at any time throughout formal arbitration proceedings. However, mediation efforts shall not stay or extend the deadlines for issuance of an award.
- The arbitrator may administer oaths, conduct hearings, and require the attendance of such witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue summons. Any hearings conducted shall not be public unless all parties agree to have them public.
- The arbitrator, after appointment, shall communicate with the parties to arrange for a date, time, and place for hearing. In the absence of an agreement, the arbitrator shall have the authority to set the date, time, and place for hearing. The arbitrator shall submit a written notice containing arrangements for hearing within a reasonable time period before hearing. At least two days before the hearing, the parties shall submit to the arbitrator and to each other their final offers on each economic and non-economic issue in dispute. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such an agreement, before the close of the hearing. Upon taking testimony or evidence, the arbitrator shall notify the parties that their offers shall be deemed final, binding and irreversible unless the arbitrator approves an agreement between the parties to permit revisions before the close of the hearing.

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47Ibid.
The arbitrator, after duly scheduling the hearing, shall have the authority to proceed in the absence of any party who, having failed to obtain an adjournment does not appear at the hearing. Such party shall be deemed to have waived its opportunity to provide argument and evidence.

The parties, at the discretion of the arbitrator, may file post-hearing briefs. The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

An arbitrator must issue an award within…. days from appointment or within such other period of time that may be set by agreement between parties.

The third flaw identified in the Labor Law’s design of interest arbitration is that because of its indiscriminate cross-reference to the Ethiopia Arbitration Law, it allows courts’ control on interest arbitration via the avenue of appeal and cassation—these avenues allow review of the award on the merit. Here, it must be noted that there is no an explicit rule allowing cassation review of award in the Ethiopia Arbitration Law—this review has come into existence by the decision of the Federal Supreme Court Cassation Division.48 The writer hopes that the precedent set by the decision will be overruled by the Cassation division.49 Obviously, it is absurd to authorize courts to review the merits of the awards of interest arbitration via appeal or cassation.50 Therefore, the Labor Law should fix this problem by clearly prohibiting the involvement of courts in reviewing the merits of awards and by minimizing their control to procedural matters.

50 It is also possible to argue that the rules on cassation have already excluded cassation review of awards of interest arbitration. Since these rules authorize review for fundamental mistakes of law and awards of interest arbitration are not about interpreting the existing law, thus no way the cassation bench can review awards of interest arbitration on the merit.
Therefore, the Proclamation should limit court’s involvement only to the avenues of setting aside (Arts 3555-357, CPC) and refusal (Art.319, CPC).\textsuperscript{51} It must state that the awards by arbitrators of interest arbitration must be final without prejudice to Arts 355-357, CPC and Art.319 (2), CPC. It must also state that the grounds of setting aside enumerated under Art.356, CPC should be deemed to have included “the absence of proper notice of the appointment of an arbitrator or of the arbitral proceedings; a party is not given a chance to present her case; and the award is in conflict with the public policy of State.”\textsuperscript{52}

5. CONCLUSIONS AND RECOMMENDATIONS

Due to its highest cost, employees and employers may like to use other method than economic warfare such as strikes and lock-out to deal with collective bargaining impasse. The Proclamation is commendable for recognizing voluntary interest arbitration as a method in which a 3\textsuperscript{rd} party gives a binding decision in the event of collective bargaining impasse. However, the Proclamation’s design for the voluntary interest arbitration is so poor that it is almost impossible to put it into use. It is designed to work on the rules of the Ethiopian Arbitration Law, but in three important areas the rules provide either a wrong solution or non-optimal solution. Therefore, the design must be fixed in a meaningful way so that it can be put into use and its advantages reaped.

The Proclamation should not have simply cross-referenced “the appropriate law” (i.e, the Ethiopian Arbitration Law) indiscriminately to be applicable on interest arbitration. It should have identified the unfit rules and provided instead rules suitable for interest arbitration. The Proclamation, therefore, should state that the rules of the Ethiopian Arbitration Law shall be applicable to voluntary interest arbitration without prejudice to such rules that:


\textsuperscript{52}To see why those grounds must be added under Art.356, CPC, see, Birhanu, \textit{supra} note 36, Pp.52-53.
• Unless there is an otherwise agreement, arbitrators in interest arbitration shall adopt as their decisions the final offer of one of the parties as a total package. Arbitrators, among other things, shall consider such factors as *affordability* (employer’s ability to pay), *comparability* (award is comparable to like workplaces or sectors), *replication* (award is reasonably what could have been achieved had bargaining continued until an agreement was reached) and *demonstrated need* (party has made a case for its positron) to adopt a final offer of the employees over that of the employers or vice versa.

• Unless there is an otherwise agreement, the conduct of the arbitration proceeding shall be under the exclusive jurisdiction and control of the arbitrator. When it comes to issuing summons, calling and hearing witnesses, fixing hearing dates and places, they are deemed to have a power of a civil court judge.

• The awards of voluntary interest arbitration shall be final without prejudice to Arts 355-357, CPC and Art. 319(2), CPC. And Art.356 shall be deemed to include in its list of grounds of setting aside such ones as the absence of proper notice of the appointment of an arbitrator or of the arbitral proceedings or a party is not given a chance to present his/her case; and the award’s conflict with the public policy of the State.
YAKKOOTA ULFA IRRATTI RAAWWATAMAN: XIINXALA SEERAA FI RAAWWII SEERA YAKKAA RDFI

Muluqan Kaasahun Amid*

ABSTRACT

The FDRE Criminal Code has incorporated provisions that criminalize abortion except on those grounds permitted by the law. It also penalizes harmful traditional practices committed on pregnant women and publicity related to abortion. The provisions are designed for the dual purposes of ensuring the well-being of pregnant child and reproductive rights of women by preventing the perils that arise from pregnancy. This article examines the legal and practical problems that affect the effective application of the law. Accordingly, the paper addresses difficulties related to the issues of consent, ensuring criminal responsibility, snags derived from the nature of crime and the main limitations witnessed in the justice sectors in connection with the matter. The finding of the study divulges that, existence of legal gaps and problems, discrepancy of some provisions with the general principles of criminal law and sentencing, convolutions regarding its implementation and other related factors verges the apropos operation of the law. Finally, this article wraps up by recommending for further reforms.

SEENSA

Yeroo si’anaa yakkootni ulfa irratti raawwataman safuu hawaasaa, amantii, fayyaa, siyasa, seeraa fi mirgota namoomatiin walqabatanii kan ilaalamani dha.¹ Fakkeenyaaf, gochi ulfa baasu, safuu hawaasaa fi ilaalcha amantiwwan garaa garaa keessatti akka badii yookin cubbuu lubbuu namaa irratti raawwatamuutti kan fudhatamu dha.² Kanaaaf, karaa fudhatama hin

qabneen (ga’ilaan ala) ulfaa’uu fi erga ulfi uumamee booda akka bahu taasisuun ni balaaaleffatama. Akka fayaatti yeroo ilaallus, akkaataa hin malleen ulfa baasuu sababa du’a haadholitiif akka addunyaatti dhibbeentaa (%) 13, akka Gaanfa Afrikaatti immoo %18 kan gumaachu dha.³ Akka Itoophiyaattis seerri yakkaa bara 1996 bahe (kana booda, seera yakkaa) osoo hin bahiin dura barmaatilee miidhaa geessisaniin rakkooleen ulfa irratti raawwataman miidhaa olaanaa geessisaa turaniiru.⁴ Miidhaan du’a haadholihi duran %32 ture, erga seerri yakkaa tumaalee yakkoota ulfa irratti raawwataman ilaalchisee qabiiyyee fooyya’e qabatee bahee eegalee hanga bara 2006 A.L.’tti gara %6.9’tti gadi bu’eera.⁵ Kun immoo, fooyya’iinsa argameef seerichi gumaacha olaanaa akka qabu mul’isa. Ha a’uu malee, yeroo ammaas taanaan ulfa addaan citu keessaa %70 ol of eegganno malee fi namoota ogummaa isaa hin qabneen raawwata.⁶ Kana irraa kan hubatamu, rakkoon kun ammalleen hin maqfamne t’a’uu kan agarsiisu dha.

Kallattii siyaasaan yeroo ilaallamus gochaan seeraan alaa ulfaan walqabatu imammata fayyaa fi baay’ina uummataa biyyoota adda addaa keessatti dhiimma uwwisni kennamuuf t’a’uu danda’eera. Kunis gochaan seeraan alaa ulfaan walqabatu galma gahiinsa kabajaa mirgoota daa’immanii fi dubartootaa mirkaneessuu, hojiirra oolmaa karoo maatii, madaallii baay’ina uummataa fi diinadegi eeguu, sadarkaa qulqullina jireeyaa fooyyessuu fi k.k.f irratti dhiibbii dha.⁷Paartilee siyaasaab biyya tokko keessa jiran jidduutti ulfa addaan kutuu hayyamuuf fi dhiisuu qabxi gaaraagarummmaa umu ta’ee yeroo dhiyaatat ni mul’ata.⁸ Kana irraa ka’uu biyyoota adda addaa keessatti, Itoophiyaay

⁴Gochaan ulfa baasuu of-egganno hin qabbe dubartoota hospitaala galuun ciisan (hospital admission) keessaa waantota sababa ta’an keessaa isa tokkoo fi sadarkaa 5ªlal irratti kan argamu dha. Akkasumas haadholihi du’an keessaa immoo %32 kan ta’an’if sababa akka tae qoraannoon ni mul’isa. (°n.° s.° t°.° j.° f.° ø.° l°.° h°.° s°.° ø°.° t°.° f°.° ø°.° l°.° h°.° s°.° ø°.° 1997, F.138).
⁵Revised Technical and Procedural Guidelines for Safe Abortion in Ethiopia, FDRE Ministry of Health, 2nd ed., F. i
⁸Fakkeenyaaf, Ameerikaatti paartiin siyaasaa Dimokraat imamaamta filannoo haadhaan ulfa baasuuh hayyamuu kan hordofan yoo ta’u, Paartiin Rippaablikaa.immoo dawi’imman ulfaa
dabalatee, haala seeraan hayyamameen ala ulfa baasuuf fi ofirraa baasisuun yakka ta’uu danda’eera.

Haa ta’u malee, Itooophiyaa keessatti gochootni karaa seeraan alaa ulfa baasu, garaa dubartii ulfaa suukuumuu uyn urgufuu akka gochaa yakkatiti seeraan haalli itti dhorkaman yoo jiraatellee, qabatamaan namootni gochaa kana raawwatan adabamuuf carraan qaban baay’ee gadi aanaadad.9 Barruun kunis, yakkoota ulfa iratti raawwatamaniin walqabatee tumaalee seera yakkaa keessa jirann fi ijoowwan kanaan hidhata qaban bu’uureffachuuun, hanqinaalee gama seeraa fi raawwii jiran iratti xiinxala gageessa. Kana gochuufis barreeffamoota, seerotaa fi galmeewwan mana murtii xiinxaluun akkasuums ogeessotaa fi namoota dhimmun ilaallatu waliin af-gaaffii taasisuuf yaalamene.


1. YAADRIMEE WALIIGALAA

1.1. MIRGA DAA’IMMAN ULFAA ILAALCHISEE EJJENNOO SANADOTA MIRGOOTA DHALA NAMAA FI MUUXANNOO BIYYOOTAA


Haa ta’u malee, Itooophiyaa keessatti gochootni karaa seeraan alaa ulfa baasu, garaa dubartii ulfaa suukuumuu uyn urgufuu akka gochaa yakkatiti seeraan haalli itti dhorkaman yoo jiraatellee, qabatamaan namootni gochaa kana raawwatan adabamuuf carraan qaban baay’ee gadi aanaadad.9 Barruun kunis, yakkoota ulfa iratti raawwatamaniin walqabatee tumaalee seera yakkaa keessa jirann fi ijoowwan kanaan hidhata qaban bu’uureffachuuun, hanqinaalee gama seeraa fi raawwii jiran iratti xiinxala gageessa. Kana gochuufis barreeffamoota, seerotaa fi galmeewwan mana murtii xiinxaluun akkasuums ogeessotaa fi namoota dhimmun ilaallatu waliin af-gaaffii taasisuuf yaalamene.


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1. YAADRIMEE WALIIGALAA

1.1. MIRGA DAA’IMMAN ULFAA ILAALCHISEE EJJENNOO SANADOTA MIRGOOTA DHALA NAMAA FI MUUXANNOO BIYYOOTAA

Daa’imman sadarkaa ulfaaarr iran ilaalchisee ijoon bu’uuraa deebii hin arganne daa’imman kunneen yoomii eegaluun mirga lubbuun jiraachuu qabu? gaaffii jedhu dha. Namootni yaada kennan gariin isaanii daa’imman yeroo ulfi uumame irraa eegalee mirga kana qabaachuu qabu jedhu. Gareen biraa immoo, mirga daa’ima ulfaa’ameef beekamtii kennuun mirga

bilisummaa jireenya dhuunfaa, lubbuu fi nageenya qaamaa haadhaa, keessattu shamarrann umuriin isaanii gaa’ilaaf osoo hin gahiin ufmaal’anii sarba jedhu.  

10 Ejennoo waadaalee mirgoota dhala namaa gara garaa sadarkaa addunyaatti taasifamanii yeroo ilaallu mirga daa’ima ufmaal’ameef beekamtii kan hin kenneen yoo ta’ellee, mirga ulfa baasuus ifaan hayyamanii hin jirani.  

11 Haa ta’u maleee, waadaaleen tokko tokko daa’ima ufmaal’ameef haalla ifa ta’ee eegumsa seeraa kennaniiru.

Fakkeenyaaaf, Waadaaleen Idil-Addunyaa Mirgoota Siivilii fi Siyaasaa (ICCPR) keewwata 6(5) jalatti adabbiin du’aa dubartii ufmaal irratti akka hin raawwatamme dhorkeera. Kunis daa’imni ufmaal dhala namaa ta’uu kan mul’isuu fi haadha irraa of danda’ee balleessaa yakka haadhaan raawwatame irraa mirga bilisa ta’uu isa eegsisuuf kan tеечhifamedhа.  

12 Waadaan Mirgoota Da’a’immani (CRC) immoo, eegumsi seeraa barbaachisaan da’uumsa duraa eegalee daa’ima ufmaal’ameef godhamuu akka qabu kutaa seensaa keessatti tumeera. Kana malees, kew. 24(2d) jalatti eegumsi da’uumsa duraa haadhaaf godhamu qabu kun dantaa haadhaa fi daa’ima ufmaal’ameef eeguuf kan yaadame dha.  

13 Dabalataan, Koreen Mirgoota Da’a’immi Mootummoota Gamtoomanii ulfa baasuun maloota ittisa ulfaa keessatti haamatamu akka hin qabne dhorkeera.  

14 Kunis daa’imman sadarkaa ufmaal arra jiraniif eegumsi godhamuufi akka qabu kan akeeku dha.

Waadaalee Sadarkaa Ardiitti taasifaman yeroo ilaallu immooWaadaan Mirgoota Dhala Naaam Ameerikaa keewwata 4 jalatti mirgi lubbuun jiraachu yeroo daa’imni ufmaal’amee irraa kaasee akka kabajamu tumeera.  

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12 Akkuma 11ffaa, F.7  
13 United Nations Committee on Rights of the Child, CRC General Comment No. 7, Implementing Child Rights in Early childhood, CRC/C/GC/7/Rev.1, 2005, Paragraph 10, 20(a) fi 27(b)  
14 Olitti yaadannoo lak.10, F. 188  

Gama biraatiin, waa’ee eegumsa mirgota daa’ima ulfaa’amee ilaachisee biyyoota gidduutti muuxanno gara garaatu jira. Biyyootni tokko tokko daa’imman yeroo ulfaa eegalee mirga lubbuun jiraachuu akka qaban seera isaanii keessatti haammachisaniiru.17 Biyyootni biroo immoo mirga lubbuun jiraachuu daa’ima ulfaa’ameef guutummaan beekamtiin yoo kenneame mirga fayyaa fi bilisummaa jireenya dhuunfayyya haadhaa sarba waan ta’eef ulfa addaan kutuun haala addaan hayyamamuu akka qabu teechisu.18 Heerri biyya Keeniyaaw kew. 26 immoo, Mirgi lubbuun jiraachuu yeroo daa’imni ulfa’a’ame irraa kaasee akka eegaluu tumuun akka hambifannootti garu gu ra haala addaan ulfa baasuun akka danda’amu hayyameera. Heerri Mootummaa RDFI waa’ee mirga lubbuun jiraachuu daa’ima kew. 36(1a) jalatti kan tumee jiru yoo ta’ellee tumaan kun daa’ima ulfaa’amee dabalachuu fi dhiisuu isaa adda bahee hin beekamu. Waa’ee ulfa addaan kutuus heericchi ifatti waanti kaa’e hin jiru.19 Haa ta’u malee, tumaa heerichaa kew. 36(4)”tii “gaa’ilaaan alatti

16Akkuma 15fflaa.
18Fakkenyaaf, murtiin Manni Murtii Heeraa biyya Isloovakiyaa fi Manni Murtii Waliigala biyya Neeppaal haala addaan ulfa addaan kutuun akka danda’amu murteessan yaada kana ni cimsa (Akkuma 17fflaa ).
19Ijoo kana ilaachisee garuu, Heerichi kew. 35(9) irratti “dubartoonnii sababa dahumsaatiin miidhaa isaan irra gahu itiisuu fi fayyammaa isaanii eegsisuuf kan dandeessisu ... odeeffannoo fi ‘humma argachuuf’ mirga qabu” jedha. Kunis, haadholiin sababa ulfaatiin

Akka waliigalaatti, waadaalee fi waliigalteewwan mirgoota dhala namaa irratti taasifamanii fi muuxanno biyyoota tokko tokkoo keessatti mirga daa’ima ulfa’ameef beekamtii kennamuu fi eegumsii seeraa barbaaichiisaan daa’ima ulfa’ameef godhamu akka qabu ni hubatama. Haa ta’u maleee, dantaa daa’ima ulfa’amee fi haadhaa gidduutti walitti bu’insi (conflict of interest) yoo uumame kan haadhaa dursuu akka qabu ni agarsiisu. Kanaaf, mirgoootni ulfaan walqabatan qaama mirgoota walhormaataa fi saalaa keessatti haguugamanii argamu.20 Qabiyyeen mirgoota saalaa fi walhormaatataa kun mirgoota kudha lama (12) ta’an of keessatti kan haammatu dha.21 Mirgoonni kunniin heeraa fi seerota Itoophiyaa keessatti haala sadin haguugamanii


21 Isaanis;mirga lubbuun jiraachuu,mirga bilisummaa fi nageenya qaamaa,mirga walqixxumma fi loogii hunda irraa bilisa ta’u, mirga kabajamuu fi eegamu jireenya dhunfaa, mirga ilaalchaa fi yaada ofii bilisummaan qabachuu, mirga odeeffanno fi baruumsaa, mirga filannoo gaa’ila, heerumuun ykn dhisiisu murteessuu fi mirga maati fee karoorfachuu, mirga daa’ima godhachuu ykn dhisiisu fi yeroo daa’ima itti godhatan bilisummaan murteessuu, mirga kunuuansa fi eegumsaa fayyaa, mirga argannon saayinsii irraa fayyadamuu, mirga walghahuu fi hirmaanntaa siyaasaa, fi mirga gidiraa fi kunuuansa hin malle irraa eeggamuu haammata.(Akkuma 20ffaa)

1.2. GOSOOTA YAKKOOTA ULFA IRRATTI RAAWWATAMAN

Seerri Adaba Yakkaa Itoophiyaan bara 1949 akka fooyya’uuf sababa kan ture keessaa tokko qabiyeyeen seerichaa mirgaa fi dantaa dubartootaa fi daa’immanii eegsisuuf kan hin dandeessine ta’u dha. Seerri yakkaa yero ammaa hojii irra jiru yakkoota ulfa irratti raawwataman bakka tokkotti haala gurmaa’ina qabuun (compiled) kan tume yoo ta’uu baatellee, haala raawwii gochichaa irratti hundaa’un; yakkoota lubbuu daa’ima ulfa’aamee irratti raawwataman (Seera yakkaa kew. 545-552), gochoota barmaatilee miidhaa dhaqqabsiisan (kana booda, GBMQ) ulfa irratti raawwataman (kew. 561-563), fi badii dambii darbuu amala gaarii irratti raawwatamu(kew.848) jalatti dhimmoota mirgaa fi dantaa dubartootaa fi daa’imman ulfa’aaman ilaallatan uwwiseera.

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23 Fakkeenyaaf, waliigaltee biyyattiin fudhatte keessaa mirga argannoobu’aa saayinsii fayyadamuu ilaachisee, akka CEDAW kew. 11(3) tti argannoobu’aa saayinsii fi teeknoloji irratti hundaa’uun seeronni mirga dubartootaa ilaallatan fooyya’u akka qaban ni tuma. Mootummaan Itoophiyaas, akka Heera RDFI kew. 9(4) tiin tumaan kun qaama seera biyyatti waan ta’eef, kana raawwachuuf dirqama qaba.
25 Yakkoota mata duree kana jalatti ibsaman irratti namootni hirmaanan akkaata tumaalee hirmamaannaa yakkaa kutaa waliigalaa seera yakkaa (kew. 32-41) jala jiranii fi akkaataa kutaa addaa seerichaa keessatti tumaman kan yakkoota ulfa baasuukew. 546(2) fi 547(1) tiin
1.2.1. Yakkoota Ulfa Baasu

Seerri yakkaa jecha ‘ulfu baasu’ jedhuuf hiikaa hin kennine.26 Seerichi kew. 545 jalatti akka teechisetti ulfa baasuun sadarkaa hunda irrattii fi maloota garagaraa fayyadamuu raawwatamu danda’u, akkaataa seeraan tumameen alatti, dhorkaa dha. Gochootni ulfa baasu akka yakkaatti tumamanis, gocha ulfa baasuub dubartiin tokko ta’e jettee ofirratti raawwattu (kew. 546/1) fi gochaa ulfa baasu namoota biraan raawwatamu (kew.547) dha. Akkasumas, balleessaa yakkaa hundeessuuf haalli adabbiin itti cimu fi salphatu tumameera. Kunis, sababa himatamaan yakka akka raawwatuuuf isa kakaase, ogummaa fayyaa qabaachuu ykn dhiisuu isaa irratti hundaa’uun adabbiin yeroo cimu (kew. 548), haalotni adabbi salphisan immoo gocha ulfa baasuub dubartii ulfa hin qabne irratti raawwachuuf yaaluu (kew.549) fi ulfa dubartiin ofirraa baasistu sababa hiyyummaa garmaleen (kew. 550) yoo ta’e dha. Haalotni addaa adabbi salphisan kunneen yeroo jiran manni murtii bu’ura tumaa seera yakkaa kew. 180 tiin adabbi salphisu akka qabu tumeera.

1.2.2. Gochoota Barmaatilee Miidhaa Qaqqabsiisun (GMBQ)

Yakka Ulfa Irratti Raawwataman

Biyya kana keessatti GBMQ gara garaatu dubartii ulfa irratti raawwatama.27 Yakkootni GBMQ ilaallatan seera adaba yakkaa bara 1949 jalattii danda’anii hin tumamne. Yakkichi seera yakkaa ammaa keessatti of-danda’ee akka teechifamu kan barbaachiseef, miidhaa sababa gocha kanaan dhufan adda baasuun dhimmichi xiyyeeffannoo gahaa akka argatuufi dha.28 Seerri yakkaa kun akkaataa cimina miidhaa dhaqqabe irratti hundaa’uun yeroo gaafataman, yakkoota GBMQ ulfaa irratti raawwatamuu immoo kew. 569 jalatti akkaataa hirmamnaa fi cimina miidhaa qaqqabee irratti hundaa’un yakkaan ni gaafatamu.

Haa ta’u malee, jechoota ulfa baasu (abortion), ulfa addaan kutuu (termination of pregnancy) fi yakkoota ‘lubbuu’ hin dhalanne irratti raawwatu (crime against ‘life’ unborn) jedhu wal keessa fayyadameera.

27 Isaan keessaas; ulfaa’uub dubartii icciitiin qabuu fi yeroo dahuumsa ishee immoo laga biratti geessanii gatuun hojii dahuumsaafi isheeettiin akka raawwattu gochu, soorata ijaarsa qaamaaf barbaachisaa ta’an yeroo ulfaa dhohorkachu, garaa dubartii ulfaa suukkumuufi hurgufuu fi k.k.f darbanii darbani ni raawwatamuu.(Olitti yaadannoo 4, FF. 165-167)

28የኢትዮጵያ ፈዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የተሻሻለዉ የወንጀል ህግ ሐተታ ዘምክንያት, kan hin maxxanfamne, 1998, F.266.
miidhaan lubbuu dubartii ulfa taate irra yoo gahe kew. 561(1) (A) ykn (C) jalatti, miidhaan qaamaa yoo gahe immoo kew. 562(1) (A) ykn (C) jalatti gaafachiisu danda’u. Kana malees, ciminaa fi gosa miidhaa qaqqabe irra tunde’a’un tumaan yakkoota daddabalamaa raawwatiinsa ni qabaatu.²⁹

1.2.3. Tooftaawwan Ulfa Baasu Beeksisuu (kew. 848)
Seerri yakkaa ke.848 haala seeraan hayyamameen ala, malootaa fi oomishoota ulfa baasuuf hoijetaman beeksisu ykn gurgururoot gaafachuu fi ifaan (publicly) tajaajila ulfaa baasuu kennuuf gaafachuun yakka akka ta’e tumeera.³⁰

1.3. HAALAWWAN ULFA ADDAAN KUTUUN SEERAAN HAYYAMAME

²⁹ Sababa GBMQ tiin lubbuu fi qaama dubartii ulfa irra miidhaa dhaqqabu ilaalchisee haalli ulfaataa (aggravated cases) jedhamee tumame hin jiru. Haa ta’uu malee, cimina miidhaa dhaqqabuu bu’ureffachun; yakkichi lubbuu irraatti miidhaa yoo qaqqabsise, seera yakka kew. 561(2) fi 543 jalatti, fi miidhaa qaama irraatti yoo qaqqabsise immoo kew. 562(2) fi 559 jalatti, yakka daddabalamaan gaafachiiisu danda’a. Gama biraan, haallan adabbii salphisan yemmuu ilaallu, yakkoota GBMQ’tiiin lubbuu ykn qaama dubartii ulfaa irra miidhaan yoo gahe, manni murtii bu’ura seera yakka kew. 563’tiin akeekkachisaan bira darbuu akka danda’u tumeera.

³⁰ Seerri yakkaa kun, tumaa seera adaba yakkaa duraanii kew. 802 (A) jalatti yakkummaa maloota ulfa ittisuu beeksisuu haqeeza. Kew 802(A) seera adaba yakkaa bara 1949, gochaa maloota ittisu uulfaa maxxansuu, beeksisuu, uummetaaf agarsiisuu, namootaa agarsiisuu, namootaa erguu fi gochoota kana fakkaataan namni raawwate adabbii qarshee ykn hidhaa ji’a tokko hin caallen adabama ture. Yeroo ammaa garuu maloota ittisu ulfaa kana fayyadamuunis ta’e, beeksisuun qabiyyee mirga walhormaata dhugoomsuu keessaa tokko kan ta’ee fi saganta taajaajila karoo maatti galmaan gahuu keessattis shooara olaanaa waan xabuu qamoolee moootummaanis ta’e miti moootummaan ni jajjabeefama.

³¹ Olitti yaadanno lax.4, F.138; Olitti yaadanno 5, F.3 ilaala (Hiikaan kan Barreessaati)
dhumaa ulfa addaan kutuun itti hayyamamu kun muuxannoo biyyoota addunyaa keessatti garaagarummaa qaba.\textsuperscript{32}

Biyyootni addunyaa haala qabatamaa biyya isanii keessa jiru bu’uureffachuu sababootni ulfa addaan kutuuf hayyaman; lubbuu haadhaa baraaruf, fayyummaa haadhaaf, ulfa sababa dirqisiisani gudeeduun ykn wal quunnamtii saalaa firoota gidduutti raawwatameen uumame, rakkoo hir’ina uumama ulfaa, rakkoo diinagdee ykn hawaasummaa fi fedhii ykn gaaffii dubartittii qofaan akka ta’edha.\textsuperscript{33} Akka Seera Yakkaa RDFI’tti immoo, ulfa baasuun akka qajeeltootti yakkadha. Haa ta’u malee, haalotni addaa seera yakkaa kew. 551 jalatti teccifaman yoo jiraatan ulfa addaan kutuun ni danda’ama. Sirna raawwiisaa fi adabbiin sirnicha cabsuun hordofsiisu kew.552 jalatti tumameera.

A. Ulfa sababa dirqisiisani gudeeduutiin ykn walquunnamtii saalaa firoota gidduutti raawwatamuun uumamu (Kew. 551(1) (A)): Ulfi sababa dirqisiisani gudeeduutiin ykn walquunnamtii saalaa firoota gidduutti raawwatamuun uumamu addaan kutuun haalawwan ulfa addaan kutuun itti hayyamamu keessaa tokko dha.\textsuperscript{34} Ulfi gochoota armaan oliin uumamu jecha miidhamtuun kennitu qofaan mirkanaa’a. Kunis, akka ragaatti galmeeyaa yaaalaa miidhamtuun miidhamtuu irratti galmeessama.\textsuperscript{35} Yeroo kana, miidhamtuun akkaata raawwii gochicha fi eenyummaa nama gochaa kana raawwateee ibsuun ishee hin barbaachisu.\textsuperscript{36}

\textsuperscript{32} Fakkeenyaaf, guyyaan laguu idilee dhumaa mul’ate kaase biyya Turkiitti torbee 10, Tuniiziyaatti torbee 12, Jaappani fi Raashiyaatti torbee 22, fi Ingliizzitti hanga torbee 24’tti dha. (Tsehai, Olitti yaadannoo 8, FF. 11-16)
\textsuperscript{34} Seerri yakkaa kun yeroo tumamu sababa bu’uureffatame sanadni agarsiisu (ማምታት የማምታት ይግቤ ከማምታት ይግበር) akka jedhutti, sababiin haala kana hayyamuu barbaachiseef, gochaa dirqisiisani gudeeduu raawwatamuun ulfa uumamu miidhamtuun dirqamaan baadhu jechuun dabalataan rakkoo biraaf ishee saxiluu dha. Akkasumas, ulfi quunnamtii saalaa fira irraa uumame oooo hin barbaadamiin kan dhufu dha. Mucaan kun yoo guddates, gochiii kun miidhaa sadarkaa \(2^{\text{ffaa}}\) (secondary victimization) saxiluu waan danda’uf fedhiin ulficha addaan kutuun akka danda’amu seerichi beekamtii kenneera (Olitti yaadannoo 28, F.261).
\textsuperscript{35} Olitti yaadannoo lak.5, F.8.
\textsuperscript{36} Akkuma 35\textsuperscript{ffaa}.
B. Fayyummaa Haadhaa ykn Daa’ima Ulfaa’amee (Kew. 551/1B): ulfichi kan itti fufu yoo ta’e lubbuu haadhaa fi ulfichaq irratti ykn fayyaa haadhaa irratti balaa kan hordofsiisu yoo ta’e, ulficha addaan kutuun ni eyyamama. Fayyummaan haadhaa, fayyummaa qaamaa ykn sammuu ta’u danda’a. Miidhaan kun jiraachu ogeessa fayyaaan mirkana’a. Ogeessi dubartii ulfaa kana qorannoob barbaachisaa akkaataa madaallib eekumsa fayyaa fi qajeeleummaadhaan (good faith), itti fufuun ulfichaq haadhaa ykn daa’ima ulfaa’ame irratti miidhaa fiduu akka danda’u mirkanessuu qaba.37

C. Ulfichi Hanqina Qaamaa Fayyuu hin Dandeeneye Qabaachuu (Kew. 551/1C): Kunis ogeessa fayyaan, qorannoo barbaachisaa erga godhame booda ulfichi hir’ina qaamaa ykn rakkoo jeenetiikii akka qabu yoo mul’ate, ulficha addaan kutuun ni danda’ama.

D. Dubartiin Ulfoofte Hir’inay Feyyaa Qabaachuu ykn Ijoollee Ta’uu (Kew. 551/1D): Dubartiin ulfoofte hir’ina qaamaa ykn sammuu qabaachuun, gaalilaaf kan hin geenye ta’uun daa’ima dhalatu guddisuuf qophii sammuu ykn qaamaa kan hin qabne yoo taate, ulficha addaan kutuun dandeessi. Ulaagaan namni tokko hir’ina qaamaa ykn sammuu qabaachuu kan madaalamu hojii idilee guyyaa guyyaani raawwatamuu dubartiin kun hojjechu yoo dadhabdedha. Kunis, qorannoob ogeessa yaalatiin qulqulla’a.38 Umuriin shamarree 18 gadi ta’u immoo, umuriid kaarduu yaala ishee irratti guutamuu qofaan mirkaneesu’a.39

E. Balaan ulfaataafi yeroo hin kenninee fi maqsamuu hin dandeeneye yoo mudatu (hojii wal’aansa yaalaa arifiichoos oo hin dabalatiin) (Kew. 551/2): Tajaajilli yeroo kana kennamu akka haala dirqisiisaah humnaa olii (Necessity) kew. 75 tti kan fudhatamuu fi si’ayinaa akkuma dubartiin kun fedhii kenniteen raawwatamuu akka qabu QUAK tumeera.40

37Akkuma 36flaa.
38Akkuma 37ffaa, F.10
39Akkuma 38flaa.
Sirna Qajeelfama Ulfa Addaan Kutuu Ministeerri Eegumsa Fayyaa baase armaan olii namii cabse kamiiyyuu adABBii maallaqaa qarshii kuma tokko hin caalleen yookiin hidhaa salphaa ji’a sadi hin caalleen akka adabamu Seerri yakkaa kew.552 (3) tumeera.

2. YAKKOOTA ULFA IRRATTI RAAWWATAMANIIN WALQABATEEQAAWWAA SEERAA FI RAKKOOR RAAWWII MUL’ATU

Mata dureen kun dhimmoota gurguddaa lama irratti xiyyeeffata. Isaanis: ulfa ilaalchisee qaaawwa seeraa ulaagaag fedhii kennuu fi itti gaafatamummaa yakkaa mirkaneessuun walqabatanii mul’atan irratti xiiinxala gaggeessa.

2.1. DHIMMOOTA ULAAGAA FEDHII YKN HAYYAMA BARBAADAN

Jecha fedhii jedhu kuusaan jechoota seeraa Black Law akka hiikeetti “Consent;- agreement, approval, or permission as to some act or purpose especially, given voluntarily by competent person”41 jedheera. Akka hiikaa kanaatti, fedhiin walta’iinsa kaka’umsa walaba ta’e irra dhufuu qaba. Akkasumas, fedhii kana kennuuf gahumsa qabaachuun barbaachisaa akka ta’e mul’isa. Ulfa ilaalchisee ulaagaan fedhii ija seeraan kallattii gara garaan ilaalamuu danda’a. Kana keessaas tokko tokko akka armaan gadiitti ilaalla.

2.1.1. Ulfa Hin Barbaadamne Addaan Kutuu

Ulfi hin barbaadamne karooora malee, gaa’ilaa fi gaa’ilaan alatti uumamuu danda’a. Miseensota Moootummoota Gamtoomanii keessaa harki 1/3ñaan ulfa hin barbaadamne fedhiin baasuun akka danda’amuu hayyamaniiru.42 Kunis biyyoota tokko keessatti fedhii dubartittii qofaan yerro raawwatu, biyyoota biroo keessatti immoo fedhii abba warraa ykn maatii akka

Graven, An Introduction to Ethiopian Penal Law (Oxford University Press,1965), F.208 ilaaluun ni danda’ama.
41 Black’s Law Dictionary (Westgroup-St Paul Publisher,USA, 7th ed.,1999), F.300.
42 Alyson G.Hyman, Olitti yaadannoo lak.20, F. 13 ilaala.
ulaagaatti gaafatu. Ulfi fedhii qofaan bahu biyyoota baay’ee keessatti daangaa yeroo murtaa’e qofa keessatti raawwata. Akka Itoophiyaatti immoo, Seerri yakkaa RDFI, ulfa hin barbaadamne addaan kutuu ifaan beekamtiin hin kennine.

Haa ta’u malee, raawwii seera kanaa yeroo ilaallu seerichi kara alkallattii ta’een beekamtiin kan kenne fakkaata. Kunis, akka seera yakkaa kew. 551(1) (A) jalatti teechifame dubartiin yookin shamarreen ulfa addaan kutuu barbaaddu ‘humnaan gudeedame ykn fira irraan ulfaa’e’ jechuun ishee gahaadha. Jecha kana ragaa biraan mirkaneessuun hin barbaachisuu. Akkasumas, akka kew. 551(1D) tiin immoo umuriin dubartiit ulfa addaan kuttuu 18 gadi ta’uu mirkaneessuuf, umurii kaardii yaalaa ishee irritti guutame qofa ilaaluun gahaah dha.54 Kana irraa kan hubannu, imammata seericha duuba jiru hin gaafatiin (don’t ask policy) yaada jedhu kan hordofu ta’uu akeeka. As irritti, kaayyoon tumaa seerichaa bu’aay bayii gochicha ragaan mirkaneessuuh hambisuun ulfa baasuuf of-eeeggannoo hin qabne ittisuuf fi icciti dhimmicha eeguufidha. Haa ta’u malee, keewvattoonni kun ulfa hin barbaadamne addaan kutuuuf mala akka dawoo yookin riqichaathi tajaajiluu danda’u.55 Sababni isaa, jecha dubartittiin kennitite qofaan (mere statement) ulficha addaan kuttuu gahaa waan ta’eeff, dubartiit ulfa hin barbaadamne ga’ila ykn gaa’ilaan alatti uumamna baasisuu barbaadde ‘dirqiiin gudeedame ykn fira irraan ulfaa’e’ jechuun salphaatti ulficha addaan kuchisiisu dandeessi.QUAK ogessi yaalaa xiinxala biraa akka hin gagggeessine ifaan

43WHO, Olitti yaadannoo lak.33,F.68.
44Fakkeenyaaaf, Manni Murtii Waliigala Ameerika Bara 1973ALA dhimma galmee Roe vs Wade gidduutti murtii kenneen, ulfa addaan kutuu marsaa sadiitti quodeera. Marsaa 1fiaa (1st trimester) guyyaa laguu idilee dhumaa mul’atee kaasee hanga ji’a sadiitti feedi haa’ila irraxtuu uumamnaadda n murtii hundaa’uun ulficha addaan kutuu ni danda’ama. Marsaa 2fiaa, ji’a 3fiaa hanga 6fiaa gidduu immoo fayyummaa haadhaa eeguuf qofa yoo ta’edh. Marsaa 3fiaa, ji’a 6fiaa hanga dahumsaa jiru immoo, carraan lubbuun jiraachu daa’ima ulfa olaanaa waan ta’eeff, lubbuu haadha baraarsuuf yoo ta’e malee, ulficha tasuma addaan kutuu hin eeyamamnu jechuun murteessera(Viki C. Jackson et al., Comparative Constitutional Law, 2nded, Foundation Press, 2006, F.23).
45Asirratti, dubartiititi umuriin ishee hammam iyyuu yoo taate, ykn ogessi yaalaa yoo shakke qulkeeffachuu isa irraa hin eegamu.Sababiin isaa; QUAK, ogessi yaluul ragaa dabalatay gaafachuu akka hin qabne dheerkeera (Olitti yaadannoo 5, F.10 ilaala).
46Dalia Mortada, Doctors in Ethiopia are looking past their religious beliefs on abortions to save lives http://www.pri.org/stories/2014-09-01/doctors-ethiopia-are-looking-past-their-religious-beliefs-abortionssave-lives yeroo dhumaad gaafa 08/06/2008 ilaalaame>.
dhorkuun isaa immoo qaawwaa kana bal’iseera.\(^{47}\) Rakkoon qabatamaan dhaabbilee fayyaa keessatti mul’atus kanuma.\(^{48}\) Kunis kan agarsiisu, seerichi nama dhuguma miidhamee fi hin miidhamme adda baasuuf ulaagaan kaa’e waan hin jirreef, ulfa hin barbaachifne addaan kutuuuf kara alkallattii ta’een beekamtii kan kenne fakkaata.

Gochi kun dantaa daa’ima ulfa’a’amee kan sarbu dha. Waadaa Mirgoota Daa’immanii kutaa seensaabuufata \(^{49}\) jalatti daa’imni osoo hin dhalatiin dura of-eeggannoo addaa fi kunuunsi barbaachisaa godhamuufi akka qabu mirga tleichifame kan cabsu dha.\(^{49}\) Tumaan seera yakkaa kun garuu mirga daa’ima ulfa’a’amee kana hubannoo keessa kan galche hin fakkaata. Kun immoo dabalatan kabajaa fi miira namummaa (humanity) kan gadi buusuuf fi tokkummaa maatii illee boressuu danda’a. Akkasumas, ogeessonnii fayyaa tokko tokko akka jedhanitti, galmee ulfa addaan kutuu harka caalaa keessatti sababni ulfi addaan cituuuf dirqisiisani gudeeduu raawwatameen ulfa uumame ta’uu dha.\(^{50}\)

2.1.2. Daa’imman Umurii 18 Gadii Ulfa Addaan Kutuuuf Fedhii Kennuu\(^{51}\)

Daa’imni umurii 18 gadii yoo ulfoofte ulficha addaan kutuu akka dandeessu seerri yakkaa kew. \(^{551}(1D)\) ni ka’a. Haa ta’uu malee, ulficha addaan

\(^{47}\) Olitti yaadannoo lakk. 5 afaan Amaariffaa lakk. 6(F.8-10) ykn Hiika Afaan Ingiliffaa, FF. 6-7.
\(^{48}\) Dalia, Olitti yaadannoo lakk. 46.
\(^{49}\) Waadaa kana Itopoofyaanaa waan fudhatteef akka Heera RDFI kew. 9(4) qaama seera biyya kanaatii. Kanaaf, biyyi kun tumaa kana hojii irra oolchuuf dirqama qabdi.
\(^{50}\) Dalia, Olitti yaadannoo lakk. 6.
kutuuf maatii moo daa’ima kanatu fedhii kennu qaba kan jedhu seerri kun adda hin baasne. Kana ilaalachise shamarreen ulfaa umuriin ishee 18 gadi taate fedhii isheetin ulfa addaan kutuu akka dandeessu QUAK ni teechisa. Kanaaf fedhii guddistoota ykn maatii shamarree kanaa hin barbaachisu.52 Keewwatni kun kan saxaxame rakkoolee daa’ima ulfoofte kana karaa maatiin mudachuu danda’an irraa ittisuu fi iccitiin dhimmichaa eeguufidha. Akka safuutti, shamarree gaa’ilaan alatti yoo ulfoofte ulficha baasisuun akka cubbuutti waan ilaalamuf, maatiin daa’ima kanaa kabajaa fi maqaa gaarii isaani eeguuf namicha ulfeesse shamarree kana akka fuudhu taasisuun baadiyyaa keessattii baratamaa dha.53 Kun immoo daa’ima kana rakkoo fayyaa, qaamaa fi xinsammuu garaa garaaf saaxila. Kanaaf, seerichi dantaa daa’imaan isa olaanaa (best interest of child) eeguuf, fedhii daa’ima kanaa qofaan akka ta’u hayyameera. Akkasumas, daa’imman maatii hin qabnee fi karaa irra jiraatan rakkoo kanaaif hunda caalaa saaxilamo waan ta’aniif dhimma kanaa walqabate fedhiin qaama 3ffaa ni barbaadama yoo ta’e, shamarre kun ulfa baasu of-eegganno hin qabnee akka raawwatanifiqaa waa waan uumuuf, furmaata si’ayinaa fi bu’a qabeessumma qabu kennuuf qajelfamichi hayyameera.54

Haa ta’uu malee, tumaan QUAK kun, tumaa Seera yakkaa kew. 547(2) waliin bakka itti wal hin simne ni qaba. Kunis, akka seera yakkaa kew. 547(2) tti “Gochi ulfa baasu kan raawwatame dubartiin ulfoofte sun kan hin hayyamme yookiin ‘hayyama ishii kennuuf yommuu hin dandeenyetti yoo ta’e’... adabbii hidhaa cimaa waggaa 3 hanga waggaa 10 gahuun adabama” jedha. Asirratti, jechi “dubartiin ulfoofte... hayyama ishee kennuuf yommuu hin dandeenyetti” jethu, daa’ima umuri 18 hin geenyeyi ni dalalata. Akka hiikaa kanaatti, fedhii daa’ima ulfoofte qofaan ulficha addaan kutuun yakkaan gaafachisu danda’a. Gama biraan, QUAK shamarra umuri 18 gadi ta’an, ulfa addaan kutuu yoo barbaadan, fedhii kennuuf gahumsa guutuu akka qaban tuma.

52 Olitti yaadannoo lak.5, F.11.
Akka yaada barreessaatti, dhimmoota kana walitti araarsuuf, walitti dhufeena tumaa seera yakkaa kewwwata 547(2), 551 fi QUAK ilaaluun ni barbaachisaa. Seerri yakkaa keewwwatni 551 hambifannoo (exception) tumaalee isaa olli akka ta’ee keewwwata 545(1) irraa hubachuun ni danda’ama. Keewwwatni 545(2) immoo yikki ulfa baasu, haadha ulfaan ykn nama biraan akka raawwatamu danda’u ibsa. Bu’uuruma kanaan, seerri yakkaa haala yikki kun dubartii ulfaa fi nama biraan raawwatamu, kew. 546 fi 547 irratti, duraa duuban tumee. Kanaaf, hundeen kew. 547, tumaa waliigala kew. 545/2 irraa kan maddu waan ta’eef akka qajeeltootti(principle) fudhachuu dandeenya. Haalli ulfa addaan kutuu kew. 551(1) (D) irratti hayyamamni hambifannoo kew. 547(2) ta’uu nu hubachiisa. Gama biraan, waltti dhufeena kew. 547(2) fi QUAK qaban ilaaluun dura, walitti dhufeena kew. 551 fi QUAK qaban ilaaluun barbaachisaa dha. Kanas, kan waltti nuu firoomuu tumaa seera yakka kew. 552(1) dha. Akka tumaa kanaatti,

*Bu’uura haalawwan armaan olitti kew. 551 jalatti tarreeffamaniin sirna ulfi addaan itti citu, haala mirga dubartoota ulfaa hin tuqeen Ministeerri Eegumsa Fayyaa ... qajeelfama ni baasa.*

Keewwwatni xiqqaan kun haalota hambifannoo kew. 551 irratti hayyamame ilaalachise Ministeeri Eegumsa Fayyyaa sirna ulfa addaan kutuu itti raawwatuuf qajeelfama akka baasu kallattii aangoon kennamuufi mul’isa. Bu’uuruma kanaan, Ministeerri Eegumsa Fayyyaa QUAK baasuun isaa beekamaadha.\(^5\) Kanaaf, tumaan kew. 547/2 irratti “dubartiiin ulfoofte... hayyama ishee kennuuf yommuu hin dandeenyetti” jedhu qajeeltoo waliigalaal yoo ta’u, tumaan kew. 551(1D) irratti da’imman ulfa addaan kutuu hayyamu immoo hambifannoo tumaa kew. 547/2 ti. Akkasumas, tumaan QUAK daa’immi umurii 18 gadii fedhii isheen ulfa addaan kutuu akka dandeessu hayyamu bu’uura seera yakkaa kew. 552’tiin tumaa hambifannoo kew. 551 raawwachisuuf bahe dha. Kun immoo alkallattii tumaan QUAK daa’immi umurii 18 gadii ulfa fedhii ishee qofaan addaan kutuu akka dandeessu hayyamu kun hambifannoo (exception) tumaa seera yakkaa kew. 547(2) ta’uu nu akeeka.

\(^5\)Ministeerri Eegumsa Fayyyaa, bu’uura tumaa seera yakkaa kew. 552/1 tiin, Qajeelfama ulfa addaan kutuu (QUAK) yeroo jalqabaaf Waxabayyay 1998 ALI baaseera. Waxabayyay 2006 ALI tti immoo Qajeelfama kana fooyyesseera (*Olitti yaadannoo lak.1 fi 5th laa ilaalu*).  

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2.1.3. Daa’imman Maloota Ittisa Ulfaa Fayyadamuu

Mootummaan gochi miidhaa saalquunnamti daa’imman irratti akka hin raawwanneef eegumsa gochuuf dirqama qaba.56 Haa ta’uu malee, yeroo ammaa daa’imman fedhiinis ta’e, sababa rakoo gara garaan gocha saalquunnamttii irratti bobba’uun isaanii beekamaa dha. Fakkeenyaaf, qo’annoon biyya kanatti taasifame tokko akka mul’isutti waggaa waggaa daa’imman 20,000 (kuma digdama) ol ta’an gocha saalquunnamttii irratti bobba’u.57 Kana ilaalchisee akka Waadaa Mirgootta Daa’imman (CRC) kew. 24 jala teechifametti daa’imman mirga fayyaa olaanaa argachuu qabu. Kunis, mirga fayyummma walhormaata dabalata.58 Kanaaf, mootummaan dirqama ulaagaa umurii gaa’ilaa, fi umurii gadi aanaa tajaajila ittisa ulfaa fayyadamuu murteessuu qaba. Fakkeenyaaf, Afrikaan Kibbaa gama tokkoon daa’ima umurii 16 gadii waliin quunnamttii saalaal raawwachuun yakkaan aka gaafachiisu seera ishiirratti yeroo haammachiistu, gama biraan immoo daa’imman umurii 12 kaasee mirga maloota ittisa ulfaa fayyadamuu aka danda’an hayyamteetti.59 Biyyoonni tokko tokko immoo, maloota ittisa ulfaa daa’immanii kennuuf seenaa shamarreeen kun quunnamttii saalaal irratti qabdu dursa qorachuu, ulaagaa dursa maatiin fedhii kennuu fi yoo akka tasaa ulfaa’uun daa’ima kanaa lubbuu ishee balaaf saaxila ta’e qabxiilee jedhan akka ulaagaalee maloota ittisa ulfaa gargaaramuuuf barbaachisiinetti ni teechisu.60

Seera yakkaa keenyatti yeroo deebinu kew. 626 fi 627 jalatti daa’ima umurii 18 gadii waliin, fedhiin illee yoo ta’e, quunnamttii saalaal raawwachuun dhorkaa dha. Kunis akka seeraatti fedhii ishee kennuuf gahumsa hin qabdu. Akka fayyaatti immoo, qaamni walhormaata quunnamttii saalaal raawwachuuf bilchina gahaa waan hin qabneef rakoo irraa gahuu danda’u irraa eegufi.61 Haa ta’uu malee, seeronni biyya keenyaa waa’ee shamarran umurii 18 gadii

56 Waadaa Mirgootta Daa’immanii bara 1989 ALA bahe kew. 34 fi Chaartara Mirgootaa fi Nageenya Daa’imman Afrikaa bara 1990 bahe kew. 27 ilaaluuun ni danda’ama.
57 James Hoot, Olli Tuutannoo Lak.54, F.137.
58 Criminalising Sex is not the answer http://mg.co.za/article/2011-09-26-criminalising-sex-is-not-the-answer# disqus_thread <Yeroo dhumaaf gaafa 04/04/2007 ilaalamwe>.
59Akkuma 58fiin.
61 Af-gaaffii Dr. Ikram Mohaammed, Ministeeer a Eegumsa Fayyaa Federaalatti Ofisara Adeemsa Fayyaa Haadholii waliin gaafa 02/04/2007 taasifame.

Tarsiimoon kun daa’imman umurii 10 eegalee tajajila mirga fayyaa walhormaata argachuu akka danda’an hayyameera. Haa ta’uu malee, umurii meeqaa eegalani tajajila maloota ittisa ulfa ammayyaa argachu akka danda’ani fi fedhiin maatii haa barbaachisu ykn haa dhiisu ifaatti waan tume hin qabu. Qabatamaan kan hojii irra oolaa jiru immoo yoo ilaalle “daa’imman mala ittisa ulfaa akka fayyadamanii ulaagaa jiru, umurii qofa osoo hin ta’iin, hirmannaan daa’imni kun quunnamti saalaas raawwachuu qabduun kan murtaa’u dha”. Kunis, daa’imni kun quunnamti saalaas yeroo yeroon kan raawwatu yoo taate, gorsi barbaachisaa akka irraa deebitu kennamefi yoo hin milkoofne, miidhhaa gara fuuluduraatti irra gahuu danda’u ittisuuf yookin xiqqeesuuf, umurii 10 gad illee yoo taate fedhi ishee irratti hudaa’an maloota ittisa ulfa akka fayyadamu ni taasifama. Haaluma kanaan, kaayyoon imaaammata fayyaa inni duraa balaa yookin dhukkuba ittisuua waan ta’eef, daa’imman maloota ittisa ulfaa akka fayyadaman gochuun ulfa hin barbaachifne fi dhukkuboota sababa kanaan dhufan xiqqeesuuf gargaara. Tajajilli kun immoo kan kennamu jiddu lixummaa fi fedhii maatii osoo hin barbaachisin fedhii daa’ima kanaa qofa irratti hunda’uni. Fedhiin maatii yoo barbaadama ta’e adaan akkasii daa’imaan fi

63 Maloota ittisa ulfaa ammayyaa kan jedhaman qoricha akka Piilsii, maloota ittisa ulfaa gadameessaa keessa ta’u, fkn IUCD, ykn Qaama namaa baqqaaqsuun kan keessa awwalamu ni dabalata (Olitti yaadannoo 4, F.81ilaala).
64Afgaaffii Sistar Birhaannee Aseffaa, Ministeera Eegumsa Fayyaa Federaalaatti Qindeessituu Karoora Maatii waliin gaafa 02/04/2007 adeemsifame.
65Akkuma 64ffaa.
maatii gidduutti waan hin dagaagnee fi gochi akkasii faallaa safuu waan ta’ef daa’imman kun fedhii maatii yoo barbaachise maatii isaanii akka hin dihiyeessine ni beekama. Kun immoo, daa’imman kun quunnamti saalaa of egganno hin qabneef akka of-saaxilaniif qaawwa waan banuuf tajaajilli walhormaataa kophaatti iccitiin kenneenaaf.⁶⁶ Haalli kun, dantaa daa’ima kanaa kan eegu qofaa osoo hin taane, duudhaa mirga tajaajila fayyaa wal hormaata iccitiin argachuu fi bilisummaa dhunfaa daa’imaa dhugoomsa.

2.1.4. Gocha Barmaatilee Miidhaa Qaqqabsiisuu (GMBQ)  
Irratti Miidhamtuun Fedhii Kennuu (Victim Consent)

GBMQ keessaa tokko, gochaa dubartii ulfaa irratti yeroo dahuumsaa raawwataman ta’uu kutaa darban keessatti ilaalleerra. Kunis yakka akka garaa dubartii ulfaa sukkuumu ykn urgufuu yeroo ta’u, gochi kun haadhaa fi daa’ima ulfa’ame miidhaa fayyaa ykn lubbuuf saaxiluu danda’a.⁶⁷ Gochoonni kun yeroo baay’ee waliigalte miidhamtuu fi qaama sadaffaatin kan raawwatamu dha.⁶⁸ Akka seera yakkaa kew.⁷⁰(1)’ tti gochii yakkaa fedhii garee lamaanin raawwate yoo yakki iyayta dhuunfaan dhiyaatu ta’e itti gaafatamummaa hin hordofsiisu.Yakkoonni GMBQ’tiiin dubartii ulfaa irratti raawwataman immoo yakka dantaa uummataa irratti raawwatamani dha. Kanaaf, namni gochaa kana raawwate fedhii miidhamtuu akka deebbi faccisaatti dhiyeeffachu hin danda’u.⁶⁹

Dhimma kana ilaanchisee seerri yakkaa kew. 562(1) itti gaafatamummaa yakka GMBQ nama gochaa kana raawwate qofaa akka ta’e yeroo tumu, miidhamtuun GMBQ akka ishee irratii raawwatuuuf fedhii yoo kennite itti gaafatamummaa yakkaa qabdi moo hin qabdu? ijoo jedhu seerichi

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⁶⁶ Akkuma 65ffaa.
⁶⁷ Olitti yaaddanno lak. 4, F.138
⁶⁸ Ruth Jackson, Waiting-to-see’ if the baby will come: Findings from A Qualitative Study in Kafa Zone, Ethiopia, Ethiopian Journal of Health Development (2013), Vol.27, No.2, F. 120.
⁶⁹ Akka seera yakkaa kew.70(1) tiin yakkoottni iyayta dhuunfaan dhiyaatu yoo fedhii miidhamaa ykn bakka bu’aa isaatin raawwatame yakkaan ni gaafachiisu. Akka dubbisa garagaltto (contrario reading) tumaa kanatti, yakkoonnni eeruu dantaa ummataa irratii dhiyaatan himataamaa itti gaafatamummaa yakkaa jalaa fedhii miidhamaa/tuun illee yoo ta’e, kan hin miliqne ta’u nu hubachisaa. Himataamaa/tun kun, garuu, fedhii miidhamtuu akka yaada adabbii salphisuutti bu’ura seera yakkaa kew. 82(1A) tiin dhiyeeffachuu danda’a/essi. (Ph. Graven, Olitti Yaaddanno 40, F. 186 ilaala).
calliseera.\textsuperscript{70} GBMQ dubarti ulfaa irratti raawwatu haadhaafis ta’e, daa’ima ulfaa’ameef miidhaa malee faayidaa akka hin qabne beekamaa dha. Gocha ulfa baasuul ilaalchisee dubartiin tokko ta’e jettee ofirratti yoo raawwatte (kew. 546) ykn namni biraa akka irratti raawwatuuuf fedhii yoo kennite (547/3) yakaakan akka gaafatamtu seerri yakkaa uwwisuun isaa miidhaa haadhaa fi daa’ima ulfaa’ame irra gahu danda’u hambisuuf kan teechifame dha.\textsuperscript{71} Haa ta’u malee, GBMQ dubartiin ulfaa tokko ta’e jettee ofirratti yoo raawwatte ykn akka ishee irratti raawwatuuuf hayyama kennite ilaalchisee itti gaafatamummaa yakkaas isheen qabdu sababni calliseef ifaa miti. Asirratti, GBMQ dubartiin ulfaa ofirratti raawwattu ykn akka ishee irratti raawwatamuuf hayyamtu dantaa ishee qofaa kan haammatu osoo hin ta’iin, kan daa’ima ulfaa’amees ni ilaallata. Akka Waadaa Mirgoota Daa’immanii (CRC) kutaa seensaa buufata 9ffaaatti immoo daa’imman osoo hin dhalatiin duraa eegalee kunuuansaa fi of-eegganno addaa, eegumsa seeraa barbaachisaa dabalatee godhamuuufi akka qabu ifaan tumeera. Kunis, daa’imman ulfaa miidhaa haadhana ykn nama biraan irratti raawwatamu irraa eegamuu akka qaban akeeka.\textsuperscript{72} Biyiyi keenya waadaa kana waan fudhatteef, tumaan kun qaama seera biyyattiti. Kanaaf, eegumsa seera daa’ima ulfaa’ameef barbaachisu tumuuf dirqama qabdi. Seerri yakka itti gaafatamummaa haadha ulfaa, yakka GBMQ ofirratti yoo raawwatte ykn akka irratti raawwatuuuf hayyama kennite callisuun isaa, eegumsa dantaa daa’ima ulfaa’amee waadaa kanaa fi mirga wal hormaata dubartoota dhugoomsu waliin hin deemu.\textsuperscript{73} Kanaaf, akka yaada barreessaatti haati ulfaa gocha akka garaa ulfaa suukkuumu, urgufuu fi k.k.f ofirratti yoo raawwatte ykn akka ishee irratti raawwatuuuf hayyamte, mirga fayyummama ishee fi dantaa daa’ima ulfaa’amee waan sarbuuf yakkichaan gaafatamuq qabdi. Haa ta’uu malee, ejjennoon kun bu’a qabeessa akka ta’uuf, hambifannoowwan (exceptions) sirna himannaa irraa bilisa taasisu (plea bargain) fi haalli dirqisiisaa humnaa olii fi filanno

\textsuperscript{70} Seerri yakkaa gochoota badii yakkaaf miidhamaan gahee olaanaa qabu tokko tokko irratti miidhamaa fi raawwataa yakkichaayakaakna akka gaafataman yeroo tumu (Fkn: kew.573 fi 647), kanneen biroo irratti immoo, yakka GBMQ dubartiin ulfaa raawwatuuuf dabalatee, itti gaafatamumma yakkaa isani calliseera (Fkn: kew. 635).

\textsuperscript{71} Olitti yaadannoo lak.28, F. 260.

\textsuperscript{72} Abba F.Janoff, Olitti Yaadannoo Lak.10, FF. 168-169; Patrick J.Flood, Olitti Yaadannoo Lak.11, F.9 ilaala.

\textsuperscript{73}Ibsa dabalataa dhimma kanaa ilaalchisee, mata –duree xiqqa ‘Ulf’a garaa keessa jiru irratti miidhaa geessisu’ jedhu kutaa 2.2.2 armaan gaddii jiru ilaala.
biraan maqfamuun hin dandeenye mudachuun raawwatu itti gaafatamummaa yakkaa akka hin hordofsiifne seerichi walumaan beekamtii kennaan qaba.

Ijoon biraa yakka GBMQ dubartii ulfa irratti raawwatuuun walqabatee ilaalamuu qabu, yakki GBMQ dubartii ulfa irratti raawwate fedhii ishee malee ykn dirqisisuun, gowwomsun, sodaachisuun fi haala k.k.f yoo ta’e, haalli adabbiin itti cinuu jiraa? dhimma jedhu dha. Kana ilaalachise, seerichi haala adabbiin yakka kanaa itti ulfaachuu danda’u hin tumne. Haalli adabbin itti cinuu danda’u yakka daddabalamoo cininaa fi gosa miidhaa qaqqabe irratti hundaa’uni.74 Haa ta’u malee, akkaata raawwii yakkichaa fakkenyaaf gowwomsuun yeroo miidhamtuun fedhii kennauf gahumsa seeraa hin qabnetti yakki kun yoo irratti raawwate seerichi haalli adabbiin itti cinuu danda’u kew. 561-563 jalatti hin uwwisne.75 Kanaaf, yakka daddabalamoo dhimmichaan walqabatanii fi ulaagaa seerichaa guutaniin himachuu yeroof furmaata dha.76

2.2. ITTI GAAFATAMUMMAA YAKKAA MIRKANEESUU

2.2.1. Hirmaannaa Yakkaa Jaarmiyaalee Namummaa

Jaarmiyaan qaamni namummaa seeraa kenneef yakka irratti yoo hirmaatan, raawwataa yakkaa muummeet ta’uun ykn kakaastumman ykn miiltummaa gaafatamuun akka danda’an seera yakkaa kew. 34 irratti tumameera. Yakkoota ulfa irratti raawwatamaniin walqabatee dhaabileen fayyaa tokko tokko haala seerri hin hayyamneen ulfa yeroo addaan kutan ni mul’ata. Haa ta’u malee yakkoota ulfa irratti raawwataman ilaalchise jaarmiyaalaa namummaa77 yoo yakka kane irratti hirmaatan akka seera yakkaatti itti gaafatamummaa yakkaa hin qaban. Sababiin isaa, itti

74Seera yakkaa, Olitti yaadannoo lak.24, kew. 561(2) fi 562(2) ilaala.
75Ijoo kana irratti, tumaa seera yakkaa ulfa baasu irra jiru yoo fudhanne gochii ulfa baasuu hayyama bilisa miidhamtuun ala yoo irratti raawwate adabbiit hidhaa cimaa waggaa 3-10 gahu akka hordofisiisu seera yakkaa kew. 547(2) tumeera.
76Fakkenyaaf, tumaaalneen seera yakka yakka yakkoota bilisummaa dhuunfAA namaaratti raawwataman (kew. 580-585 fi 590) akka barbaachissummaa fi amala yakkicha irratti hundaa’un yakka daddabalamoon gaafachisuu danda’u.
77Jaarmiyaaleen namummaa dhaabbiata fayyaa: Kiliinikoota fi Hospitaalota dhuunfAA ykn moottommaa, Maaristooppis Internaashinal, Waldaa Qajeelcha Qusannaa Maatti Itoophiyaa, fi k.k.f kan dabalatu dha.(Ibsa dabalata waa’ee itti gaafatamummaa yakka Jaarmiyaalee Numummaa ilaalchise Dejene, Olitti yaadannoo lak. 40, FF.35-46ilaala)
gaafatamummaan yakkaa jaarmiyaalee namummaa seerichi haala addaan ifatti yoo tume qofa ta’uu seerri yakkaa kew. 34(1) ni ibsa. Kun immoo, jaarmiyaaleen namummaa yakkaan gaafatamuuuf kuta addaa seera yakkaa keessatti beekamti yoo kename qofadha. Waa’een itti gaafatamummaa jaarmiyaalee namummaa immoo tumaalee yakka ulfa baasuu keessatti hin uwwisamne. Rakkoo kana agarsiisuf dhimma tokko haa ilaallu.

Dhimma tokko keessatti himamatootni tumaa seera yakkaa kew. 27(1) fi 548(1) bira darbuun hayyama ulfa baasuu osoo hin qabaatiin kilinika dhuunfqa isaanii keessatti himamattuu 2ffaan(haatii qabeyna kilinikicha) waliigaltee miidhamtuu waliin uumun, himatamaa 1ffaan(Narsii) akka ulficha baasu gochuuf waan yaalaniif himataman. Manni murtii dhimmicha ilale falmii bitaaf mirgaa dhagahuun himamatoota keewwata himataman jalatti balleessaa jedheera. 78 Dhimma kana irratti himamattoonni, yakkicha kan raawwatan kilinika dhuunfa beekamti seerraa qabu keessattidha. Haa ta’uu malee, kilinika kana yakkaan gaafachuuf tumaan seera yakkaa kana haguugu waan hin jirreef, namoota gochaa kana irratti hirmaatan qofa irratti tarkaanfiin seeraa fudhatame. Kanaaf, dhaabbileen fayyaa gochaa kana yoo raawwatan tarkaanfii bulchiinsaa irratti fudhachuuf ogeessoo dhuunfaa badii uuman immoo yakkaan gaafachuuf yeroof furmaata ta’uu danda’a.

2.2.2. Ulfa Garaa Keessa Jiru Irratti Miidhaaa Geessisu

Haalotaa fi maloota yakka ulfaa irratti raawwatan armaan dura ilaalle malee gochootni daa’ima ulfa irra miidhaa geessisuu danda’an biroo haadhaan ykn qaama 3ffaan raawwatuun mu uumuu danda’a. Haati ulfaa gochaa dhookame raawwachuun (fkn; yeroo ulfaa dhugaati alkoolii fi wantoota biroa dhorkaman fudhachuun79) ykn of-eeggannoog gochuuf qabdu raawwachu dhiisuu (fkn: gorsa ogeessi yaalaa kenne hordofuu didduun80)

78A/Alangaa fi Biraamuu Baqqalaafaa (N-2), Mana Murtii Federaala Sadarkaa 1ffaa Lak. Galmee, 85521
79Ijoo kana ilaalchisee Naannolee Ameerikaa keessaa Mootummaan naannoo Teenesse bar 2014 tti dubartiin ulfaa waantota yeroo ulfaa dhorkaman( fkn dhugaati alkoolii ykn qorichoota dhorkaman) yoo fudhatte yakkaan akaa gaafatamtu tumeera(Substance Abuse During Pregnancy, State Policies in Brief, Guttmatcher Institute, 2014, F.1).
80Fakkeenyaaf, Galmee yakkaa People fi Stewart gidduutti Manni Murtii Saandiyagoo biyya Ameerika bar 1987 ALA murtesseen, haati ulfa gorsa ogeessi yaalaa akaa boqonnaa ciisicha fudhattsu, quumamti saalaa irraa of quusattu fi yeroo dhiigni mul’atetti tajaajila yaalaa hatattaman akaa argattu gorsamte didde yakkaan adabeara. (Punishing Women for
daa’ima ulfa’a’ame irra miidhaan yoo gahee ykn immoo namni biraa garaa dubartii ulfaa ruktuun, ulficha irra miidhaa qaamaa ykn ajjeecha yoo geessise, itti gaafatamummaa yakkaa hordofsiisir jiraa? dhimmi jedhu kan ilaallamu qabu dha. Ijoo kana irratti, Seera yakkaa RDFI keessatti waanti ifaan tumame hin jiru. Haa ta’u malee, gocha nama biraan miidhaa daa’ima ulfa irra gahu ilaalchisee dhaddachi ijibbaata Federaalaa falmii dhimma yakkaa Oliyyattuu Zeenit Abbaabbu fi Abbaa alangaa Bulchiinsa Naannoo Beenishangulii jidduutti murteesseen haalotaa fi maloota ulfa irra miidhaan gahuu danda’u seeraa yakkaa keessaati tumame irratti yaada haarayaa kan dabalu fakkaata. Murticha irraa akka hubatamutti namni dubartii ulfaa garaa ishee irra rukchuun ulfichi akka du’u godhe, yakka yaalii ajjeechaan gaafatama.81


Waadaalee mirgoota dhala nama biyyi keenya fudhatte keessaa immoo, fakkeenyaaf, akka Waadaa Mirgoota Daa’immanii(CRC) kutaa seensa buufata 9ffaa armaan dura ilaalleen daa’imni ulfaa eegumsa seeraa haadha irraa of danda’u akka qabu mul’isaa. Akkasumas, Koreen Waadaa Mirgoota Daa’immanii ibsa waliigalaa (General Comment) lakk. 7 irratti keneen biyyoonni waadaa kanaa mirga lubbuun jirachuu daa’imaa Waadaa Mirgoota Daa’immanii (CRC) kew. 6(2) irratti tumame dhugoomsuu fi mirga fayyummaa dahuumsa duraa (Pre-natal care) kew. 24(2d) irratu jiru guutummaan hojiirra oolchuuf haadhaa fi daa’ima ulfa’aameef of-eeggannoobarbaachisaan dahuumsa duraa eegalu godhamuu akka qabu ni ibsa.86 Sanadoonni mirgoota dhala namaa gara garaa dantaan daa’ima ulfa of-danda’ee ykn mirga haadha ulfa waliin kabajamu akka qabu akeeku. Kunis, yoo walitti bu’insi dantaa daa’ima ulfa’aameefi haadha gidduutti uumame qofaa kan haadhaa dursuu akka qabu qajeechuu malee dantaan daa’ima ulfa’aamee kan haadhaa keessatti kan haguugamu ykn tasuma

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85Seera Yakkaa, Olitti yaadannoo lak.24, kew. 545(2), 546 fi 547 ilaala.
eegumsa seeraa akka hin qabne hin mul’isan.87 Murtiin dhaddacha ijibbaata armaan olii garuu, miidhaa du’a daa’ima ulfaa’amee irra gahe kallatti haadhaa qofaan madaaluun isaa qabiyyee waadaa mirgoota dhala namaa biyyi keenya fudhattee fi eegumsa seeraa daa’ima ulfaa’ameef seera yakkaa RDFI keessatti uwwisamee jiru hubannoo keessa kan galche hin fakkaatu.

2.2.3. Tumaalee Yakkoota Ulfa Baasuul Ilaalchisee Jechoota Ifa Hintaane

Yakkoota ulfa irratti raawwataman ilaalchisee tumaalee ifa hin taane tokko akka armaan gadiitti ilaalla.

A. Seera yakkaa kew. 548(3) jalatti, ogeessonni fayyaa yakka ulfa baasuul seeraan alaa ‘irra deddeebiin (Repeatedly)’ yoo raawwatan, hayyamni hojii isaanii dhaabbataan dhorkamuu akka qabu tuma. Kana irratti, jechi ‘irra deddeebii’ jedhu, yeroo meeqa yoo irr raawwato ‘irra deddeebii’ jedhama jedhu safartuun hin ka’a’amneefi. Akka qopheessaa barruu kanaatti, jechi irra deebi jedhu, yeroo 2ffe kan ibsudha. Jechi irra deddeebii jedhu immo gocha yakkaa yeroo lamaa ol raawwate akka ta’e waan akeekuuf, bu’uruma kanaan hiikamu qaba.

B. Seera yakkaa kew. 550 irratti immoo gochi ulfa baasuul sababa hiyyummaa garmaleen yoo ta’e adabbiin akka salphatu tumeera. Haa ta’u malee, jechi ‘hiyyummaa garmalee’ maal akka ta’e hin ibsine. Dhaabbatni mootummota gamtoomanii hiikaa jecha hiyyummaa garmalee (Extreme Poverty) jedhuf kenne yoo ilaalle:

A condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information.88

Hiikaan kun kan mul’isu hiyyummaa garmaleen galii qofaan kan madaalamu osoo hin ta’iin, dhaqqabummaa tajaaajilawwan bu’uraa dabalata. Kunis hamma galiin yeroo shaallagamu, guyyaatti Doolaara

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87 Abbye F. Janoff, Olitti yaadannoo lak.10, FF.187-189; Patrick J. Flood, Olitti yaadannoo 11, FF. 187-189; Olitti yaadannoo lak.15 ilaala.
Ameerikaa 1.25 gadi argachuu akka ta’e Baankiin Addunyaa baseera. Kanaaf, jechi kun yeroo hiikamu ulaagaan armaan olii hubannoo keessa osoo galee gaarii dha.

C. Seera yakkaa Kew. 551(1) (C) irratti sababoota ulfa addaan kutan keessaa tokko ‘hir’ina qaamaa ulfaataa fi fayyyu hin dandeenye’ jedhu irratti yaadni “Hir’ina qaamaa ulfaataa” jedhu maaliin safarama? Fakkeenyaaaf, harka dhabuu, qaamoleen miiraa hir’achu, lakkuu walitti maxxanan ta’uu, quba dabalataa qabaachu, hir’ina sammuu qabaachu, fi k.k.f ni dalalata moo miti? ijoon jedhu dhimma ilaalamu qabu dha.

Kanaan walqabatee, biyyoonni tokko tokko dhimmoota ‘qaamaa hir’uu’ jedhaman ulaagaal daa’imichi yoo dhalate of-danda’ee jiraachu danda’u ykn dhiisu irratti dhiibbaa uumuun akka madaalamu yeroo tuman, biyyootni biroon immoo dhimmoota ulfa addaan kuchisiisu danda’an tarreessuun (list) ka’a’aniiru. Biyyoonni hafan, hanqina qaamaaaf (fetal impairment) ifaan osoo beekamtii hin kennii fayyummaa fi rakkoo hawaasummaa haadhaa fi daa’ima kana fuuluduratti mudachuu danda’u keessatti ilaaluu. Akka Itoophiyaatti immoo, ogeessa yaalaan qoranoo barbaachisaa erga godhamee booda hir’inni qaamichaa, yoo kan hin fayyine ta’e ykn hir’inni jeenetikii yoo mul’ate ulfichi adda cituu akka danda’u QUAK eyyameera. Ulaagan kun haala waliigalaan kan taa’ee fi seerichi dhmma kana ogeessi yaalaa akkaataa ogummaa isaatiin akka itti fakkaatetti (discretion) akka murteessu kan dhiise ta’uu nu hubachiisa.

2.2.4. Yakkoota GBMQ tiin Dubartii Ulfaa Irratti Raawwataman Ilaalchisee Adabbiin Tumaalee Seerichaan Taa’an Rakkoo Qaban

Qajeeltooowan seeraa keessaa tokko namootni badii raawwatan irraa seeraan fayyadamoo ta’uu hin qaban kan jedhu dha. Akka qajeeltoo

89Akkuma 88ffaa
90WHO, Olitti yaadannoo lak.33, F. 92.
91Akuma 90ffaa.
92Olitti yaadannoo lak.5, F.9.
93Jechi kun Afaan Laatinin “Commodum Ex Injuria sua nemo habere debet” (wrong doer should not be enabled by law to take any advantage from his/her action) jedhama. Kunis, seerri namoonni badii isaanii irra aka fayyadamamaniif tumamuu akka hin qabne mul’isa. <www.duhaime.org/legaldictionary/C ilaala>.
kanaatti, adabbiin seera yakkaan bahu madalawaa, balaafamummmaa fi amala dhuunfaa raawwataa yakkichaa, cimina yakkichaa, haala raawwii yakkichaa fi k.k.f irratti hundaa’un adabbiin cimu akka qabu mul’isa. Kunis, namni itti yaadee yakka raawwate kan dagannoon raawwate irraa balaafamummmaa waan qabuuf, adabbiin isaas qixuma kanaan cima. Akkasumas, namni miidhaa olaanaa geessise kan miidhaa gadi aana geessisse waliin walqixa adabamuu waan hin qabnee, cimina miidhaa gahee bu’ureffachuu adabbiin seera yakkaa tumama.94Haa ta’uu malee,tumaaleen yakkoota GBMQ tiin dubartii ulfa irratti raawwataman (kew. 561-563) fuggisoo duudhaa armaan oliiit.

Kunis, akka keew. 561(1) tti karaa GBMQ tiin, miidhaa lubbuu dubartoota ulfaa fi daa’imman irratti namni itti yaadee miidhaa geessise adabbi maallaqaatii yookiin hidhhaa salphaa ji’a sadii hanga waggaa tokkoo gahuun adabama. Namni yakkuma kana dagannoon raawwate immoo kew. 543 jalatti adabama.95 Adabbi kew. 543(1-3) jala jiran yeroo ilaallu, hidhhaa salphaa ji’a ja’a hanga hidhhaa cimaa waggaa kudha shanii fi akkaata cimina yakkichaaatti, adabbi maallaqa akka filannootti ykn hidhhaa waliin hanga qarshii 15,000 gahu adabamuu akka danda’u tuma. Akkasumas, akka kew. 562(1)’ tti karaa GBMQ tiin miidhaa qaamaa dubartoota ulfa fi daa’imman irratti namni itti yaadee geessise adabbi maallaqaatii yookiin hidhhaa salphaa ji’a ja’a hin caalleen akka adabamu yeroo tumu, namni yakkuma kana dagannoon raawwate immoo kew. 559 jalatti akka adabamu keewwati 562(2) ni qajeelcha. Haalawwan kew. 559(2) jala jiran yoo ilaalle immoo, namni yakkuma kana dagannoon raawwate, fakkeenyaaf, miidhaa qaamaa cimaa yoo geessise adabbi hidhhaa salpha ji’a ja’aa gadi hin taanee fi qarshii kuma tokkoo gadi hin taanen adabama.


94Dejene, Olitti yaadannoo lak.40, F. 156.
95Seera yakkaa, Olitti yaadannoookal. 24, kew.561 (2) ilaala.
Sababni isaa, akka keewwata kanaatti yakkoota GBMQ tiin lubbuu ykn qaama dubartii ulfaa irra miidhaan yoo gahe manni murtii ‘akeekkachis’a kennuu qofaan bira darbuu danda’a. As irratti waanti hubatamuu qabu, seerichi miidhaan lubbuu irras ta’e qaama irra yoo gahee, manni murtii akeekkachisa qofaan bira darbuu akka danda’u tume jira. Ija haqaa fi nama dhama qabeessaan yeroo ilaalamu garaa-garummaan simina miidhaa fi adabbichaa wal hin madaalu.Akkasumas, miidhaa lubbuu irra gahu akeekkachisa qofaan akka bira darbamuf seerichi hayyamuun isaa amansisaa hafn fakkaatu.

Tumaaleen armaan olitti qeeqaman kun kaayyoo seera yakkaa; yakkoota itisuu fi nageenyaa hawaaasaa eeguu fi dudhaalee adabbii kan akka adabbii walsimu (consistency), madaalawaa, tilmaamanumma, fi seera duratti walqixaan ilaalamuu qajeltoowwan jedhaliin kan wal hin simne dha. Kana malees, tumaan kun mirga himatamtoo kan sarbuu fi amantaa uummanni sirna haqaa irratti qabu gadibusuu danda’a.

3. YAKKA ULFA IRRATTI RAAWWATAMUUN WALQABATEE RAKKOOLEE RAAWWII IRRATTI MUL’ATAN

3.1. RAKKOOLEE HAALA RAAWWII YAKKICHAAAN WALQABATAN

Itoophiyaa keessatti daa’imman waggaatti gara miliyeena 4 ulfa’aman keessaa 380,000-500,000 kan ta’an ulfa fedhii malee bahuu fii malaa ulfa baasuu of-eggannoo hin qabneen kan addaan citu ta’uu qorannoong gara garaa ni mul’isa. Kunis, gocha ulfa baasuun kan GBMQ ulfa irratti raawwatu

97As irratti waanti hubatamuu qabu, ulfaa baasuu gosa lamaa jira. Inni 1ffaan, ulfa fedhii malee bahu (involuntary abortion) yeroo ta’u, kunis haala humnaa olin fedhii dubartitti malee kan bahudha. Waantonni kanaaf sababa ta’an, dhukkuboota ho’ina qaamaa baay’ee dabalan (knn busaa), balaa tasaa ulfa irratti dhaqqabu ykn haali uumama ulfichaa rakkoo qabaachuu fa’i. Inni 2ffaan immoo ulfa baasuun ta’ee jedhhe raawwatu (induced abortion) yeroo ta’u, gosti kun karaa seera qabeessaan ykn seeraa alaa ulficha adda kutuu ta’u danda’a (Olitti yaadannoo lak.4, F.139 ilaala).
3.1.1  Yakkichi Waliigaltee fi Wal-amantaa Raawwatamu


99 Dalia Mortada, Olitti yaadannoo lak. 6
himachuuf ragaa bay’ee barbaachisu ta’uu danda’a.\textsuperscript{102} Miidhamtun immoo, dantaa ishee fi waaahltoota ishee eeguuf jecha qorannoo yaalaaf hayyama kennuu dhiisuu dandeessi. Kun immoo ragaa namaas ta’e kan mana yaalaa argachuuf aarsaa guddaa akka barbaadu mul’isa.

\textbf{3.1.2. Yakkicha Faayidaa Walliiniif Raawwachuu}

Yakkootni baay’een jibbiisaa ykn haaloo bahuuf ykn aariin raawwatamu. Yakkoota kana keessatti tokko miidhaa fi kan biraa immoo miidhammaa waan ta’eef gareen miidhame eeruu kennuu kaasee hanga murtii argatutti dhiiyeyaaan hordofuun hojji qorannaa yakkaa walta’iinsaa deegggaruun mirga isaa sarbame kabachiifata. Haa ta’uu malee, yakka ulfa irratti raawwatuun walqabatee miidhamtuun (fkn dubartiin ulfi irraa bahu) dhiibbaa sababa ulfa kanaan gara fuulduratti dhuufuu danda’u hambisuuf gocha kana akka carraa dhumaatti yeroo fayyadantu, qaamni sadaffaan himatamaa yakkichaa ta’u immoo faayidaaf ykn kabaaja (beekamtii) argachuuf raawwata. Kana ilaalchisee, dhimmoonni itti aanani dhiyaataan rakkoo gama kanaan jiru agarsiisu.

Dhimma \textsuperscript{1}keessatti Abban alangaa fi himatamaa Warqinaa Taaddasaa jedhamu (lakk. Galmee 206785 ta’ee irratti) seeraa yakkaa kew. 548(3) irra darbuun miidhamtuu irraa qarshii 350 fudhachuun haala seerri hin hayyamneen ulfa waan baaseef kan himatame yeroo ta’u, Manni Murtii Sad. \textsuperscript{1}Federaaalaa himatamaa keewwata himatame jalatti balleessaa jedheera. Akkasumas, dhimmi A/Alangaa fi Himatamaa Biraanuu Baqqalaafaa (N-2) armaan olitti ilaalle ijoooka kana kan cimsuu dha. Kunis, miidhamtuu fi himatamtoonni akkaataa seerri hin hayyamneen ulfa baasuuf qarshii 800 tiin waliigalan hojjechuuf utuu jedhanii qabamuu isaanii mul’isa. Dhimmoontii armaan olli kun himatamtootaa fi miidhamtootaa gidduu faayidaan waliin jiraachu agarsiisu. Himatamtoonni gochichaa baay’inaa badii kana keessa kan seenan, keessatti ogeessonnii yaalaa yakkummaa gochicha wallaaluun osoo hin ta’iin faayidaa hin malle argachuufidha. Haaluma wal fakkaatuun, garaa dubarti ulfaa suukkumuuf fi urgufuuniis yeroo bay’ee miidhamtuun yeroo ciniiinsuu, cinqaa muddamteyyaattu jiru jalaa bahuuf gochi kun akka

\textsuperscript{102} Fakkeenyaaaf, ulfa baasuu nama biraan haalawwan kew.547 tiin raawwatu ilaalchisee namoonni gocha kana irratti hirmaatanii fi miidhamtuun hayyama kennite itti-gaafatammummaa yakkaa akka qaban tuma.
raawwatuuf fedha ishee kenniti. Kun immoo garee bitaa fi mirgaa gidduu faayidaan waliinii waan jiruuf, ragaa kana mirkaneessu funaanuu gufachisuun qorannaa yakkicha walxaa taasisa.103

3.1.3. Hirmaattotni Yakkichaa Hundumtuu Yakkamaa Ta’uu

Yakkoota ulfi irratti raawwatu kan akka ulfa baasu, dubartiin akka irraa bahuuf fedhii ishee kennite ykn ofirraa baaste ykn namni ulfa baasu irratti sadarkaa adda addaan hirmaate akka seera yakkaa kew. 545-552 tiin fi namni GBMQ irratti hirmaate bu’ura kew.569 tiin yakkaan akka gaafatamuun danda’u tumameera. Kun immoo namoonni iccitii kanaa beekanii fi harka keessaa qaban faayidaa dhuunfaa isaanii jecha ragaa dabarsanii hin kennan. Kana caalaa immoo, gareen lamaanuu ija seeraan himatamtoota waan ta’aniif yakkicha dhoksuu fi ragaa balleessuuf cimsanii itti fufuun qorannoooka yakkaa jalaad fedhii waliinnif wal miliqsu. Rakkoo gama kanaan jiruu agarsiisuf dhimma itti anuu haa ilaallu.

Kunis, dhimma A/Alangaa fi himatamtuu Ababaa Shifarraa (lakk. Galmee 09414 ta’e irratti) seera yakka kew. 548(2) irra darbuun ogmma barbaachisu osoo hin qabaatiin gocha ulfa baasu airawatte jechuun kan himatamte yoo ta’u; Go/ Qe/ Wallaggaatti Manni Murtii Aanaa Anfilloo falmii bitaaf mirgaa dhagahuun murtii balleessummaa keeneera. Haaluma walfakkaatuun, miidhamtuun himata kanaa immoo (lakk. Galmee 09413) keessatti seera yakkaa kew. 547(3) irra darbuun gochi armaan olii akka irratti raawwatamuuf hayyama ishii waan kenniteef himatamte, keewwata kana jalatti balleessaa jedhamteetti. Asirratti waanti hubatamuq qabu yakkicha kan saaxile himatamtuu ykn miidhamtuu osoo hin ta’iin hirmaanannaa fi hordoffii hawaasa naannoona akka ta’e galmicha irra hubachuun ni danda’ama. Galmeeewwan arman olii kana irraa akka hubannutti, gareen lamaanu (himaamtuu fi miidhamtuun) itti gaafatamummaa yakkaa kan qaban ta’uu fi yakkicha ittisuufis ta’e saaxiluuf himaannaa ummataa hammam barbaachisaa akka ta’e dha.

103 Af gaaffi Itti-aantuu Koomandaraa Ad. Shittoo Likkaasaa, Abbaa Adeemsa Hojii Dhimma Dubartootaa, Daa’immanii fi Dargaggoota Koomishinii Poolisii Oromiyaa, waliin gaafa 05/05/2008 taasifame.
3.1.4. Miidhamtuun Safuu Hawaasaan Balaaleffatamu

Baratamaan namni miidhaan yakkaa irra gahe miidhaa kana irraa akka dandamatuuf hawaasni yaadaa fi deeggarsa adda addaan ni jajjabeessa. Haa ta’uu malee, yakkaa ulfa baasuun walqabatee himatamaa/tu caalaa miidhamtuutu balaaleffatama. Sababni isaa, yeroo baay’e ulfi hin barbaadamne gaa’ilaan alatti kan uumamu yommu ta’u, kun immoo duudhaa, aadaa, safuu, fi amantii hawaasa irraa maquu waan ta’eeef, ulfii gaa’ilaan alaa akka sagaagalummaatti kan fudhatamuuf fi erga ulfa’amee booada ulficha ofirraa baasisuun immoo cubbuu lubbuu nama irratti raawwatamu jechun akka hojii abaaramamaatti fudhatama.¹⁰⁴ Gama biraan, yakkaa GBMQ dubartii ulfa irratti namoonni raawwatan miidhamtuu gargaaruuf yaaduun waan ta’eeef, miidhamtuu namoota ishee gargaaran (garaa ulfaa sukkuuman yookin urgufâan) kana yakkaan yoo himatte dhiibbaan hawaasa biraa ishee irra gahuu bal’aa dha.¹⁰⁵ Kun immoo miidhamtuun miidhaa cimaan yoo irra gahes badii ishee irratti raawwatame kana saaxiluuuf kaka’uumsa hin qabaattu.

3.2. RAKKOOLEE QAAMOLEE HAQAA BIRATTI MUL’ATAN¹⁰⁶

Rakkoon biraa yakkoota ulfa irratti raawwatamanin walqabatee jiru qaamolee haqaa bira hanqina jiru dha. Rakkoo kana keessaa inni tokkoffaan qorannoo yakkaa barbaachisu yeroon gageessu dhabuun ragaan mana murtiif dhiyaatu laafaa ta’u dha. Kana ilaalchissee dhimma A/Alangaa fi Dr. Kinfee Gudlufaa (Na-2) haa ilaallu. Himatamtootni seera yakkaa kew. 543(3) fi 548(3) irra darbuun yakka ulfa baasuu seeraan ala raawwachuu miidhamtuu irra miidhaan du’aa waan dhaqqabeef yakka dagannoon nama ajjeesuu fi yakkaa ulfa baasuu cimaan, duraa duuban, himataman. Ragaa miidhaa du’aa mirkaneessuuf dhiyaate keessaa tokko ragaa qorannaa reenfaa yeroo ta’u, ragaan barreeffamaa kun akka jedhutti miidhamtuun kan duuteef

¹⁰⁵Afgaaffii Ad. Shittoo Likkaasaa, Olitti yaadannoo lak.103 waliin gageeffame.
¹⁰⁶Mata dureen xiqqaan kun rakkoolee qaamolee haqaa biratti mul’atan hunda kan mul’isu osoo hin ta’iin rakkookeee qabatamaa tokko tokko ragaan deeggaraman kan agarsiisuu dha. Akkasumas, rakkooleen kun akka amalaa fi raawwii isaanii irratti hundaa’uun bakkaa fi qaamolee haqaa hunda biratti mul’achuu ykn dhisuuu akka danda’an hubatamu qaba.
sababa infeekshinii ulfa seeraan ala addaan kutuu irraa dhufeeni dha. Haa ta’u malee, ragaan kun kan argame erga miidhamtuun awwaalamtee turtee jia tokkoof torree sadi boodadhaa. Ragaan ogeessaa dhimmicha irratti dhiyaatee ibse akka jedhuttti, ‘qorannaa reenfaa erga du’ee ji’a tokko booda godhamuu siriitti beekuu akka hin danda’mnee fi ragaan kana booda kennamu ‘tilmaama’ irratti hunda’uun’ akka ta’e dha.

Manni Murtii Olaanaa Federaalaalaa Dhaddacha Boolees ragaa kana bu’uura godhachuun duuti miidhamtuu sababa infeekshinii ulfa baasuu seeraan ala uumame irraa dhufeen ta’uu ragaan dhiyaate sababaa fi bu’aa mirkaneessuuf amansiisaa waan hin taaneef, himannaa ajjeeca dagannoo (seera yakkaa kew. 543(3)) jalaa bilisa jechuun himannaa 2fīfaa seera yakkaa kew. 548 (3) jalatti balleessaa jedheera. Galmee kana irraa akka hubannutti qorannaa reenfaa kun ji’a tokko keessatti osoo ta’ee jiraa jirtaa murtiin kennamu faallaa ta’uu danda’a ture. Seenaa galmichaa irraa akka hubatamutti eeruun yakkichaa yeroon qaamolee haqqaa biratti yoo dhiyaatullee, qorannaa reenfaa barbaachisaa ta’e kun erga eeruun dhiyaatee booda battala (yeruma) sana waan hin taasifamneef fudhatamummaa ragiccha gadi buusera. Kanaaf ‘Haqni ture haqa hafe’ ta’uu isaa galme kana irraa hubanna.

Rakkoon biraa qaamolee haqqaa biratti mul’atu himata yakkaa tumaa rogummaa qabuun banuu dhiisu dha. Sababa kanaan himatamtoonni adabbii isaaniff malu jalaa miliqu. Fakkenyaaf, himata A/Alangaa fi Biraanuu Baqqalaafaa (N-2) armaan dura ilaalle irratti himatamtoonni seera yakkaa kew. 27(1) fi 548(1) irra darbuun yakka ulfa baasu cimaa himatamuun, manni murtii faamii bitaaf mirgaa dhagah ee tumaa kana jalatti balleessaa jedheera.107 Haa ta’uu malee, himataamaa Biraanuu Baqqala ogeessa fayyaa Narsii waan ta’eef, seera yakkaa kew. 548(3)’n himatamuun qaba ture. Akka keewwata xiqqaa kanaatti ogeessotni fayyaa yakka ulfa seeraan ala baasu yoo raawwataan tumaa kanaan gaafatamuun akka qaban ifaan tumeera. Kunis ogeessotni fayyaa itti gaafatamummaa ogummaa qaban daagachuu yakkicha waan raawwataniif manni murtii adabbii hidhaa fi maallaqaqaa irratti dabalataan yeroo murtaa’eef yookiin yakkicha irra kan deddeebi’e yoo ta’e hanga dhumaatti hoji ogummaa isaanii irraa ni dhorka. Himataamaan kunis hamma ogeessa fayyaa ta’ee gocha kana raawwateetti tumaa kun raawwatiinsa irratti qaba ture. Garuu, himannii Abba Alangaa himataamaan

107Olitti yaadannoo lak.78

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faayidaa argachuu malee ogeessa fayyaa ta’uu isaa hubannaa keessa hin galchine. Manni murtii tumaa kana bu’uura godhachuun murtii laate.


108Seera yakkaa, Olitti yaadannoo lak.24, kew. 106 fi 179(F).
Galmeewwan dafanii murtii argachu dhabuun hanqina qaamolee haqaa biratti mul’atan keessa isa kan biraati. Dhaqqabummaan seeraa kan ittiin madaalamu keessaa tokko himanni dhiyaate si’aayinaa fi qulqullinaan yeroo dhama qabeessa ta’e keessatti murtii argachu dha. Haalli walxaxaan osoo hin jiraatin galmeee lafarra harkisuun dhaqqabummaa haqaa daangessuu dha.


4. YAADOTA GUDUUNFAA FI FURMAATAA

Yakkootni ulfa irratti raawwataman yeroo ammaa dhimma ijoo seeraa qofaa osoo hin ta’iin dhimmoota safuu hawaasaa, amantii, siyaasa, fayyaa, mirgoota dhala namaa, fi k.k.f’iin walqabatee ilaalamu dha. Waadaaleen mirgoota dhala namaa gara garaa sadarkaa idil-addunyaatti jiran mirga daa’ima ulfaa’ameef ifaan beekamtii hin kennine. Gama biraatiin immoo waadaaleen kunnee gocha ulfa baasu ifatti aka mirgaatti hayyamanii hin jirani. Biyyootni gara garaas haala qabatamaa naannoo isaanii irratti hunda’uun seeraa fi imammata isaanii keessatti haala itti fakkaateen dhimma kanaaf uwwisa kennaniiru. Seerri yakkaa RDFI yakkoota ulfa irratti raawwataman bakka tokkotti gurmeessuun yoo tumuu baatellee, yakkoota
seeraa ala ulfa baasu, GBMQ’tiin miidhaa lubbuu fi qama dubartii fi daa’ima ulfa irratti geessisuuf fi tooftaawwan ulfa baasu ifatti beeksisuun yakkak akka ta’e labseera. Akkasumas, mirga saalaa fi walhormaatay dubartootaa mirkaneessuu fi miidhaa ulfaan walqabatee dhufu hir’isuuf, ulfichi dirqisiisaniin gudeeduun yookin fira irraa yoo uumame, fayyummaa haadhaa fi daa’ima ulfaa’ameef, rakkoo uumama ulfichaa fi dubartiin ulfaa hir’ina fayyaa qabaachuu ykn ijoollee ta’uus isheetiinii fi balaan tasaa humna olli yoo mudate ulficha addaan kutuuun akka danda’amu hayyameera.


Yakkoota ulfa irratti raawwataman seeratti dhiyeessun murtii haqaa kennisiiisuuf irratti waantoti danqaa ta’an adda durummaan amala yakkichaa

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irra kan maddani fi qaamolee haqaa keessatti hanqinaalee mul’atanidha. Rakkooleen haala raawwii yakkichaan walqabatanii jiran; yakkicha waliigalttee fi wal amantaan faaordion waliiniif raawwachuu, hirmaattotni yakkichaa, miidhamtuu fedhii kennite dabalatee itti gaafatamummaa yakkaa waan qabanif walii dhoksuu fi miidhamtuun hawaasaa balaaleeffatamuu fa’i. Kun immoo qorannoo yakkaa gochaa kana irratti adeemsifamu walxaxaa taasisuun himamattoonni carraa itti gaafatamummaa yakkaa jalaa miliquu bal’isa. Kana malees, hanqinootni qaamolee haqaa biratti mul’atan maddi isaanii tajaajilamtoota ykn dhimmamtoota ykn hojimaata qaama haqaa keessatti mudatu irraa dhufu. Rakkooleen tajaajilamtoota biratti mul’atan keessaa: miidhamtoonni battala miidhaan irra dhaqqabetti beeksisu dhabuu fi dhimmicha hanga xumuraatti hordofuu dhiisuu sababa gara garaan addaan kutuu yeroo ta’u; qaawwi dhimmamtoota biratti mul’atu immoo ogeessotni fi dhaabbileen fayyaa tokko tokko yakkicha irratti hirmaachuu fi miidhamtoota seera qabeessaan ulfa adda kutuu barbaadaniif tajaajila si’ataa kennuu dhabuun miidhamtuu rakkoo dabalataaf saaxilu fi k.k.f dha. Hanqinoota hojimaata qaamolee haqaa keessa jiru ilaachisee qorannoo yakkaa yeroon gaggessuu dhabuu ragaan barbaachisu baduu, himata yakkaa keewwata rogummaa qabuu banu fi mureessu dhabuu, miidhamtuun gocha ulfa baasu seeraan ala akka ishee irratti raawwatuuf fedhii kennite itti gaafatamummaa yakkaa osoo qabduu himachuu dhiisuu, adabbii gahaan akkaataa seeraan kennamu dhabuu fi galmee lafarra harkisuu fi k.kf warra gurguddoo dha.

Rakkoo gama kanaan jiru maqsuuf hojiin bu’uraa hanqinaalee armaan olii irratti hojjechudha. Isaanis; dubartootni yakkoota seeraan ala ulfa baasu fi GBMQ isaan irratti akka hin raawwaneef hubannoo gahaa uumuu, dhaqqabummaa tajaajila seeraa fi fayyaa caalaatti mirkaneesuu rakkoon kun akka hin uumamne dursanii ittisuun ni danda’ama. Rakkoon kun yoo uumame immoo, gama tokkoon himamattoota irratti qorannoo yakkaa barbaachisaa si’oominaa fi qulqullinaa gaggeessuu hojiiy haqaa mirkaneesuu yeroo ta’u, gama biraan immoo miidhamtoonni miidhaa kana irraa akka dandamatanifi haala miijeessuu dha. Fakkeenyaaf, qaama tajaajila fayyaa fi seeraa (Medico-legal service) bakka takkotti kennuu danda’u dhaabuu ykn dhaabbilee fayyaa keessatti qaamolee haqaa waliin ta’uun haala itti hojjechuun danda’amu uumuu fi kkf irratti hojjechuun barbaachisaa dha.
Kana malees, mootummaan tumaalee seera yakkaa keessatti dabalataan haguugamuq qabanii\textsuperscript{109} fi kanneen seera yakkaa keessatti tumamani raawwi irratti qaaawwa agarsiisan yeroo yeroon haalaa qabatama jiru irratti hundaa’uun fooyyessuu qaba. Fakkeenyaaf, yakka ulfa baasuu ilaalchisee itti gaafatamummaan yakkaa jaarmiyaalee namummaa seeraa qabanii aka uwwisu gochuu barbaachisaa dha. Ulfi kan uumame sababa dirqisiisani gudeeduu yookin quannamttii saalaa fira waliin raawwatame irraa argame yeroo jedhamu sababni kun dhugaa ta’uu mirkaneessuuf ragaa yookin qorannaan dabalataa akkaataa itti taasifamuu danda’u irratti seerri jiru fooyya’uu qaba. Kanaan walqabatee iccitii fi si’oomina tajaajila kanaa mirkaneessuuf qorannoon galmee battala miidhamtuun tajaajila kana argachuuf gaafattetti haala itti eegaluu danda’amurratti hojjetamuu qaba. Adabbiin yakkoota GBMQ tiin dubartii ulfaa fi ulficha irratti raawwataman irratti kennamus kaayyoo seera yakkaa fi qajeeltoowwan adabbiitiin aka walsimu danda’u seerichi fooyya’uu qaba.

\textsuperscript{109}Tumaalee haaraa seera yakkaa keessatti dabaluu ilaalchisee bu’ura Heera Mootummaa RDFI kew.55(5)tiin naannoleen dhimmoota seera yakkaa federaalan hin haguugamiin iratti aangoo seera yakkaa baasuu aka qaban waan tumeef, dhimmoota seerri yakkaa federaalaa hin uwwisiin irratti naannoleen, Oromiyaa dabalatee, seera naannoo isaanntii haguuguu danda’u.
ETHIOPIAN WITNESS PROTECTION SYSTEM: COMPARATIVE ANALYSIS WITH UNHCHR AND GOOD PRACTICES OF WITNESS PROTECTION REPORT*

Wekgari Dulume**

ABSTRACT

Witnesses play an indispensable role in the justice system. As Bentham says “Witnesses are the eyes and the ears of justice.” They assist the court in deciding the guilt or otherwise of the accused person. They are crucial in a criminal proceeding; from reporting of crime to its trial. The evidence by a witness is crucial for the conviction of offenders. At the same time, individual facing criminal investigation or prosecution wants to obstruct the justice administration and relief themselves of liability; by intimidating witnesses and/or their families to jeopardize the criminal proceeding. Hence, it becomes very important to protect the witnesses to make sure they are not intimidated in order not to fear revealing the truth in court. This article discusses the concept of witness protection in Ethiopia and analyzes its protection law; emphasizing on provisions that are very essential for effective implementation by making comparisons with UNHCHR, Good Practices of Witness Protection, UNODC draft model law and some countries’ laws where witnesses are protected well. From the comparative analysis factors affecting implementation of the law like lack of necessary fund, organized staff, awareness about the law is concluded. Awareness creations, allocating necessary budget for the protection program, enacting regulation, and courtroom protection procedural guideline are measures needed to be taken for effective implementation of the law.

1. INTRODUCTION

A number of factors have led to increased attention for the role of witnesses in criminal proceedings at international level during the last 10-15 years. Perhaps the two most important factors have been the emergence of interest in the status of victims and witnesses in criminal proceedings and the significant rise in terrorist and organized crime.1 The legal obligation of a

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witness to testify in the criminal file is fair and equitable as long as there are no threats putting at risk the life, bodily integrity, freedom, asset or professional activity of the witness or any of his/her family members upon the fulfillment of an obligation.\(^2\) The successful prosecution of crimes largely depends on securing reliable evidence, including the testimony of witnesses.\(^3\) When witnesses withdraw from proceedings due to intimidation or actual harm, securing convictions often becomes impossible. For this reason, the protection of witnesses remains a cornerstone of an effective criminal justice system. According to a review of Witness Protection Programs around the world, including the U.S., the protection of victims and witnesses is essential to acquire convictions and maintaining public confidence in the effectiveness of governments to protect their citizens.\(^4\) Consequently, it has become an important issue for both the academic and practical departments to protect the personal rights, property rights, action rights, etc. of the witness.\(^5\)

Coming to Ethiopia, a proclamation to protect witness or whistleblower has come to force from 2010. It covers several measures in protecting witness and includes procedural laws for protecting witness or whistleblowers. This proclamation which serves as both substantive and procedural laws towards protecting witnesses or whistleblowers is widely blamed of some drawbacks that hinder its effective implementation. This article examines factors that affect its implementation by comparing it with good practices of witness protection, UNODC draft model law, and A/HRC/15/33 Report of the United Nations High Commissioner for Human Rights on the Right to the Truth; since countries are required to harmonize their protection laws in line with the spirit of the the report for holistic protection.


For this, the article is organized into five sections. Following this introductory section, section two briefly traces the origin and how the idea of witness protection spread across the world. Historical background, legal basis of witness protection, and the right of the accused are all treated under this section. Section three briefly indicates Ethiopian witness protection legal framework before the enactment of separate proclamation. Section four comparatively analyses the Ethiopian witness protection law by pinpointing some important provisions. Finally, section five gives conclusions and recommendations.

2. WITNESS PROTECTION: GENERAL OVERVIEW

The term ‘witness protection’ denotes a range of actions applicable at any stage of criminal proceedings to safeguard witnesses and thereby ensure their effective cooperation in providing testimony. \(^6\) “Witness protection programme” which is referred to as witness protection is defined as formally established covert programme subject to strict admission criteria that provides for the relocation and change of identity of witnesses whose lives are threatened by a criminal group because of their cooperation with law enforcement authorities. \(^7\) Witness protection is the process in which witnesses who testify in criminal trials are provided with specific procedural and non-procedural protection measures aimed at effectively ensuring theirs and sometimes including their relatives’ safety before, during and after their testimony. \(^8\) These given definitions have similar meaning stating measures necessary to protect witness so as to make sure that those cooperating with the justice system are not harmed because of their involvement to bring deviants to justice. In general, witness protection legal system which is

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\(^8\) European community has made working document on the feasibility of EU legislation in the area of protection of witnesses and collaborators with justice; and in this working document witness protection is defined. However, the community reached the conclusion the time does not seem ripe for immediate legislative action at EU level in witness protection which binds all EU members as most of the EU members got their respective witness protection law either separately or in their criminal procedure.
equated with witness protection is contained within multiple subjects as constitutional jurisprudence, science of procedural laws and sociology. On one way or another, witness protection has a great link with constitutional, procedural and sociological matter. For instance, when we talk about anonymity of witness, there is no way to jump over constitutional issue i.e. the right of accused. It also involves science of procedural law; (in and out of court protection). Best witness protection starts as early as an investigation start which is out of court and during testimony in the court room to ensure witnesses testify free of intimidation. It is also the matter of sociology as witness protection involves social cohesion of the protected person. Scholars like Cheng, Mao and Zhu defined the concept of witness protection.

The term witness protection is defined nowhere in Ethiopian Witness and Whistleblowers Protection Proclamation No. 699/2010 (here in after, WP). The Proclamation starts with why it is necessary to have witness protection law and simply defined what witness or whistleblower means and who protected person is. The meaning of witness protection could be inferred from the definition given to who witness and protected person is. Thus, inferred meaning of witness protection is, measures that maybe taken in order to protect witness or whistleblower and/or families from intimidation

9 Dr. YvonDandurand and Kirstin Farr N.P, Supra note 4.
10 According to Cheng, Witness protection legal system refers to “the protection system that judicial offices implement to ensure the safety of a witness and his or her relatives in a certain range. In his view, judicial office implements protection measure. For instance, if the protection measure agreed is to anonymous testimony judicial officer will implement the same in proceeding provided it does not hamper right of the defendant. In the view of Miao, state has duty to implement witness protection to safe guard the interest of witnesses and their relative. This stand shows for protection measures like relocation, which demands construction of institution within state’s financial power. And therefore, it is better to give this duty to a state for its implementation. Zhu focused on the physical protection measure referring state implementation by avoiding the hinder of witness testify by means of violence and threats, or the retaliation behaviors of assault and insult on testified witness and relatives regarding their safety and interests.
11 Providing protection to witness or whistleblower is important in the prevention of crime as it plays significant role in bringing offender to justice by uncovering crimes that causes serious threat to the public. This creates conducive environment for witnesses and whistleblowers from being intimidated testifying commission of crime. Article 2 (1&2) define who witnesses or whistleblower and protected person is. Accordingly, witness means a person who has given or agreed to give information, or has acted or agreed to act as a witness in the investigation or trial of an offence and protected person means a witness, a whistleblower or a family member of a witness or whistleblower who has entered into a protection agreement with the Ministry.
or threats against their life, security or property; because of cooperation with law enforcement or judicial authorities in the maintenance of justice.\textsuperscript{12}

2.1. HISTORICAL BACKGROUND

Witness protection first came to prominence in the United State of America to dismantle Mafia style criminal organizations.\textsuperscript{13} Before its formal establishment by act, witness protection system started to protect people testifying against a member of \textbf{Ku Klux Klan}.\textsuperscript{14} An established formal program of witness protection in the United States dates back to organized criminal control act of 1970. This protection system is run by the United States marshal service. Earlier in the 20th century, the Federal Bureau of Investigation also occasionally crafted new identities to protect witnesses.\textsuperscript{15} Currently, many states, including California, Connecticut, Illinois, New York and Texas, as well as Washington D.C, have their own witness protection programs for crimes not covered by the federal program.\textsuperscript{16}

In the United States, before witness protection funds can be sought, law enforcement must conduct an assessment of the threat or potential for danger. This assessment includes an analysis of the extent the person or

\textsuperscript{12} Meaning of witness protection could be inferred from reading of Witness Protection Proclamation No. 699/2010, Art 2(1, 2), Art 3(1b) and Art 4.
\textsuperscript{14} The Ku Klux Klan (KKK) is the name of three distinct past and present movements in the United States that have advocated extremist reactionary currents such as; white supremacy, white nationalism, anti-immigration. This Klan historically expressed through terrorism aimed at groups or individuals whom they opposed. All three movements have called for purification of American society and all are considered right organizations. In the Enforcement Act of 1871, the President is empowered to suspend the writ of habeas corpus to combat the Ku Klux Klan (KKK) and other white supremacy organizations. And someone who testifies in the court for what they committed will be protected.
\textsuperscript{15} Gary T. Rowe Jr., 64, Who Informed on Klan In Civil Rights Killing, Is Dead states “He was buried under the name of Thomas Neal Moore, the identity that Federal authority helped him to assume in 1965 after he testified against fellow Klansmen.
persons making the threats appear to have the resources, intent, and motivation to carry out the threats and how credible and serious the threats appear to be.\textsuperscript{17} When threats are deemed credible and witnesses request law enforcement assistance, witness protection funds can be used to provide assistance to witnesses who help law enforcement, keep witnesses safe and help ensure witnesses appear in court and provide testimony.\textsuperscript{18}

Today, witness protection is viewed as a crucial tool in combating organized crime, and a large number of countries around the world have established such specialized programmes or have legislated for their creation. Examples from different jurisdictions among many; Australia, for instance has introduced witness protection in 1983. In 1983, a Royal Commission highlighted the need in Australia for better use to be made of informers in the fight against organized crime and, accordingly, for lower-level players to be given an incentive to inform on organizers. At that time, arrangements for witness protection were a matter for individual police forces and approaches differed, with some placing emphasis on 24-hour protection and others preferring relocation of witnesses under new identities.\textsuperscript{19} Witness protection programmes have been in place in Germany since the mid-1980s.\textsuperscript{20} They were first used in Hamburg in connection with crimes related to motorcycle gangs. In the following years, they were systematically implemented by other German Lander (federating units) and the Federal Criminal Police Office.

In Africa, where witness intimidation and harm have led to case dismissals and acquittals, justice fails in these circumstances.\textsuperscript{21} This demands responding appropriately to complex transnational and international crimes require a multifaceted approach that includes a robust criminal justice response.\textsuperscript{22} Protection for witnesses is, therefore, central to effective rule-of-law-based responses and robust criminal justice systems. In most of the

\begin{thebibliography}{99}
\bibitem{17} Naveena Varghese, National University of Advanced Legal Studies, \textit{Witness Protection: Problems Faced and Need for a Protection Programme in India} (2015), P8.
\bibitem{18} Matthew O’Deane, ‘Gang’. Gangs: Theory, Practice and Research.
\bibitem{19} UNODC (2008), \textit{Supra} note 7.
\bibitem{20} \textit{Ibid}.
\bibitem{22} \textit{Ibid}.
\end{thebibliography}
African countries, witness protection is absent, or weak, or inconsistent. This seriously hampers efforts to successfully prosecute serious crimes.

A case in point is Nigeria, where, in April 2014, a crucial prosecution witness declined to testify during the trial of alleged Boko Haram member Dr. Muhammad Nazeef Yunus. The judge’s earlier decisions to disallow the use of masks to conceal the identity of witnesses in favor of using a cubicle and to maintain an open court is likely to have resulted in the witness’s withdrawal.23 The trial is still to be finalized.24 Similarly, the withdrawal of certain key protected and unprotected witnesses in the International Criminal Court (ICC)25 case against the Kenyan President, Uhuru Kenyatta, relating to crimes committed during post-election violence in 2007/08 in Kenya led to postponements and the eventual withdrawal of charges for lack of evidence.26 Some of those who withdrew are said to have been insider witnesses who represented substantial evidence for the prosecution’s case. Kenyatta’s lawyers have denied involvement in any form of witness intimidation.27

Witness intimidation, and/or harming witnesses is believed to have played a role in the 2004 disappearance of Peter Mulamba, a key witness in the

25Similarly, in September 2015 the ICC opened a case against Jean-Pierre Bemba Gombo for subverting the course of justice for, among other things, corruptly influencing witnesses to give false testimony in connection with the ICC case against Bemba for war crimes and crimes against humanity in the Central African Republic.
27N Kulish and M Simons, Setbacks rise in prosecuting the president of Kenya, 19 July 2013 www.nytimes.com/2013/07/20/world/africa/dwindling-witness-list-threatens-case-against-kenyan-president.html. On 5 April 2016 the ICC ruled that the Kenyan deputy president, William Samoeiarap Ruto, and his co-accused, a radio journalist, Joshua Arap Sang, had no case to answer for in the charges of crimes against humanity allegedly committed during the 2008 post-election violence. The termination of the case was due to interference with witnesses, recanting of testimonies, disappearances or as a result of political meddling and intimidation. The accused denied the allegations, despite an ICC warrant for the arrest of a Kenyan journalist, Walter OsapiríBarasa, in 2013 on charges of being involved in a 'witness interference scheme' in the same case.
corruption case against former Malawian Finance Minister, Friday Jumbe. Reports pointing to Mulamba’s death surfaced but were allegedly untrue.28 Preventing witnesses of serious crimes or crimes involving high profile or influential people from being intimidated or harmed is, therefore, central to witness protection. Individuals are more likely to testify if they can be guaranteed of their safety and that of their families. Nevertheless, harming, threatening, interfering with or intimidating witnesses are not sufficiently addressed, either in legislation or protection services, in most African countries. It is worth noting that justice processes other than criminal justice ones, such as transitional justice measures, are also subject to these concerns if witnesses do not feel safe to testify.29 Insufficient funding, shortage of skill, weak political will/interest is among obstacles preventing practices of witness protection in Africa.

Currently, Africa has recognized the significance of witness protection; addressing serious crimes. Specifically; the African Union Model National Law on Universal Jurisdiction over International Crimes stipulates both prosecutorial and court responsibility to ensure the protection of witnesses.30 The Rules of Procedure of the African Commission on Human and Peoples’ Rights also acknowledge the need to prevent reprisal against witnesses. Other forums, such as the Africa Prosecutors Association, the East African Association of Prosecutors, and the East African Magistrates and Judges Association, also emphasize the crucial function of witness protection in fighting complex crimes.31 Despite these agreements and bodies, however, there is only limited provision for witness protection at the national level in many African countries.32

International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone are prominent institutions established in Africa to prosecute responsible persons for genocide crime, serious violation of international humanitarian law committed in Rwanda and Sierra Leone respectively. These tribunals employed witness protection in the process of investigation and making them responsible for atrocities happened in the country.

Months after the genocide ended in Rwanda, the UN Security Council created an International Criminal Tribunal to prosecute those responsible. ICTR has played a pioneering role in the establishment of a credible international criminal justice system, producing a substantial body of jurisprudence on genocide, crimes against humanity, war crimes, as well as forms of individual and superior responsibility. In the statute of International Tribunal for Rwanda, there is a provision for witness protection. Witness and victim protection has already emerged as a major problem for the tribunal. This is especially true for prosecution witnesses as the ongoing violence in Rwanda has already claimed many genocide survivors who were both potential victims and witnesses. The United Nations Human Rights Field Operation in Rwanda (HRFOR) has investigated these attacks and uncovered chilling accounts of targeted killings to eliminate potential witnesses who could testify about the 1994 genocide in either Rwandese courts or the ICTR. To protect witnesses who intends to bring perpetrator of the crime to justice, a chamber may hold an in camera proceeding to determine whether measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a

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33Statute of the International Tribunal for Rwanda, Art 1. According to this provision, the tribunal has the power to prosecute persons responsible for serious violation of international humanitarian law committed in the territory of Rwanda and Rwandan citizens in the Rwandan territory or neighboring states between 1 January and December 31, 1994.

34Statute of the Special Court for Sierra Leone, Art 1. As per this article, the special court has the power to prosecute persons who bears greatest responsibility for serious violation of international humanitarian law and Sierra Leone law committed in the territory of Sierra Leone since 30 November 1996.


37Statute of the International Tribunal for Rwanda, Supra note 33, Article 21.

38HRFOR, Status Report/33/1/24 January, 1997, "Killings and other attacks against genocide survivors and persons associated with them, January to December 1996".
witness, or of persons related to or associated with him by such means as: Giving of testimony through image or voice-altering devices or closed circuit television and the like. Protecting witnesses who are said to be eyes of justice system ICTR managed to indict 93 individual sentencing 62 of them.

The Special Court for Sierra Leone was established by an agreement between the Government of Sierra Leone and the United Nations in January 2002. Even though there is no explicit call provision for witness protection in its statute unlike that of statute for ICTR statute, the Special Court operates a witness-protection program that seeks to meet victims’ and witnesses’ needs, including psychological assistance, before, during, and after trial. Most of the witnesses used at the Special Court are children and to limit their vulnerability psychosocial support and identification of potential witnesses have been investigated. Even in some cases although witnesses were both over 18, they continued to benefit from special measures for children. This included granting pseudonyms and other measures to protect their identity. Closed circuit television was used to avoid confrontation in the courtroom and risks of re-traumatizing (although some preferred to testify in the courtroom).

Most witnesses before the Court benefit from protective measures like relocation, either to neighboring countries (usually under informal arrangements) or overseas. Since Sierra Leone is a small country in which information travels quickly through informal networks, and ex-combatants of all factions remain in the community and the difficulty to find countries willing to conclude formal arrangements to host witnesses and their relatives, particularly so-called ‘insiders’, protecting witness remain challenging. In building complex criminal prosecutions, the office of Prosecution has interviewed hundreds of witnesses and placed dozens of them in various forms of protected custody. Many witnesses have required relocation. The costs of witness protection are inevitably high where

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39ICTR Rules of Procedure and Evidence Rule, 75(B (i c)).
40Supra note 36.
41The report of prosecutor general at Special Court of Sierra Leon on Nov. 10-12, 2005 shows witness protection on going and most of them benefited as children; Luc Cote, “Prosecuting Child Related Crimes at the Special Court for Sierra Leone: A Mid-Term Assessment,” presented at UNICEF Conference on Transitional Justice and Children, Florence.
42Ibid.
relocation measure is taken that demands adequate fund. Therefore, Special Court raised fund from different donor countries. This shows how crucial funding is for witness protection.

One of the most innovative aspects of the Special Court for Sierra Leone is its Defense Office, which may be a promising new model for defense services in international tribunals. Defense Office represents a considerable improvement over approaches in other criminal courts, where the defense has typically suffered a lack of institutional support and the trials have been plagued with issues of inequality of arms. Currently, international observers agree that in general terms, the trials before the Special Court are in compliance with fair trial standards, which is largely due to the Defense Office’s role. Although there have been valid complaints regarding late disclosure of materials by the Prosecutor (including revealing the identity of a witness 21 days before he was called), insufficient funding for investigators and experts, and problems of performance by individual defense counsel which steps have been taken to address some of these concerns. Generally, the Special Court was seen as an improvement in terms of implementing a narrow focus on “those bearing the greatest responsibility”, which in turn would allow for a more limited and efficient approach. When evaluated on these terms, the Special Court is succeeding in rendering a measure of justice for some of the worst atrocities in Sierra Leone, as a number of prominent former faction leaders are facing trial and therefore their experience is interesting in witness protection thereby resulting preservation of justice system.

43 Countries like Japan, Netherlands, Sweden, United Kingdom, U.S.A, Canada, Denmark, Finland, Germany, Ireland donated to the Special Court in 2003-2005 to the total approximately 15, 742,138 in 2002/2003, 21, 801, 390 in 2003/2004 and 18, 620, 444 and other countries supplied by the Special Court. Other donors to the Court, for smaller amounts, include Australia, Belgium, Chile, Cyprus, Czech Republic, Greece, Israel, Italy, Lesotho, Liechtenstein, Malaysia, Mali, Mauritius, Mexico, Nigeria, Oman, Philippines, Senegal, Singapore, South Africa, and Spain.

44 Supra note 36.

45 Tom Perriello and Marieke Wierda, Senior Associate at the International Center for Transitional Justice (ICTJ), Hybrid Courts Case Study the Special Court for Sierra Leone under Scrutiny pdf (2006), P1.
2.2. LEGAL BASES OF WITNESS PROTECTION

The issue of witness protection has been gaining attention by countries, not only as to how to better protect witness under threat but also how to better assist them during their contact with the criminal justice system. The reasons for the attention may be due to both increase and globalization of crime which has affected countries. Additionally, the issue is being raised due to the jurisprudence and practice of the international tribunals and courts. Witness protection has legal bases internationally, regionally as well as nationally in many countries.

At international arena United Nations General Assembly passed resolution that covers witness protection on transnational organized crime. United Nations Office on Drug and Crime has drafted model law on witness protection with the purpose of protecting witness and their relatives whose life or safety is at risk because of their involvement in justice system. United Nations Convention against Corruption Recognized Witness Protection.

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46 Karen Kramer, protection of witnesses and whistle-blowers: how to encourage people to come forward to provide testimony and important information.
47 Witness protection got attention in international arena; such as the International Criminal Court, the Extraordinary Chambers in the Courts of Cambodia (ECCC), the International Criminal Tribunal for Rwanda (ICTR) and the former Yugoslavia (ICTY) and the Special Court for Sierra Leone (SCSL) and the Special Tribunal for Lebanon (STL).
48 United Nations Convention against Transnational Organized Crime, Resolution 55/25 of November 2000 Article 24. As per this provision, all parties to the convention are encouraged to take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences… [Including], as appropriate; their relatives and other persons close to them.” Specifically, it calls for the establishment of procedures “for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons.
49 UNODC model law on witness protection on its very article one states the purpose of the law is to provide the conditions and procedures for ensuring special protection on behalf of the state to witnesses in possession of important information, who are facing potential risk or intimidation arising from their cooperation in the judicial process.
50 In order to have effective legal instrument against corruption, UN General Assembly adopted resolution 58/4 after series of negotiation on October 31, 2003 which became functional as of December 2005. On its Art 32, 33, 37 the States parties are called upon to take appropriate measures for the protection of witnesses against retaliation or intimidation for their testimony. Under the Convention, protection should be granted not just to witness collaborators but also to victims who become witnesses and it can extend to family members or persons close to the witness.
through principally two resolutions. Nowadays large number of countries all over the world have witness protection law. After all, witness protection has legal bases and is regulated by specific legislation in some countries and in some other the case isn’t true in countries like Austria, Denmark, Finland, France, Greece, Ireland, Luxemburg, the Netherlands and Spain. In the UK, witness protection evolved out of police practice, but was given statutory footing in 2005.

2.3. WITNESS PROTECTION AND THE RIGHT OF THE ACCUSED

Witness protection has been a key concern of the international criminal system since the establishment of international criminal tribunals in the decade before the ICC. The ICTY and ICTR have incorporated in their statutes an explicit call for the protection of victims and witnesses, alongside respect for the rights of the accused. Therefore, protection should be made without jeopardizing the right of defender. In the UNCAC, protection measures are mandatory for crimes covered by the convention, but only when appropriate, necessary, without prejudice to the rights of the defendant and within the means of the state. As a result, the obligation to provide effective protection is limited to specific cases or specified conditions and officials have some discretion in assessing the level of threat and decide on protective measures accordingly.

51Resolution of the council of 23 of November of 1995, http://europa.eu/smarttapi/cgi/sgadoc?smartpi!prod!CELEXnumdoc&lg=EN&numdoc=31995Y1207 (04) &model=guichett. It call on member states to guarantee proper protection of witness against all form of direct or in direct threats, pressure or intimidation, as well as during and after trials.
52Naveena Varghese, Supra note 17, P1.
53In some countries, including Austria, Slovakia and the UK, witness protection is associated with the police, in others (e.g. the Netherlands) the programmes operate within the executive or the judiciary. In Italy and Belgium WPPs are implemented by multidisciplinary bodies: respectively the Central Commission, composed of the Under-Secretary of State at the Ministry of the Interior, two judges or prosecutors and five experts in organized crime, and the Witness Protection Commission, composed of prosecutors, high-level police officers and representatives of the Ministries of Justice and the Interior.
55UNODC, Supra note 7.
56Ibid.
Protection measures also need to be within the means (resources and capacity) of the state. Thus, constitutional values and rights of accused and any third party should not be affected under the guise of witness protection. This constitutional issue could be raised since one among witness protection measure could be witness anonymity which in turn affects the right of cross examination. There is great public interest in avoiding the protection of witnesses who might pose a threat or whose protection might alienate the rights of others to whom witnesses and the state owe a duty of care. These interests must be weighed against the public good of fighting forms of organized crime often resistant to rudimentary law enforcement procedures. There are a number of situations where the right of the accused is compromised with witness protection at international standards resulting in the priority of public security at the risk of accused right of defense.

For instance, in Prosecutor vs. Tadic before the International Criminal Tribunal for the former Yugoslavia (ICTY), the court held that the identities of witnesses could be withheld indefinitely from the accused and the counsel. This was an important and severely mitigating precedent for the rights of the accused. Justice Stephen's dissenting opinion, however, found the provision of anonymity would deny the accused’s fair trial and may lead to convictions on the basis of tainted evidence. Authorities on international law, such as Christine Chinkin, err on the side of the majority in that 'other interests' need to balance an accused right to know and confront prosecution witnesses. Clearly, these interests involve the safety of witnesses and victims. International instruments which instruct the accused right to a fair trial, such as article 14 of the International Covenant on Civil and Political Rights (ICCPR), should not, in practice or perception, appear to be

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57Ibid.
58N kulish and M Simons, Supra note 27.
59International Criminal Tribunal for the former Yugoslavia, Prosecutor vs. DuskoTadic, Decision on the prosecutor’s motion requesting protective measures for victims and witnesses, Trial Chamber, UN Doc IT-94-1-T, 10 August 1995. The court further analyzed the "balancing exercise" now so familiar in this and other fields of the law must be undertaken. On the one hand, there is the public interest in the preservation of anonymity . . . On the other hand, there is the public interest that . . . the defendant should be able to elicit (directly or indirectly) and to establish facts and matters, including those going to credit, as may assist in securing a favorable outcome to the proceedings. There is also the public interest in the conduct by the courts of their proceedings in public.
compromised. To do so, paint some protective measures as impeding a fair and equitable justice process at best, and, at worst, severely undermines the legitimacy of justice institutions and processes. Chinkin cites the novel dimension of protecting witnesses where large-scale violent conflict has taken place. In such circumstances she finds that a climate of fear and intimidation exists and that witnesses are spread across borders, thereby limiting protective capacity to engage normative measures.  

Under article 14 of the ICCPR, a fair trial includes the right to 'examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him'. Chinkin qualifies the clear abrogation of such rights through the provision of indefinite anonymity by citing article 14 as non-derogable, not absolute and, therefore, requiring qualification in a situation of public emergency. The anonymity of witness jurisprudence requires full disclosure to the defense, but not necessarily the public, prior to trial. This allows adequate defense preparation and witness cross-examination. In circumstances of great threat, pre-trial physical protection, particularly surrounding disclosure and testimony, is critical to achieving observation of the accused right to fair trial, as well as the physical and psychological wellbeing of witnesses.  

According to Article 20(1) of the FDRE Constitution, accused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged. This right may be limited and the court may hear cases in closed session with the view of protecting the right of privacy of parties concerned, public morals and national security. Moreover, as per Article 20(4) of the Constitution, accused have the right to full access to the evidence presented against him and examine them. This right, however, may be derogated in case the attendance of witness may expose them to the threat to the life or property of the witness or relative merely because of aiding justice organs. When the issue of witness protection arises, it is not only protecting the witnesses or their relatives but also about perseveration of

61 Id, P76.  
63 Chinistine, Supra note 60, P77.
justice system and general public interest. This could be inferred from reading Art 3 (1(a & b)) of WP. Therefore, it is possible to trade the right of accused; mainly examinations of witness when it is believed a threat of serious danger exist to the life, physical security, freedom or property of the witnesses or their relatives.

Protection measures applicable to witness are listed under Article 4 of Ethiopian WP law. Among protection measures, producing evidence by electronic devices or any other method, hearing testimony behind screen or by disguised identity, non-disclosure of the identity of a witness until the trial process begins and witness testifies, hearing testimony in camera poses danger to the right of accused. Producing evidence electronically affects the right of the accused the most since there is no way to cross examine witness who testified against him/her. In order to protect the right of the accused to some extent, unlike that of ICTY where most of evidences produced electronically, ICTR and Special Court of Sierra Leone used direct witness testimony under protection. Like experiences of ICTR and Special Court of Sierra Leone shows, there could be possibility of limiting the right of accused for witness protection. Thus, issue of witness protection and right of the accused could be solved in the same way in our case, too; as far as constitutional right is concerned.

3. WITNESS PROTECTION SYSTEM IN ETHIOPIA

The idea of witness protection came to being by Federal Ethics and Anti-Corruption Commission Establishment Proclamation No. 235/2001. The Proclamation put duty on the Commission to provide physical and job security protection to witnesses and whistle blowers. This proclamation simply made protecting witness and whistleblower duty of Federal Ethics and Anti-corruption Commission without listing procedures for protection and kinds of protection measures that may be taken. Because of that, protection under this proclamation could be judged incomprehensive to guarantee the protection of witness and whistleblower. Proclamation No. 433/2005, which revised Federal Ethics and Anti-corruption Commission Establishment Proclamation No. 235/2005; repeated the same issue adding

the necessity of cooperation with other bodies. It made reference to law; in order to provide the protection. The problem here is non-existence of the law that provides protection at the time.

Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 236/2001 has provision that protect whistleblower. According to this proclamation, the objective of whistleblower protection is to encourage disclosure of corruption offences. Although, witness protection is equally important as whistleblower, the proclamation lacks witness protection provision. The amendment proclamation of 236/2001 i.e. Proclamation No. 434/2005 added witness protection and made reprisal against them illegal.65

Under Article 38 (2) of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005, public prosecutor may apply to court keep identity of witness in secret during preparatory hearing and if court authorizes, the identity of witness will be kept secret. This could serve as a means of witness protection; however, nothing is said as to how long the witness identity could be kept undisclosed or whether it could extend to normal hearing. Therefore, protection under this proclamation could be judged as not comprehensive enough to protect witnesses.

With the introduction of Ethiopian Criminal Justice Policy in 2003 E.C. (Herein after (CJP)), witness protection got a vast coverage. According to the policy, most of the time witnesses refuse to testify even though they know commission of a crime and who committed it; due to fear of reprisal or threat of intimidation. Thus, protecting witness is the must work to be carried out. Under 3.19 of CJP, most of the time criminal justice fails due to lack of witness. This happens in most cases as witness refrain from testifying because of threat from offenders. So, if they are protected obviously justice would be served. In some cases the victims even fail to bring their cases to court as they face intimidation and threat from offenders or their relatives. To make sure victims bring their cases to justice overcoming fear of threat, the policy extended protection to victims of a crime.66 In order to have effective criminal prosecution especially for heinous crimes, there is a need to protect witnesses who testify against such criminals. Taking protection

66አብዛኛውን ከወንጀል ድርጊቶች ቁልፍ ምስክር ሆነው የሚቀርቡት ራሳቸው የወንጀል ተጎጅዎች በመሆናቸው ምክንያት ሲሆን የሚደረግ ጥበቃ ለእነሱም በተመሳሳይ መልኩ እንደሚያስፈልግ ይታወቃል፡፡
measure starts at the time of crime investigation; continues during proceeding and may extend after conviction.67 The policy has given direction for its implementation, by stipulating that provisions protecting witness shall be added in laws like criminal procedure code and other related one. Nowadays, Ethiopia has law that governs witness and whistleblower protection.

4. ETHIOPIAN WITNESS AND WHISTLEBLOWER PROTECTION PROCLAMATION

As stated in its preamble, the purpose of this enactment was to create conducive situation in order to ensure safety and security of the public by having criminal offenders brought to justice and sustain the right penalty.68 This is needed for prevention of crime by disclosing crimes that may cause serious threat to the public; and to protect witnesses and whistleblowers of criminal offense from direct or indirect danger and attack they may face as a consequence thereof and thereby to ensure their safety.69 The proclamation is applicable to witness who wishes to give testimony or whistleblower who gives information on suspect punishable with ten or more years rigorous imprisonment or with death. The proclamation put two grounds under which witness is protected. One is where offence may not be revealed without the testimony of the witness or whistleblower's information. The other is existence of serious danger to the life, physical security, freedom or property of the witness or whistleblower or their respective family.70 The proclamation serves as both substantive and

67Policy listed bundles of issues like at which time the protection will be made; which in this case shall start at prosecution and may extend to after conviction of criminal. The policy also stated protection may be physical and property protection; concealing identity; hearing the testimony of the witness through video are included in the policy, which make it good as of legal framework save its implementation.
68Ibid.
69Ibid.
70The proclamation made criterion basing on which witness or whistleblower or their respective family are going to get protection. As per this proclamation, the base of crimes
procedural law. In the 1st and 2nd part, issues like who could be protected? What kinds of protection measure may be taken? Criteria used to determine necessary protection measures are broadly dealt. In this regard, the proclamation has established legal framework even though its protection is not quite broad.

In Taiwan which has model law that protects witness; protection is accorded to offences punishable with not less than three years. In our case protection is applicable to offences that entail ten or more years imprisonment. In our criminal law, crimes entailing ten and more years punishment are limited. Moreover, in UNCAC witness protection is envisaged which Ethiopia has also ratified. However, under our corruption law ten or more years imprisonment is very rare which results in non-applicability of witness protection scheme in some cases of corruption offences despite protection envisaged in the UNCAC. From the very nature of corruption offences which are committed most of the time by high officials; witnesses are susceptible to intimidation as the criminals could reach them easily. An experience of other countries shows witness protection law makes exception as to the applicability of the law to corruption offences but, such exception isn’t made in WP. For instance, in Taiwan protection is accorded for witness testifying against corruption offence even where the crime entail less punishment envisaged in witness protection law. This shows some limitation of the proclamation even if this does not affect its implementation. Because, it is possible to apply protection measures envisaged in the WP proclamation with all its limitations. Witness may face some problems when protected. For instance, if protection measure taken is relocation, the witness may be isolated from families, social life, and there is possibility of adapting culture of the society where s/he relocated for protection purpose.

Protection measures that could be applied to protected person or families are listed in the WP. The majors are: physical protection of person and property, relocation, concealing identity and change of identity. There are more

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71 Gong, W. L., Supra note 5.
72 Ibid.
measures that could be taken in protecting a person.\textsuperscript{73} According to A/HRC/15/33 report which helps developing comprehensive witness protection; programmes and measures for protecting witness and victims should start at early stage. At early stage, it should be emphasized witness and victim protection cannot be viewed in isolation, but must rather be considered a crucial part of a comprehensive system designed to effectively investigate and prosecute perpetrators of human rights violations. Protection measures will be ineffective if other parts of the criminal justice system do not function well. Every step of the process, from investigation through to conviction and punishment, should be analyzed to identify ways in which witnesses are placed at risk, and potential reforms designed to limit those risks.\textsuperscript{74} According to the report, countries while developing their witness protection law have to add provisions that state protection shall start at early stage. For instance, Bosnia and Herzegovina witness protection law under Article 6 states during investigation, prosecution and after the indictment, court has to keep witness’s personal details undisclosed.\textsuperscript{75} From the reading of article 3 and 6 of WP, we can find the non-procedural protection; i.e. protection at the early stage as envisaged in A/HCR/15/33 report. Countries are required to introduce procedural guideline for court room protection measure in order to protect witness from intimidation in the courtroom. Procedural guideline deals with how witness testifies in the courtroom without being exposed to threat. Among measures that may be taken in courtroom procedural guideline; testifying under a pseudonym, behind screen, removals of accused from court room at the time of testimony. Countries, like Bulgaria, Canada, Croatia, El Salvador etc. have introduced special method of courtroom procedure\textsuperscript{76} as it enhances witness protection. This is missing in our WP and no guideline is drafted by the organ entrusted to work on the matter. When there is no courtroom protection procedural guideline, there is possibility of potential exposure of witness and the programme to risk. Not only is the witness likely to be

\textsuperscript{73}Protection measures listed under Art. 4 of proclamation no. 699/2010 in all or partially applicable to protected person whichever is necessary to guarantee protection of the witness of whistleblower or their families.

\textsuperscript{74}A/HRC/15/33/ Report of United Nation High Commissioner for Human Rights on the Right to the Truth.

\textsuperscript{75}“Official Gazette” of Bosnia and Herzegovina, 3/03, 21/03, 61/04, 55/05, Art. 6.

\textsuperscript{76}UNODC, \textit{Supra} note 7.
vulnerable to intimidation and threats while physically present in the courtroom to give testimony, but sensitive information regarding the programme is liable to be exposed and tested by the parties (such as the identity and whereabouts of the witness or the security measures implemented). It is critical that any such risks be identified and addressed at the earliest opportunity through timely and appropriate consultation and liaison with the prosecution. Additional procedural protection measures may then be requested from the court for the duration of the testimony, such as the use of pseudonyms in witness statements or suppression of the identity of the witness if permissible under applicable law and if that does not so undermine the weight of the witness’s testimony as to be counterproductive.

To determine appropriate protection measure, the nature of imminent danger the witness or whistleblower is exposed to, cost to be incurred while protecting person, health and living condition of protected person and etc. has to be investigated. Taking these and many more matters into consideration, appropriate protection measures like change of identity, relocation, physical protection, or other protection measures listed under article 4 of the WP will be applied. The question left unanswered here is who investigate the existence of threat? This aims at protecting who really deserves protection. United Nations Higher Commissioner demands the establishment of a specific body responsible to investigate assessment of threat. This body should be from multi-disciplinary team with strong investigation capacity. In WP the investigation and assessment of the threat is not properly dealt with; the proclamation simply says when application for protection is made, the minister shall solicit opinion of investigator or public prosecutor. Since the proclamation did not made any special investigator specifically on the matter; investigator envisaged here is no more than police who investigated commission of crime which application for protection measure is made. This show there is no established system to investigate the existence of threat. Moreover, under the Proclamation No. 916/2015 Ministry of Justice is entrusted to ensure that whistleblowers and witnesses of criminal offences are accorded protection in accordance with the law. However, there is no organized staff responsible to work on witness protection and simply the prosecutors apply for protection if the witnesses
say they fear to testify.\textsuperscript{77} The Ministry did not made witness protection one division or section which shows very little focus given by the ministry. This may lead to bias for those in need of protection. Unless it is investigated deeply, under the pretext of witness protection, some may benefit unduly. This hampers the successful application of the proclamation.

Fund is key issue in operation of witness protection. The cost associated with setting up and operating a witness protection programme may be deterrent to countries. Budgets differ from state to state,\textsuperscript{78} depending on living costs, population size, crimes rates and other factors, and cost variations also result from several factors, including law enforcement activities, individual circumstances of the witness to be relocated, needs and safety of their family and close friends. However, cost must be weighed against benefits, which include combating impunity, strengthening rule of law and democracy, shorter investigation, more efficient prosecution, thus ensuring justice and integrity of the justice system. The UNODC on the draft model law urges state to allocate budget for witness protection.\textsuperscript{79} This is crucial for effective application of witness protection program. The complexity of the operations involved in each case depends largely on whether witnesses need to be relocated alone or together with persons close to them. The concept of sustainability must be recognized. Funds need to be adequate to sustain the new identity and relocation of witnesses into the future coming.\textsuperscript{80}

In the good practices of witness protection which countries are required to follow to take a holistic approach to witness protection, funding is key point for effective witness protection. They identify a series of measures that may be adopted to safeguard from intimidation and threats against their lives the physical integrity of people who give testimony in criminal proceedings. That is why every country follows the good practice in developing one’s own witness protection. The reason behind comparing Ethiopian witness protection


\textsuperscript{79} The State shall include in the national budget the necessary allocations for funding and operating the Program.

\textsuperscript{80} Supra note 36.
protection with good practice and UNHRC report comes from the above scenario.

In countries where witness protection is functional and considered effective, there is budgetary procedures and the financial cost of witness protection. For example, in Australia, the Australian Federal Police submits budget bids to the Government each year. Some of the funds are tied and can only be used for defined activities. The budget is divided among broad functions. For witness protection, staff salary costs per financial year are about 4.5 per cent of the “Protection” staffing budget, and operating costs are about 9 percent of the “Protection” operating budget. The programme has about 20–30 active cases per year. In accordance with the Australian Federal Police report for the period 2005–2006 on witness protection to the Parliament, the programmes annual cost was 1 million Australian dollars (approximately 775,000 United States dollars). In United Kingdom, overall budget details are not available for the United Kingdom. However, in the period 2006–2007, the budget for the witness protection programme of the Merseyside police force, which covers the Liverpool area (population: 1.5 million), was 550,000 British pounds (approximately US$ 1,080,000). In South Africa, the programme is registered as a sub-programme in the Department of Justice and Constitutional Development and was allocated a fixed annual budget of 55 million rand (approximately US$ 7.5 million) for the period 2006–2007 by the National Treasury. About 80 per cent of the programme’s budget goes to operational expenses. On average, there are 250 witnesses and 300 related persons in the programme. In the period 2001–2002, witnesses were under the programme for about five years. In 2006, the cycle was reduced to 2.5 years through the fast tracking of witness protection cases in the criminal justice system. Generally, countries where funding the protection program is available, it seems effective in protecting witness as well as punishing criminals.

82 Ethiopian Witness and Whistleblowers Protection of Criminal Offences Proclamation No.699/2010, the Preamble.
In some states government enact statutory provisions allowing the program to be funded through the use of proceeds from property seized or confiscated for having been acquired through activity involving drug trafficking or organized crime. Under Republic Act No. 6981, ten million pesos is authorized to form any fund to national treasury for the purpose of witness protection.\(^84\) Even where the activity is entrusted to certain institution, it is better to have fund reserved for protection program provided that institution have different activities. This is attention paid to questions of protection, taking due account of the lack of means and resources.\(^85\)

In Ethiopian witness protection law, there is no provision about budget for protection business. Absence of provision regarding budget affects its implementation as measures that may be taken to protect witness demands money. Ministry of Justice, which the protection law gave duty to give protection did not organized staffs necessary for the activity and did not allocated budget for this activity.\(^86\) When necessary budget is not allocated for this business obviously it is difficult to withdraw money from any title when needed. This indirectly affects the implementation of the law. Attorney general, who replaced ministry of justice, is researching how to effectively organize witness protection program. Giving hope witness protection will be practiced well under Attorney General; the attorney general shall consider allocating necessary fund for witness protection program.

Qualified staffing is a crucial element for the success of any protection programme. Witness protection officers need to possess a particular set of qualities and skills. They are required to be vigilant protectors, interrogators and undercover agents, as well as innovative thinkers, social workers, negotiators and even counselors. One of the first tasks when establishing a programme is to decide where to find people with such qualifications.\(^87\) The

\(^{84}\)Section 20 of an act providing for a witness protection security and benefit program and for other purposes. Accordingly, (p10,000,000) is here by authorized to be appropriate out of any funds in the national treasure not otherwise appropriated to carry into effect the purpose of this act.


\(^{86}\)Australia, *Supra* note 81.

\(^{87}\)According to good practices training is important in maintaining witness protection. Ongoing skills maintenance and development is the key to the effectiveness of a witness protection programme. Protection officers perform a number of functions that require aptitudes that are different and perhaps broader than normal police functions. As a result,
qualification needed could be gained through training which is envisaged in United Nations Higher Commissioner report. The importance and necessity of training for public prosecutors was envisaged to facilitate better application of witness protection. As far as the author’s information is concerned, capacity building on this issue is not in action so far. In Oromia, the largest state of the country, no training is given to justice sector on the matter. I don’t think even module is prepared let alone delivering training both at Federal Justice System and Research Institute and Oromia Justice Sectors Professionals Training and Legal Research Institute.

5. CONCLUSIONS AND RECOMMENDATIONS

Based on overall analysis, the following conclusions and recommendations can be drawn.

5.1. CONCLUSIONS

Even though the idea of witness protection exists in Federal Ethics and Anti-Corruption Commission Establishment Proclamation and proclamation that revised the same; as well as Anti-Corruption Special Rule and Evidence proclamation as a measure that could be used for protection, it wasn’t comprehensive enough to protect witness and whistleblower. After enactment of CJP, wide coverage is given to witness protection. The CJP envisaged the enactment of necessary manual for its proper application and currently there is a separate law for witness protection.

training must be multidisciplinary in nature and cover diverse fields. Coordinated and standardized training in national witness protection programmes could increase the confidence of the authorities in the capacity of other countries to protect witnesses and lead to the strengthening of international cooperation on witness relocation.

Although the witness protection mandate may be unified at the national level in one institution, many actors will continue to be involved in witness protection. Judges and prosecutors may not have adequate knowledge on how to handle vulnerable witnesses, or assistants (of judges and prosecutors) taking witnesses’ initial statements may also lack basic training. The witness protection agency should create a strong training and capacity-building unit to keep its staff abreast of developments in the field, but also to train those persons who come into contact with vulnerable witnesses. Such training activities could gradually be integrated into the curricula of national judicial training institutions and involve, among others, Bar Associations.

WP has the details of who could be protected? How protection measure may be taken, procedure of its application and as to who and to whom application be made; organ responsible to take protection measures, rights and duties imposed on parties is dealt with in detail. With enactment of proclamation no. 943/2016 Ministry of Justice lost its legal personality and duty of witness protection is transferred to the Attorney General. At the time this article is on process, the organ entrusted for witness protection did not organized multidisciplinary staff necessary for protection program. WP serves as substantive and procedural law with regard to witness and whistleblower protection. The protection law is not known that much to society and even to justice organ professionals. Measures taken to implement the proclamation is not convincing so far since there is no organized staff that works on protection, or that investigates the existence of threat. Most of the time, protection measures given for protected persons are providing self-defense weapon.

Government, except enacting law, necessary budget allocation to carry out the activity is hardly done. Unlike some countries’ experience, there is no annual fixed allocation of budget for protection program; institution to which the work entrusted did not separately allocated budget for protection program. This affects the implementation of the law as the work requires adequate amount of money.

5.2. RECOMMENDATIONS

- To make the protection law pretty broad enough that covers enough criminal offences, there is a need to extend its application to crimes punishable with lesser years envisaged in the WP. Moreover, criminal offences like corruption need to be treated exceptionally; since it is susceptible for witness intimidation.

- Since protection of witness is crucial in maintaining justice, within its economic capacity, the government has to allocate necessary budget for the witness protection program. This could be done by allocating annually fixed amount of money for witness protection; or the organ to which this work is entrusted to may allocate necessary budget for the effective protection. Thus, Attorney General needs to make witness
protection a program; and has to organize multidisciplinary staff for the work allocating necessary budget for the protection measures to be applied.

- There is a need to have courtroom procedural guideline to make courtroom protection effective while maintaining the right of the accused and how the right could be limited in balancing general public interest.

- Training institutes in the country has to give training on the subject matter so as to enhance knowledge of justice professionals; to ensure the pivotal role of witness protection services among society and give awareness on the existence of such right thereby encouraging witness or whistleblowers who afraid to testify about a crime.
PRODUCING IN COMPLIANCE WITH ENVIRONMENTAL OBLIGATION: CASE OF BEDELE BREWERY

Mohammed Ibrahim 1

ABSTRACT

The Ethiopian environmental laws have provided different environmental regulation mechanisms for different types of industrial sectors based on their gravity of impact to the environment. Breweries are also subject to such regulation mechanisms according to environmental laws. This paper focuses on study of Bedele brewery with the intent to examine whether it is producing in compliance with the Ethiopian environmental laws. In line with this objective, different Ethiopian environmental laws, together with the data gathered through interview, field observation, and different literature related with the topic are examined. The cumulative result shows that the effluent that is released from the factory is causing some problem on farm land and its products. However, in order to create causal link between this effluent and its impact on the farm land and its products, it needs scientific study or laboratory test both on farm land and the product on the one hand, and the effluent itself on the other hand. Hence, the author of this paper recommends that it is better if the concerned government organs conduct further study through scientific methods or through laboratory test with the intent to give long lasting solution to the problem.

1. INTRODUCTION

The Ethiopian environmental laws provide for different environmental regulation mechanism for different types of industrial sectors based on their gravity of impact to the environment. Brewery is one of such industrial sectors that is subjected to environmental regulation according to environmental laws. This paper specifically focuses on the study of Bedele brewery. In line with this objective, it examined different Ethiopian environmental laws together with data gathered through interview, field observation, and different literature related with the topic.

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Structurally, it is organized into five sections. The first section provides for a succinct introduction to the paper. The second section deals with Environmental Standards for Industrial Pollution Control by the Federal Environmental Protection Authority together with data gathered through interview, field observation and different literature related with the section. The third section addresses Protection of Industrial Pollution Control Regulation No.159/2008 together with data gathered through interview and different literature related with the section. The fourth section analyzes Environmental Pollution Control Proclamation No.300/2002 together with the data gathered through interview. Finally, the fifth section provides conclusions and recommendations.

2. PROTECTION OF ENVIRONMENTAL STANDARDS FOR INDUSTRIAL POLLUTION CONTROL BY THE FEDERAL ENVIRONMENTAL PROTECTION AUTHORITY

Brewery wastes are generated in liquid, gaseous, and solid form. The liquid form of waste generated from brewery consists of waste water or effluent obtained from washing raw materials, cleaning of tanks, bottles, machines and floors. These effluents also originate from disposal of solid waste products. Solid waste mainly consists of residuals from the process including spent grains and hops, sludge, surplus yeast, label sludge, Kieselguhr, powdered carbon and broken glass. Other solid wastes from a brewery are glass cutlets from the packaging area, Kieselguhr from the filtration process, paper pulp from the bottle washer, paper, and plastic from received auxiliary material (especially packaging materials), waste oil and grease, etc.

Untreated brewery effluents are known to have organic components (expressed as BOD5) mainly consisting of sugars, soluble starch, ethanol, volatile fatty acids and so on. It also contains high chemical oxygen demand (expressed as COD) and high level of PH (acid) such as caustic soda,

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phosphoric acid, nitric acid, ammonia and so on.\textsuperscript{4} If this untreated effluent is released to the environment, it creates serious problem to the environment.\textsuperscript{5}

In order to preserve the environment, the Federal Environmental Protection Authority, issued environmental standard in 2003 to discharge limits for industrial effluents before they are released to the environment. According to this standard, the breweries waste water limit values for discharges to the environment like any other industrial effluents are provided as follows:

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Limit Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temperature</td>
<td>40 °C</td>
</tr>
<tr>
<td>PH</td>
<td>6 – 9</td>
</tr>
<tr>
<td>BOD5 at 20°C</td>
<td>90% removal or 60 mg/l, whichever is less</td>
</tr>
<tr>
<td>COD</td>
<td>90% removal or 250 mg/l, whichever is less</td>
</tr>
<tr>
<td>Suspended solids</td>
<td>50 mg/l</td>
</tr>
<tr>
<td>Total ammonia (as N)</td>
<td>20 mg/l</td>
</tr>
<tr>
<td>Total nitrogen (as N)</td>
<td>80% removal or 40 mg/l, whichever is less</td>
</tr>
<tr>
<td>Total phosphorus (as P)</td>
<td>80% removal or 5 mg/l, whichever is less</td>
</tr>
<tr>
<td>Oils, fats, and grease</td>
<td>15 mg/l</td>
</tr>
<tr>
<td>Mineral oils at the oil trap or interceptor</td>
<td>20mg/l</td>
</tr>
</tbody>
</table>

The above diagram shows the limit value of the effluent that can be released to the environment. This means any effluent that is released to the environment in excess to the limit values stipulated in the diagram is considered as dangerous to the environment and punishable under the law.

A field observation by the author shows that this factory releases the effluent through pump to the nearby small river. The farmers around the factory use this river for irrigation. For the question that is provided to them concerning

\textsuperscript{4}Id, Pp 6-7.
\textsuperscript{5}Ibid.
the impact of this effluent on their health, products and farm land, they answered that it has no impact until a recent period. However, this effluent began to affect their land and products starting from a recent period.\(^6\)

The interview conducted with Mr. Meles Asfaw, a worker in the factory on whether the released effluent is in compliance with the standard limit of the Federal Environmental Protection Authority, he answered positively without doubt.\(^7\) But, the author’s field observation and interview conducted with the farmers showed the existence of complaint on the factory. Mr. Meles Asfaw did not deny the truth and stated that the factory is now improving or upgrading its production system in a more modernized and environmentally friendly manner which by its nature presupposes cleaning and changing the tank. As a result of this, it is releasing untreated effluent to the surrounding although it is for a short period of time. That is why such problems are happening according to him.\(^8\) For the question that is provided to him on how much maximum period the establishments of new tank will take, he answered that he has not any knowledge about it.

Taking the above information both from the factory and the farmers, the author has visited the agricultural expert of the kebele to ask whether this effluent has any effect on the farm land and products.\(^9\) The interviewee

\(^6\)The farmers have said that they have been using this effluent for different purposes such as for irrigation and drinking their domestic animals starting from its establishment. Until a recent time (before 1 year), the effluent is treated one and it has no impact on their irrigation product and animals according to the farmers. However, they have said that the situation is changed since a recent time (before a year). According to them, untreated effluent which is released with high content of acid began to burn their product and crack their land. For example, they have shown the author different burned product and different cracked lands as a result of acidic content in the effluent to support their assertion. In this regard, the author conducted interview with Mr. Asrat Itafa, Farmer, Bedele, 6 May 2015; Mr. Tamegen Itafa, Farmer, Bedele, 6 May 2015; Mr. Tadese Gamta, Farmer, Bedele, 6 May 2015; Mr. Asafa Burayu, Farmer, Bedele, 7 May 2015; Mr. Tesfaye Itafa, Farmer, Bedele, 10 May 2015; Mr. Abdu Hussein, Farmer, Bedele, 9 May 2015; Misses Assagadu Jamana, Farmer, Bedele, 9 May 2015; Mr. Mansur Abdu, Farmer, Bedele, 10 May 2015; Mr. Nagasa Gamtessa, Farmer, Bedele, 10 May 2015

\(^7\)Interview with Mr. Meles Asfaw, Technical Manager, Bedele Brewery Factory, Bedele, 11 May 2015

\(^8\)For the question that the author raised to Mr. Meles Asfaw on what the factory is doing to minimize this problem until that time, he answered that the factory is only diluting the effluent by using large amount of water. That is why it becomes ineffective according to him (Ibid).

\(^9\)Mr. Galata Tamiru, Agricultural Expert at Sidisa Kebele, Land and Environmental Protection Office, Bedele, 15 May 2015
replied by saying in order to say it has such effect, it requires scientific study /laboratory/ test. He also replied by saying since we have not made any laboratory test on the effects of this effluent on the farm land and products, he cannot say anything about it as an expert of agriculture. Regarding to the question that is provided to him on complaint of the society about its effect on their products and land, he says many society complained to him on that but since it requires scientific study, he referred them to the Bedele Woreda Investment Office seeking to initiate to conduct laboratory test both on the effluent and its impact on the soil and products. Depending on this information, the author has visited the Bedele Woreda Investment Office to know whether they have entertained such complaint from the societies. However, the office has answered by saying we have not appointed any worker on investment sector for more than a year and no one can give you reliable information on that.10

Besides the above fact, the author has visited Bedele Woreda Land and Environmental Protection Office to know whether they have any knowledge about this fact. In this regard, the author has made interview with Mr. Malkamu Bulcha.11 For the question that is provided to him on this regard, he said, after you have made the interview with the society I have also visited the farmer around that factory and I have made some interview with some of them for the office consumption.12 The farmers I have made interviews with answered that the effluent is causing damage both to their land and products. Further, he explained that although it requires laboratory test to handle peoples’ complaint, it is somehow difficult to ascertain the allegation since there is no laboratory to test the composition of this effluent in Bedele town. However, he informed his office many times to make laboratory test on this effluent by taking the sample to Jimma town in order to take precaution although he did not get any response yet.

He also said that regarding soil study, there is laboratory here in Bedele that can study the soil and he has provided many times the question to his office to conduct such soil study on that land in order to avoid the impact of the

10Interview with Mr. Namarra Namomsa, Deputy Mayor, Bedele Town Administration, 16 May 2015.
11Interview with Mr. Malkamu Bulcha, Environmental Concern, Bedele Woreda Land and Environmental Protection Office, Bedele, 30 May 2015.
12I have made the interview with Mr. Malkamu Bulcha staying some days after I have made interview with the farmer.
effluent by taking precautionary measure. Also he did not get any response for that. Indeed he said, in order to contribute some of his effort to help the farmers, he has guided some of the farmers to bring a written complaint containing signature on the effect of this effluent in order to discuss the situation with the factory. However, they did not provide him with this complaint until now and he is still waiting for them. Finally, Mr. Malkamu Bulcha put his opinion by saying that he thinks all these problems are happening because of the expansion of the product of the factory following its transfer to private ownership.

In relation to the above interviews, the author has obtained another source that is related with the issue under the section. That is - assessment report made by International Organization for Standardization (herein after referred as ISO) on the factory. This organization has made assessment in 26 - 27 May 2014 which is very close to the time when this study has been conducted. According to the report, the ISO has identified many gaps regarding the waste management system of the factory. Some of the identified gaps are: waste water treatment plant input, process and output is not adequately managed; gas emission from burning of waste papers (in incinerator) and vehicles are not adequately managed; used oil is not adequately managed etc…In order to improve and fill the identified gaps, the ISO recommended some solutions to the factory through its report.13

Breweries do not discharge air pollutants other than some odors.14 Concerning to the odor that comes from this effluent, the farmers and other community around the factory with whom the author has made interview unanimously answered about its disturbance. However, they have stated that it happens randomly.15 During this period the farmers have said that they

13This document falls on the hand of the author together with other documents received from the factory in soft copy. The one who gave this document to the author wanted to remain anonymous.


15According to their answer, this odor comes randomly within two months interval by estimation. However, when it comes it remains for more than a week. They have said during this period living around the factory becomes difficult. In this regard, for example, I made interview with Misses Asnakech Chali, Resident, Bedele,7 May 2015; Mr. Wayyessa Marga, Farmer, Bedele, 8 May 2015; Waqine Gamta, Resident, Bedele, 8 may 2015; Misses Ijigayo Ayyele, Resident, Bedele, 9 May 2015;Mr. Tesfaye Itafa, Farmer, Bedele, 11 May
were exposed to high headache and colds (cough). During the production process when the beer is filtered, solid waste products like surplus yeast and Kieselguhr remain under the bottom of tank. When the tank is opened for cleaning, this accumulated waste product is released out to the society with other water mixed effluents. As a result of this, high amount of odor occurs.\textsuperscript{16}

Based on the information from the society and the factory, the researcher has made journey to Bedele Town Administration Health Office to know whether they have any information on what is happening to the society and if not, to know what precaution mechanism they have made to avoid the possible health problem that may arise from this effluent. For this question, the office head, Mr. Kamal Mohammed said, we have established committee as a town which is known by the name Town Sanitation and Beautification Committee (\textit{yeketema tsidatinta wubet committee}) composed of many members from different sectors and our office health service and production work inspectors known as environmental concern is a member of this committee. Through such committee, we quarterly assess the environmental impact of the factory. Finally, he said that for detail information contact our Health Service and Production Work Inspectors Head by the name Mr. Meseret Abbiyyu\textsuperscript{17}.

Accordingly, Mr. Meseret Abbiyyu said, in order to prevent environmental impact of this factory, we work based on - \textit{Food, Medicine and Health Care Administration and Control Proclamation No.661/2009}. Mr. Meseret Abbiyyu goes on saying it is around one year from now that people complain the factory that it is releasing untreated effluent to the river thereby suffering the societies around the factory. Through Town Sanitation and Beautification Committee (\textit{yeketema tsidatinta wubet committee}), we have

\textsuperscript{16} We are improving or upgrading our production system and when this activity is finalized there is no surplus yeast or Kieselguhr that is released out to the society with the effluent. Instead, we use it as a fertilizer and animal feed that is sold which in turn generates additional income to the factory. At this juncture, no bad odor found. Interview Mr. Duri Hussein, Maintenance Manager, Bedele Brewery Factory, Bedele, 15 May 2015

\textsuperscript{17} Interview with Mr. Kamal Mohammed, Head of Health Office, Bedele Town Health Office, Bedele, 29 May 2015

\textsuperscript{18} Interview with Mr. Meseret Abbiyyu, Health Service and Production Work Inspectors Head, Bedele Town Health Office, Bedele, 29 May 2015
made assessment and stopped the factory from releasing untreated effluent that the people complained about. Even we wanted to punish the factory. However, the Town Administrator of the time prohibited us from taking such measure on the ground that it affects the good name of the factory that is generating high income for the country.\(^\text{19}\) As a result of this, we are forced to oblige the factory only to release the effluent to the limited standard by the laws. We also warned the factory to minimize the limit of odor. Furthermore, he said, we have seen many environmentally unfriendly production systems during our inspection at different times. The followings are some of the problems he mentioned:

- We have seen during the assessment period that they have no standardized hole to burn some solid waste product. We warned them through letter to dig the standardized hole within two month and to notify us the result. However, they did not respond to us on the result until now. This event is now around a year.

- They only send a small portion of broken bottle for the recycling and throw the remaining part here and there both inside and outside the factory compound. Since the broken bottles are dangerous to the environment, we warned them to avoid this conduct although they did not respond to us on the result until now. This event is now around a year.

- They provide the spent grain (furushka) for animal feed to help the community. However, they damp it on the main road, near resident house, near government office, and near educational institutions in the town. When the rainfalls, this spent grain creates bad odor to the environment thereby preventing the residents to have and to live in beautiful and suitable town. For this reason, we have warned the factory to dump this spent grain to specified place prepared for this purpose. But, the situation is still continuing. The administration organ is also reluctant to take measure on the factory on the ground that it is

\(^{19}\) The author asked him about the then Town Administrator. However, he was not willing to explain for the security reasons.
important to the poor society-those engaged on breeding the livestock for their livelihood.

Taking the above information from Mr. Meseret Abbiyyu, the author has made a journey to the Head of Town Sanitation and Beautification Committee (yeketema tsidatinna wubet committee alafi), Mr. Habtamu Wagga to verify the obtained evidence. Supporting Mr. Meseret’s view on the issue, Mr. Habtamu Wagga replied as follows: For a question that we have provided to them based on the public complain, the factory responds by saying that we are improving the standard of the factory with the intent to modernize it and that is why these problems are happening. They also tell us that they are diluting the effluent by adding high amount of water in order to reduce its impact until the new machines are established. For the warning we gave them, they promised us to finish establishing the new machine within two months and notifying us the result in writing although they did not do that. Also, we did not visit them after that time and it is now around a year. For this reason, I have no any information personally on what is happening now. Finally, Mr. Habtamu Wagga puts his opinion by saying that he thinks all these problems are happening as a result of the expansion of the factory’s product following its transfer to private ownership.

3. PROTECTION OF INDUSTRIAL POLLUTION CONTROL REGULATION NO.159/2008

This regulation is issued pursuant to Environmental Pollution Control Proclamation No.300/2002. Its main objective is to give effective implementation to this Proclamation. Accordingly, one of the obligations of a factory that is provided under article 4(2) of this regulation is the obligation to handle equipments, inputs, and products in a manner that prevents damage to the environment, and to human and animal health. The factory thinks that it has no problem as far as application of such provision is concerned. However, the ISO report shows that different chemicals (ammonia gas, acetylene gas, caustic soda, etc) are handled in the same store (constructed

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20 Interview with Mr. Meles Asfaw, Supra note 7.
from sheet metal wall and roof) without adequate space and ventilation in a way that may bring harm to the environment and human beings.\textsuperscript{21}

Article 8 of the regulation obliges any factory to prepare and implement an emergency response system and to notify the competent environmental organ. The interview conducted with Mr. Meles Asfaw regarding the application of this provision revealed that the factory is fully implementing the provision.\textsuperscript{22} However, in contradiction with the information that was obtained through the interview, the ISO report reported as follows:

\textit{Procedure for emergency preparedness and response has not been reviewed, communicated to relevant sites and implemented; identification of emergency situations and response planning has not been adequately done.}\textsuperscript{23}

Article 9 of the regulation obliges any factory to prepare and implement its own internal environmental monitoring system. Interview conducted with one of the workers in the factory regarding the application of this provision revealed that the factory is fully implementing it.\textsuperscript{24} However, in contradiction with the information that is obtained through interview, the ISO report provides the following:

\begin{quote}
\textit{the depot and agent activities for product distribution have not been clearly defined in the scope of the environmental management system of the company; environmental policy of the company has not been reviewed and communicated to all stakeholders; procedure to identify environmental aspects of the company’s activities, products and services has not been reviewed, communicated to relevant sites and implemented; environmental aspects and impacts of operations of the brewery are not identified and documented; environmental objectives, targets and programs are not established; resources required for effective implementation of the environmental management system (e.g. time, waste water treatment plant, chemical store, etc) have not been adequately identified and provided; Procedure to identify training needs with}
\end{quote}

\textsuperscript{21} Documents, \textit{Supra} note 13.

\textsuperscript{22} Interview with Mr. Meles Asfaw, \textit{Supra} note 7.

\textsuperscript{23} Documents, \textit{Supra} note 13.

\textsuperscript{24} Interview with Mr. Meles Asfaw, \textit{Supra} note 7.
regard to environment performance of the company has not been implemented; training needs associated with environmental aspects and their management have not been adequately identified and planned; employees' awareness regarding significant environmental impacts associated with their respective operations (e.g., chemical store, CO2 and ammonia generation, etc) has not been conducted; mechanisms to communicate information with regard to environmental aspects and their management has not been reviewed, communicated to relevant sites and implemented; documents necessary to ensure effective planning, operation and control of processes that relate to significant environmental impacts (e.g. waste water treatment procedure, transportation) have not been reviewed, communicated to relevant sites and implemented; procedure to control environmental management system documents has not been communicated to relevant sites and implemented; methods needed for effective control of operations (chemical handling, waste management, etc) have not been reviewed, communicated to relevant sites and implemented; procedures for dealing with actual and potential environmental non-conformities and for taking corrective and preventive actions have not been reviewed, communicated to relevant sites and implemented; procedure for the identification, storage, protection, retrieval, retention and disposal of environmental management system records has not been implemented to control environmental management system records; program(s) and procedures for periodic environmental management system audits to periodically evaluate effectiveness of the Environmental Management System has not been reviewed, communicated to relevant sites and implemented. Finally, the report finalized its gap identification report by concluding that review of environmental management system that is needed to ensure continuing suitability, adequacy and effectiveness of the system has not been conducted”.

Article 11 of the regulation obliges every factory to keep written information describing the pollutant it has generated and a disposal mechanism it has used to dispose of the pollutant and other related matter. The regulation also

25The document at Supra note 13.
The article obliges the submission to the competent environmental authority an annual report describing how it is complying with the provision of the regulation. In order to know the compliance of the factory with this provision, the author posed a question to Mr. Meles Asfaw. He answered that the factory has no such grave pollutant which it has generated and hence has no recorded information. Concerning the question as to whether the factory is submitting an annual report describing how it is complying with the provision of this regulation to the competent environmental authority, he answered negatively.

4. PROTECTION OF ENVIRONMENTAL POLLUTION CONTROL PROCLAMATION NO.300/2002

Article 7 of the proclamation says environmental inspectors that are established under Ministry of Environment, Forest and Climate Change ensure compliance with environmental standards and related requirements of the factory. The author has made interview with the factory on whether these inspectors come and the effect of their non-arrival on conducting their work according to the environmental laws. The interviewee replied that although he has been working in the factory for more than two years, no one comes for the purpose. Their inspection has no value on us to observe the laws because this factory is sold to Heineken Company, one of the biggest multinational companies. It has its own environmental standard that fits international environmental standard. Furthermore, he replied, since it is internationally competent multinational company, it protects the environment and works for its own repute.

Finally, in order to minimize the environmental effect of waste generated from brewery factory, conducting the following waste minimization process is recommended: using water for recycling in order to minimize both water consumption and the content of waste in the water, sending broken glass and bottles that cannot be used to recycling, using spent grain for livestock feed,

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26 Interview with Mr. Meles Asfaw, Supra note 7.  
27 Interview with Mr. Meles Asfaw, Supra note 7.  
28 Interview with Mr. Meles Asfaw, Supra note 7.  

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using surplus yeast to filter it since it has some amount of beer and using the spent one to fertilizer and animal feed, burning label sludge, etc…

The author made interview with Mr. Tewelde Asfaw whether the factory has been applying the above waste minimization system. He replied that the factory is only applying some of the above system. According to him, the factory is using spent grain for animal feed, broken glass and bottles for recycling and burning label sludge. According to him, using the remaining waste minimization process is on the ways since it is installing new machine. In other words, this is to mean that water is not recycled and waste product such as surplus yeast is released with other effluents until such installations are installed.  

5. CONCLUSIONS AND RECOMMENDATIONS

The overall assessment of the study reveals the following. The interview with a society shows that the effluent from a factory has no effect both on their land and products. However, it starts to affect their land and product beginning from a recent period. The odor exists all the year round although it happens randomly.

Regarding to the conversation with the factory on whether it is operating according to the environmental laws, the interviewees answered positively for all the questions provided to them. However, they did not deny the fact that they are not operating according to the laws at this time for the reason that they are improving the standard of the factory. But, they have no answer for a question like for how long does the situation continue. Also they have no answer for a question like what scientific mechanism they are using now to minimize the harm until that time.

As it is also understood from the interview with government officials, the reason for non-compliance to the laws by the name of upgrading the standards were answered by the factory to these government officials before a year. The factory also promised them to finish the upgrading work and to notify them within specified period. But, it was a mere promise as the factory

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30Interview with Mr. Tewelde Asfaw, General Manager, Bedele Brewery Factory, Bedele, 10 May 2015.
did not do that. The findings of gap identification report by ISO and the interview conducted with the factory do also contradict each other.

Based on the above findings, it can be concluded that the factory is not producing according to environmentally friendly manner. However, in order to become more certain and to create causal link between this effluent and its impact on the farm land and product, it requires further practical investigation. That is to say, in order to ascertain the impact of this effluent on the farm land and products as it is asserted by the farmers, it needs scientific study or laboratory test both on farm land and the product on the one hand, and the effluent itself on the other hand. Hence, it is better if the concerned government organs conduct further study through scientific methods or through laboratory test with the intent to give long lasting solution for the problem.
Ergama, Mul’ata, Toorawwan Xiyyeffannoo, fi Duudhaalee Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qo’annoo Seerra Oromiya

Ergama

Leenjii ogeessota qaamolee haqaa af itti fufiinsaan kennun ogeessota gahumsaa fi qulqullina ol aanaa gonfatanii sirna Heeraa fi seeraa kabajanii fi kabachiisan horachuur mirkaneessu fi rakkoowwan sirna haqaa irratti qorannoo fi qo’annoo gaggeessuun yaada haaraa burqisiisuun foyyaa’insi sirna haqaa itti fufiinsaan akka jiraatu dandeessisuun dha.

Mul’ata

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

Toorawwan Xiyyeffannoo

1. Gahumsa Ogeessota Qaamolee Haqaa
2. Qo’annoo fi Qorannoo

Duudhaalee Ijoo

- Gahumsa
- Iftoomina
- Maamila Giddu galeessa godhachu
- Kalaqummaa fi
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Mission, Vision, Thematic Areas and Core Values of Oromia Justice Sector Professionals Training and Legal Research Institute

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

Vision

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

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2. Studies and Research

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- Transparency
- Customer-centered
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