

JOORNAALII SEERAA OROMIYAA OROMIA LAW JOURNAL

Jiildii 10^{ffaa} , Lakk.1
Vol.10, No.1
ISSN 2304-8239

Waggaatti Yeroo Tokko Kan Maxxanfamu
Published Once Annually



Barruulee Articles

Oath in Oromia Courtrooms: A Critical Discourse Analysis

The Quest for Eternal Clauses in the Ethiopian Constitutional and Democratic Reforms

The Legal Status of Communal Land Tenure System in Ethiopia and Its Congruency with the FDRE Constitution

Contractual Acquisition and Transfer of Immovable Property Ownership System under Ethiopian Law

Revitalizing Intellectual Property Right Protection for Traditional Knowledge and Cultural Expression in Ethiopia: A Lesson from Kenya

Hundeeffama Mana Murtii Aadaa Naannoo Oromiyaa

JOORNAALII SEERAA OROMIYAA

OROMIA LAW JOURNAL

Boordii Qophii (Preparatory Board)

Tasfaayee Booressaa(Daarikteera Ol'aanaa ILQSO (W/qabaa)
Dr. Abarraa Dagafaa (Barsiisaa Seeraa Yuni. Addis Ababaa)
Mohammad Nuuree (Barsiisaa Seeraa Yuni. Arsii)
Tashoomaa Shifarraawu (A/Murtii MMWF)

Koree Gulaallii (Editorial Committee)

Tafarii Baqqalaa(Dar. Qorannoo ILQSO, Gulaalaa Muummichaa)
Waaqgaarii Dullumee (Qorataa Seeraa ILQSO, Miseensa)
Geetaachoo Fayyisaa (Qorataa Seeraa ILQSO, Miseensa)
Abdii Asaffaa (Leenjisa Seeraa ILQSO, Miseensa)

Gulaaltota Alaa (External Assessors)

Muraaduu Abdoo (LL.B, LL.M, PhD, Assoc. Prof, Yuni. A/A)
Kiristoof V/der Beekan (LL.B,LL.M,PhD,Assoc.Prof,Yuni. A/A)
Silashii Badhaasee (LL.B, LL.M, PhD, Yuni. Ottawaa)
Abdii Jibiriil (LL.B, LL.M, PhD, Gargaaraa Prof., Yuni. AA)
Muluqaan Kaasahun (LL.B, LL.M, Kaadh.PhD, Pirof. Garg., Yuni. Mattuu)
Daani'el Behayiluu (LL.B, LL.M, PhD, Assoc. Prof.,Yuni. Hawaasaa)
Taammiraat Taalegeetaa (LL.B, LL.M, PhD, Gargaaraa Pirof., Yuni. Arsii)
Zalaalem Tasfaayee (LL.B, MA, Kaadh. PhD, Pirof.Garg., Yuni. Salaalee)
Fiqaaduu Qana'aa (BA, MA, PhD, Gargaaraa Pirof, Yuni. Wallaggaa)

Gulaaltuu Barreeffamaafi Dizaayinii (Text and Design Editor) Naahilii Xaafaa

Barruulee

Articles

Oath in Oromia Courtrooms: A Critical Discourse Analysis.....1-29

Adugna Barkessa

The Quest for Eternal Clauses in the Ethiopian Constitutional and Democratic Reforms.....30-53

Solomon Emiru

The Legal Status of Communal Land Tenure System in Ethiopia and Its Congruency with the FDRE Constitution 54-72

Nigatu Bekele

Contractual Acquisition and Transfer of Immovable Property Ownership System under Ethiopian Law73-119

Kumela Firisa

Revitalizing Intellectual Property Right Protection for Traditional Knowledge and Cultural Expression in Ethiopia: A Lesson from Kenya.....120-159

Abiyot Moges

Hundeeffama Mana Murtii Aadaa Naannoo Oromiyaa160-205

Azzanee Indaalammaa,

Abdii Tasfaa

fi

Askaalee Tarfaa

List of Articles, Case Analysis and Reflections Published on the First Nine Issues of Oromia Law Journal..... 206-211

OATH IN OROMIA COURTROOMS: ACRITICAL DISCOURSE ANALYSIS

*Adugna Barkessa**

ABSTRACT

This article analyzes the oath currently in use in the Oromia courtrooms. The analysis mainly aims at examining the oath from the language as a social practice view point which depicts what users do with their language, and what language use does for its users. Its specific objectives include describing the linguistic devices the oath employs, exploring the discursive strategies it comprises, and explaining the nexus between oath, ideology and power in the attempt to boost the presentation of facts about cases. To attain these objectives, descriptive-interpretive design and qualitative methods which are social constructivism in orientation were employed to collect and analyze oath used in the study. Non-participant observation was the sole instrument employed to attend and record the oath judges prescribed to witnesses before the specific provision of testimony about the cases they saw or heard. The data recorded were changed into written Afaan Oromoo, translated into the English language and analyzed thematically. Fairclough's (1992) model of discourse analysis was used in the analysis. The findings show that abstract and concrete words, antonyms, repetitions, pronouns, conjunctions, parallel expressions, metaphors and speech acts (promising and self-cursing) are the dominant linguistic devices used in the oath. The main discursive strategies employed in the oath include authoring, associating, intensifying, self-mentioning and total submission. The devices and strategies used in the oath aims at impacting the mental spaces of witnesses by magnifying the negative consequences of perjury crime supposed to be happened on their livelihood source, offspring, dwelling and peace. They try to make witnesses accountable for the information they provide about cases. They also attached the values of telling truth and lie to the customary spiritual ideology and authority to which the witnesses are socialized their culture to provide truthful testimony.

Key words: *Courtroom Discourse, Critical Discourse Analysis, Language and Law, Oath, Witness Oath*

*BA (Jimma University); MA (AAU); PhD (AAU); Asst. Professor of Applied Linguistics and Development at AAU; Email address: barkiikoo2011@gmail.com

1. INTRODUCTION

This article examines the oath-swearing practice currently in use in the Oromia courts dealing with civil and criminal cases. Oath-swearing, the main focus of this article is religious by its very character. The development of its religious character flashes back on the pre-constitutional and the constitutional eras where supernatural being was supposed to have a magic power and principle that govern the whole life of people.¹The development of oath-swearing is interlocked with religion which in turn is closely linked to law. ² According to Currie and de Waal³, religion played significant roles in the development of law. In the courtroom of many countries, oath-swearing practices mainly take place for legal purpose as part of the procedure of trials to take actions.⁴It is believed that for the fear of divine retribution, swearers may refrain themselves from deigning to lie.⁵

However, the legal system of constitutional era is mostly non-accommodative to the diversified practices of religious faiths among the societies across the world. Unlike the pre-constitutional era where customary religious tradition, rules and principles govern customary system, the legal system is exclusive due to the religious ideology of the group occupying socio-political power in different nations.⁶Thus, the constitutionally implanted religious ideologies into the legal systems excluded the customary religious practices of the respective societies. Oath-swearing is one of the customary religious practices of social groups influenced by the ideologies of the selected religions fixed into the legal systems of nations. ⁷ The oath-swearing practices allowed in the legal systems of Ethiopia are not exceptional. The ideologies of Christianity and Islam implanted into the legal system of Ethiopia during the imperial regime, have dominated the customary oath-swearing practices of the people in the country. As a result,

¹ Bothama, F., A legal History of Oath-swearing (Unpublished MA Thesis, 2017).

²*Ibid.*

³ Currie and de Waal the Bill of Rights Handbook 3; Devenish 2012 Fundamina 3.

⁴ See Bathama, *supra* note 1.

⁵ Milhizer, E. R., 'So Help Me Allah: An Historical and Prudential Analysis of Oaths as Applied to the Current Controversy of the Bible and Quran in Oath Practices in America, Ohio State Law Journal(2009), Vol.70, No.1, Pp1-71.

⁶Ngong L. Studies in World Christianity; World Religions: African Traditional Religion (2009), Pp 46-63.

⁷*Ibid.*

the swearing practice in the courtrooms of the country references only to the faiths of the two religions using Amharic disregards the religious, linguistic, cultural and social diversities prevailing in Ethiopia.⁸ The Gada System of Oromo, though egalitarian by its character to protect justice⁹, is one of the customary practices excluded from functioning in the formal situations of decision-making by the religious ideologies fixed in the oath-swearing practice of the Ethiopian legal system.

Following the change in political system from the socialist to the federal era of Ethiopia, Nation, Nationalities and Peoples to the country are allowed to exercise their languages in their respective courtrooms. However, the ideologies of Christianity and Islam implanted in the assertory oath-swearing practice to administer justice system in the courtrooms are continued to the current judicial practices of the people. Until 2016, it was common for all the regions in Ethiopia to practice oath-swearing in the names of God holding Bible or Allah holding Quran. From that year on wards, oath-swearing practices in the names of both religions in some of the Oromia courtrooms were replaced by cultural oath of the Oromo people. Courtrooms judges of the region have started ordering witnesses to practice the selected customary oath as a solemn pledge to attest statement of truth about the case they see, hear or know.

This study analyzes the oath from the language use view point in which a Critical Discourse Analysis (henceforth CDA) is the approach employed to describe the oath text and interpret the context in which it is consumed, and unmask the ideology and power relations embedded in it. The approach opens room to disclose the power relations fixed in the production, regulation and consumption of the oath-swearing practices in the legal milieu¹⁰. It explains the ideology guiding the discursive repercussions of realities presented in and through the oath.¹¹ According to Van Dijk, “CDA is

⁸ Kumsa, A., *The Oromo National Memories* in RUDN Journal of Sociology (2019), Vol.19, No.3, Pp 503-516.

⁹ Asafa J., *The Oromo Struggle: Knowledge and Oromo Agency in the Age of Globalization*, Journal of Oromo Studies (2018), Vol. 25 (1and 2), Pp 25-61.

¹⁰ Gee, J. *How to Do Discourse Analysis. A Toolkit* (New York and London: Rutledge, 2011).

¹¹ For example, see Hyland, K., *Meta-discourse. Continuum Guides to Discourse* (London, 2005).

a type of discourse analytical research that studies the way ideology and identity are produced and (re)enacted in social and political, legal texts and contexts".¹² He also states that CDA is a problem-oriented approach which systematically explores the interconnection between events and texts of wider socio-political structures, and uncovers the opaque as well as transparent relationships of dominance and discrimination used through discourses.¹³

2. OBJECTIVES AND METHODS

The general objective of this study is to examine the assertory oath-swearing practice currently used in Oromia courtrooms when dealing both civil and criminal cases. The specific objectives include describing the linguistic devices employed in the oath, exploring the discursive strategies it comprises, and explaining the nexus between oath, ideology and power in the presentation of facts about cases in the legal proceeding. To attain these objectives, descriptive-interpretive design and qualitative methods which is constructivist in orientation¹⁴ are used to frame the data collected and analyzed in the study.

In 2019, I and two of my colloquies had been called to Sululta court to witness for a civil case. In the meantime, the courtroom judge had prescribed us the oath under this study which we had never practiced before in such a legal context before uttering what we knew about the case. That was the time when the oath attracted my attention to analyze it from the language use perspective. To identify weather or not the oath is used for other case (criminal, labor, etc.) in the courtroom and in the other courtrooms of the region, the researcher selected three courts, namely Sululta, Sabata and Burayu using a purposive sampling technique. The oath was collected in between 14 December – 4 March 2019 from these courts using a non-participant observation.

¹²*Ibid.*

¹³Fairclough, N., *Critical Discourse Analysis: The Critical Study of Language* (London: Longman, 1995)

¹⁴Creswell, J. W., *Research Design: Qualitative, Quantitative and Mixed Methods Approaches* (London: Sage Publication, 3rd ed., 2007).

In consultation with judges of the courts selected, the dates arranged for witnesses to give evidence about cases were identified to attend the oath. On the dates identified, the oath prescribed by the judges and repeated by witnesses was recorded based on permission of the judges. The oath recorded was changed into written *Afaan Oromoo* using line based transcription system¹⁵. The transcribed script was translated into the English language and analyzed thematically. Fairclough's tri-dimensional model of CDA was employed in the analysis¹⁶. The analysis begins with describing the linguistic devices identified from the oath. The description was amalgamated with their context of use for interpretation. Finally, the analysis ends with explanation of the oath to uncover the ideology and power relations embedded in the oath.

Systemic Functional Linguistics (SFL)¹⁷ and Speech Act Theory (SAT)¹⁸ are the theories adapted to frame this study. According SFL, language use is neither neutral nor innocent; but it is ideologically (re)charged. In this regard, the theory enables me examine what the judges intend to do with the oath they administer to witnesses, and how the use of the oath to ensure the provision of truthful testimony about cases on trial. The use of SAT gives room to examine what judges and witnesses do with the words and expressions of the oath in connection the information required to give decision. Both theories frame the formal description, the contextual interpretations and the social explanations of the oath this study attempted to do.

3. COURTROOM DISCOURSE AND DISCURSIVE PRACTICES

Courtroom is an institution where defendants and claimants present their conflicting sets of ideas, witnesses testify about the cases they witnessed, and judges make decisions based on the evidence they collect from different

¹⁵Chafe, W., The Analysis of Discourse Flow in Schiffirin, D. Tannen, D. and Hamilton H. E. (eds.), *The Handbook of Discourse Analysis* (2001), Pp.673–687.

¹⁶See Fairclough, Tridimensional Model (Description, Interpretation and Explanation) of CDA to systematically reveal ideological and power relations embedded in textual, discursive and social practices of a given group(1992).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

sources. It is the place where justice is central for decision making.¹⁹ According to Finnegan, courtroom is the stage for observing contesting discourses about criminal and civil trials that enable judges identify facts about cases to give decision.²⁰

The comprehensive definition of discourse involves form and function of both the verbal and non-verbal practices. This is because, in a real context, one cannot communicate with form devoid of function, and function devoid of form. In connection with this interlocking nature of form-meaning, discourse is defined as “...the way of behaving, interacting, valuing, believing, speaking, reading and writing that is accepted as instantiations of particular identities by individuals or groups.”²¹ Gee argues that discourse encompasses both the forms and functions of textual and non-textual means people use in their lives. This study sees discourse as the way we produce, comprehend and reflect realities in a legal system. It refracts and reflects the meanings courtroom actors intend to communicate in and through oath-swearing practice. All the interactions between actors and their intentions can be concluded as courtroom discourse.

Courtroom discourse, as a subgenre of discourse, is used in the process of fact finding and decision making about cases individuals and/or groups brought to courtroom for legal resolution.²² It comprises both the verbal and the non-verbal actions and interactions between the claimants, defendants, witnesses and judges involved in the process of decision making about cases on trial.²³ Oath-swearing is one of the courtroom genres practiced in legal decision-making system. It is usually prescribed courtroom judges and applied by witnesses of the cases on trial, from the legal point of view, oath-swearing is seen as an assertory action takes place in the procedure of

¹⁹ Milhizer, *supra* note 5.

²⁰ For further details, see Finnegan, R. African Oral Literature: World Oral Literature Series, United Kingdom: Open Book Publisher, 2012), Retrieved from <http://creativecommons.org/licenses/by/3.0/>

²¹ See Gee, J. P., A Sociocultural Perspective on Opportunity to Learn (2008, p.3) for the comprehensive definition and typology of discourse.

²² Van Dijk, T., Discourse as Social Interaction: A Multidisciplinary Introduction Discourse Studies (London: Sage Publication, 1997).

²³ See Rigney, A., The Pragmatics of Question/Answer Structures in A Bilingual Courtroom (Paper presented at the Conference of the National Association of Judiciary Interpreters and Translators, Seattle, USA, 1997).

courtroom trial to obtain facts about cases.²⁴ In this case, assertory oath-swearing constitutes the crime of perjury, which can be seen as common law and statutory perjury.²⁵ From the view point of language use, oath swearing is seen as language in the context of use, where it is considered as language as a social practice. This view point, which this study mainly used to analyze the oath text presented in the appendix, mostly focuses on what people do with oath, and what the oath-swearing practice does for the users.

In courtrooms, the legal context is largely dependent on the discursive practices (the courtroom drama) between the plaintiffs, defenders, witnesses and judges. Discursive practice refers to the production, distribution and consumption of a text (in this case, oath). It mainly shows what people do with their language use and what language use does for its users in myriad contexts.²⁶ In both cases, language use is neither neutral nor innocent, but ideologically (re)charged. Discourse constitutes and is constituted by contexts where ideology is the guiding principle.²⁷ Ideology determines the power relations between discourse participants and the discursive strategies they employed in their interactions with each other and with the contexts in which the interaction takes place.²⁸ Discursive strategies are perceived as a

²⁴See Bathama,*supra* note1.

²⁵Common law perjury was the breaking of an assertory oath prescribed to be taken during the course of civil and criminal cases. The statutory crime of perjury was the breaking of an assertory oath prescribed by legislation which also prescribed the consequences of such breaking (See Bothama, 2017).

²⁶ In the late 1970s, following the paradigm shift from the objective to subjective view in language study, considering language as a social practice is becoming more prominent than considering it as a formal system and a neutral medium of communication that reflects the social world. It is argued that language is an activity that people do in context where words do not merely say but do something. This argument mainly opposes the disconnected and decontextualized view of language as a system. Since language is its context of use, the difference in the context is inevitably resulted in different ways people employ it to perform, and the different roles the language performs for its users. Thus, language is seen as a part of society; a form of social practice, and a socially conditioned process which is entirely tied up with identity. See Austin, J.L., *How to Do Things with Words* (Oxford: Clarendon Press, 1962); Janks, H., 'Critical Discourse Analysis As A Research Tool.' *Journal of Cultural Politics of Education*(1997), 18(3), Pp 329-342.;Fairclough, N., 'Critical Discourse Analysis and the Marketization of Public Discourse: The Universities in Discourse and Society, (1993), 4(2), Pp 133-66.

²⁷See Van Dijk, T. 'Critical Discourse Analysis', in Schiffrin, D. (eds.) *Handbook of Discourse Analysis* (2001, p. 352), Pp.352-371. Oxford: Blackwell.

²⁸ See Dettenwanger, S., 'Witnesses on Trial: Address and Referring Terms in US Cases; Cao, D., 'Power of and to Language in Law,' in Wagner, A. and Cheng, L.(edt.), *Exploring*

more or less intentional plans designed to achieve certain goals.²⁹ They are planned and used in both written and spoken text in accordance with the functions intended to be achieved. In a courtroom, defendants and prosecutors can use dissociative discursive strategy in their written and/or spoken discourses to protect themselves from the potentially damaging implications judges and their rivals may be raised. At the same time, they can use an *associative* strategy which relates them to the potentially helpful ideas for their arguments.³⁰ Similarly, plaintiff and prosecutor in both civil and criminal cases may use claiming and blaming strategies to win their rivals and protect their rights respectively.³¹

The discursive strategy of presupposition also allows actors use the ideas and practices as a springboard for their argument. There might be self-mentioning strategy in a given text so that claimants, defendants and witnesses show their explicit presence in cases a courtroom is investigating.³² Judges also use cross-examining and relabeling strategies to focus, conform and affirm admissibility of information about cases.³³ Thus, the discursive strategies and the corresponding functions and their linguistic realizations the courtroom participants use are based on the existing contexts of the legal system.

Linguistic devices realize the discursive practices and discursive strategies employed in a communicative context, in this case courtroom. They are ways

Courtroom Discourse: The Language of Power and Control, (Ashgate Publishing Company, USA, 2011).

²⁹ Blackledge, A., *Discourse and Power in A Multilingual World* (Amsterdam: John Benjamin, 2005).

³⁰ Komter, M., *Accusations and Defense in Courtroom Interaction*, *Journal of Discourse and Society* (1994), Vol 5(2), Pp 165-187; Dettenwanger, S., 'Witnesses on Trial: Address and Referring Terms in US Cases' in Wagner, A. and Cheng, L. (eds.) *Exploring Courtroom Discourse: The Language of Power and Control* (2011).

³¹ Wodak, R. Rudolf, de C., Martin, R. and Karin, L., *The Discursive Construction of National Identity* (Edinburgh: Edinburgh University Press, 2nd.Ed., 2009).

³² Kiguru, G., 'A Critical Discourse Analysis of Language Use in Selected Court of Law in Kenyan (Unpublished PhD dissertation, 2014)

³³ O'Barr, W., *Linguistics Evidence: Language, Power, and Strategy in the Courtroom* (New York: Academic Press, 1982); Roy, C., 'Interpreters, Their Role and Metaphorical Language Use' in *Looking a head: Proceedings of the 31st Annual Conference of the American Translators Association*, A. L.Wilson (ed), Medford, NJ: Learned Information (1990), Pp.77-86.

of using language to realize social, cultural and psychological realities that frame and manifest the context.³⁴ The devices include vocabularies, grammatical features and rhetorical device. Vocabularies are the word forms such as wording, collocation, synonyms, metonyms, etc. that discourse participants use in their utterances to communicate their intended meanings. Grammatical features realize the discursive practices and strategies used in a discursive context. The devices comprise cohesive devices³⁵, activation, passivation, etc.³⁶ Rhetorical devices, on the other hand, are linguistic mean of persuading people to take specified actions which realize the intended and used discursive practices and strategies people used in relation to the context which they interact with.³⁷ They realize experiential and relational values and mostly used as art of speaking.³⁸ Therefore, rhetorical devices are the productive and alternative ways of using language to describe, construct and argue circumstances in which people live. Circumstances that are the focus of rhetorical devices include political, social, legal, etc. that individuals or groups prefer to explicitly and/or implicitly compare arguments based on similarities and differences of ideas and actions, and replace personal entity with impersonal entity based on their relations. Thus, the oath encompass these rhetorical elements to present arguments for and against the cases on trial.

The literature reviewed on the courtroom interaction so far shows the interlocking nature of forms and meanings of texts and contexts of legal decision making. It indicates the discursive practices, strategies and linguistic devices produced and used by courtroom actors in the discourses of dispute and its resolution mechanisms to valuate, devaluate and reevaluate arguments about cases for legal jurisdiction. This article describes, interprets

³⁴See, Kwon, W, Clarke, I. and Wodak, R., *Micro-level Discursive Strategies for Constructing Shared Views around Strategic Issues in Team Meetings*, Journal of Management Studies(2013), DOI:10.1111/joms.12036.

³⁵Cohesive devices are discourse markers that establish connection through backward, forward and outward ties to express certain meanings which presuppose and /or entail the presence of other components in a text.

³⁶McCarthy, M. J., *Discourse Analysis for Language Teachers* (Cambridge: Cambridge University press, 1991); Halliday, M.A.K. and Hasan, R., *Language, Context and Text: Aspect of Language in a Social Semiotic Perspective* (Oxford: Oxford University Press, 1989).

³⁷Zaleska, M., *Rhetoric and Politic* (Cambridge: Cambridge Scholars Publishing, 2012).

³⁸Fairclough, N. *Supra* note 13.

and explains the discursive strategies and linguistic devices used in the oath-swearing practice serving in Oromia courtrooms since 2016

4. RESULTS AND DISCUSSIONS

This section discusses findings of the study. The discussion was made on the major themes identified from the oath in connection with the objectives set in section 2. One of the themes is the linguistic devices employed in the oath. The oath contains abstract and concrete words, antonyms, repetitions, pronouns, conjunctions, parallel expressions, metaphors and speech acts. These devices advocate the provision of desirable information about cases in the courtrooms. The next subtopics discussed these linguistic devices using illustrative examples taken from the oath presented in the appendix.

4.1. CONCRETE AND ABSTRACT WORDS

Concrete and abstract words build both semantic and pragmatic meanings of a text. Semantically, concrete words refer to something that we can have immediate experience of them through our senses and the actions we do. It signifies all the tangible qualities of things we can experience directly through our senses or actions. Abstract words refer to intangible qualities, ideas, and concepts which we know only through our intellect.³⁹ Pragmatically, text producers and users employ concrete and abstract words to communicate both transparent and obscured textual, contextual and social meanings.⁴⁰ The abstract words identified from the oath employed in Oromia courtroom presents concepts like truth and its relations with the beliefs in supernatural being. The concrete words used in the oath refer to objects and actions which concretize the beliefs about truth in the Oromo people. Both the abstract and concrete words used in the oath show the beliefs and practices of telling truth among the society. In what follows, the words extracted from the oath text presented in the appendix refer to this point.

³⁹ Pollock, L. 'Concepts and Concreteness in Psycholinguistics (Unpublished PhD Dissertation, 2017); Brysbaert, M., Warriner, A.B., Kuperman V., Concreteness Ratings for 40 thousand generally known English word lemmas. *Behav. Res. Methods* (2013), 46, 904–911. <https://doi.org/10.3758/s13428-013-0403-5>.

⁴⁰ Fowler R., *Language in the News (Discourse and ideology in the Press*, London: Rutledge, 1991).

(1)

	<i>Abstract words</i>	<i>Gloss</i>		<i>Concrete words</i>	<i>Gloss</i>
(1)	<i>dhugaa ... soba ...</i>	'truth...lie'	(9)	<i>... guddate ...</i>	'...grew...'
(5)	<i>Waaqa...</i>	'God'...'	(11)	<i>... mul'ate ...</i>	'...visible...'
			(17)	<i>...qe.ee ... bofa ...</i>	'... home, snake...'
			(19)	<i>... booyyee</i>	'...pig...'
			(21)	<i>... dhala</i>	'...offspring...'
			(28)	<i>...faca'e ...</i>	'...sown...'
			(30)	<i>... marge ...</i>	'...germinate...'
			(34)	<i>...ija</i>	'...seed...'
			(48)	<i>... mana ...</i>	'...house...'

The abstract nouns *dhugaa* 'truth' and *soba* 'lie' present the desirability of telling the truth by contrasting it with the undesirability of telling a lie. The use of the noun *Waaqa* at the beginning of the oath intimidates witnesses in the name supernatural being not to give false information about a case. Witnesses are expected to declare their integrity to truth before testifying about a case under investigation in the name of God wrath. The concrete nouns denoting the properties believed to be influenced by God's punishment, in case witnesses tell lie, include *qe'ee* 'home', *dhala* 'offspring', *ija* 'seed/product' and *mana* 'house'. These nouns denote the basic foundations of life of the Oromo society. The choice of these nouns over the other words is to declare commitment to tell truth by reference to the foundation to witness's life. The Oromo use the expressions *qe'ee abbaabayyuu koo* 'my ancestor's home', *dhala koo* 'my offspring', *ija godhu* 'bear a seed/offspring' and *mana koo* 'my house' to demonstrate their attachment to the entities the nouns denote. For the people, the loss of these entities is as painful as the loss of life. Thus, for the Oromo swearing in the names of these entities is an assumption that their statement would amount to tell truth. Likewise, using concrete nouns which denote *bofa* 'snake' and *booyyee* 'pig' (17 and 19) which have enmity and gluttonous behaviors is to control witnesses to tell fact about cases. Witnesses call God's action to bring these impersonal characters on themselves if they perjury.

The verbs *faca'e* 'sow', *marge* 'germinated', *guddate* 'grew' and *mul'ate* 'became visible' used in (9, 11, 28 and 30) of the text represent concrete

actions. The actions are related to human and non-human growths which overtly show the bad future wished for the offspring and seed of a witness who tell a lie, conversely demonstrate a good future wished for he/she who tell the truth a case on trial in the courtroom. Specifically, the use of the verbs seems to wish self-perpetuation and sufficient subsistence for a person who tells truth, and the reverse for those who speak a lie about a case. In the perspective of functional grammar, such lexical items are also names ‘active words for they are triggering physical actions, and mainly emphasize on what words do rather than on the traditional grammatical descriptors.’⁴¹

4.2. ANTONYMS

Antonyms are the other lexical units identified from the oath used in Oromia courtrooms as an alternative way of discursively enforcing witnesses to give truthful testimony. Antonyms are words that are opposite with respect to some components of their meanings. It is argued that antonyms show disagreement with or present contradicting argument to a presupposed context.⁴² Semantically, antonyms show linguistic opposition, whereas, pragmatically, they indicate context opposition as presented in the example below.

(2)

(1)	<i>Dhugaa ... soba</i>	‘...truth; ... lie’
(23)	<i>Dhugaa ... soba</i>	‘... truth; ... lie’
(39)	<i>Dhugaa ... soba</i>	‘... truth; ... lie’
(51)	<i>Dhugaa soba</i>	‘... truth; ... lie’

The paired words *dhugaa* vs. *soba* reiterated in the lines are opposite in meanings. The reiteration shows the emphasis to telling truth and lie – the socially and legally desirable and undesirable verbal practices respectively. The use of the words (true vs. false) with textually and contextually contradicting meanings has direct influence on witnesses to agree with the socially accepted and disagree with the unaccepted beliefs and practices. Consistent with this discursive argument, Clancy states that the pragmatic

⁴¹ Blackledge, A., *Discourse and Power in A Multilingual World* (Amsterdam:John Benjamins, 2005).

⁴² McCarthy, M.J., *Spoken language and Applied Linguistics*(Cambridge: Cambridge University Press, 1998).

use of words with opposite meanings challenge unacceptable and favoring acceptable notions and practices in a given society.⁴³ Thus, the antonyms used in the oath encourages witnesses telling truth and discourages them telling lie about cases.

4.3. REPETITION

Repetition refers to the reoccurrences of words, phrases and clauses which mean the same things. In the literature on discourse study, repetition is seen as one of the pragmatic devices which keep text coherence and yield effects on social actors and actions through text.⁴⁴The repetitions range from sounds to sentences to mainly focus on the necessity of telling truth, and the beliefs about the repercussions of speaking a lie. In what follows, repetition of the sounds comprised in the lines of the oath text was discussed.

(3)

-
- (33) *kan daraare ija hingodhatin*
 (35) *kan ija godhate hinyaatamin*
 (37) *kan nyaatame naaf hinsifaa'in*
 (44) **nagaan mana kootti na hingalchin**
 (45) *yoo na galche, nagaana hinbulchin*
-

The forms made bold in the lines of text (3) show repetitions of both consonant and vowel sounds. The repetitions include consonance, alliteration and assonance.⁴⁵ In the case of consonance, /n/ is reiteratively used at the end of each line of the text. The sound is also reiterated at the beginning of some words of the text (44 and 45). Similarly, the vowel sounds /a and aa/ are repeatedly used in the text. Our main concern here is not what but why

⁴³ See Clancy, B., 'From Language as A System to Language As A Discourse (2018) available on:<https://www.researchgate.net/publication/328334800> .

⁴⁴ Fayyadha, H. M., *A discourse Analysis of the Linguistic Strategies in the Debate between Moses and Pharaoh*, Journal of Language and Literature (2014) No.13 <https://www.researchgate.net/publication/323704171>; see also Jackson, R. C., *The Pragmatics of Repetition, Emphasis, and Intensification* (Salford University: Unpublished PhD Dissertation, 2016).

⁴⁵ Consonance and alliteration refer to the recurrence of final and initial consonant sounds respectively. Assonance is the recurrence of a vowel sound in two and more words in a sentence (See Albashir, E. H. and Alfaki, I. M., *An Exploration of the Rhetorical Devices in Leila Aboulela's Novel*, American International Journal of Contemporary Research (2015), Vol.5, No.1, Pp 29-38.

the repetitions are used in that ways. The recursive use of these phonemes at the beginning and end of the words creates rhythmic sound which can attract attentions of audience towards the harmful effects of giving wrong factual information about cases brought to courtroom. This agrees with Robert’s observations in which the recursive use of both consonant and vowel sounds in words create musical effect that can hold listeners’ attentions towards the messages intended to be conveyed.⁴⁶

The other repetitions observed in the oath include words and phrases. The following fragments show the repetitions.

(4)

<i>Repetitions</i>	<i>Frequency</i>	<i>Gloss</i>
<i>yoo</i>	x18	‘if...’
... <i>naaf</i> ...	x15	‘...to me..’
... <i>qe’ee</i> ...	x8	‘...home, ...’
... <i>qe’ee koo</i> ...	x6	‘...my home...’
... <i>dhala</i> ...	x4	‘...offspring,...’
... <i>dhala koo</i> ...	x2	‘...my offspring...’
... <i>ija</i>	x2	‘...seed/product....’

The maximal repetitions of the conjunction *yoo* ‘if’ at the beginning of the phrases and clauses used in the oath is to give emphasize to the supposed negative consequences of telling lie and positive impact of telling truth about a cases. Furthermore, on the repercussions, the nouns *qe’ee* ‘home’, *ija* ‘seed and *dhala* ‘offspring’ which refer to the basic foundations and self-perpetuation of someone are iteratively employed in the oath. Repetition of the noun phrases such *qe’ee koo* ‘my home’, *ija koo* ‘my seed’ and *dhala koo* ‘my offspring’ demonstrates one’s own reference and attachment to his/her properties. More importantly, repetition of the prepositional phrase *naaf* ‘to me’ accentuates the agreement witnesses should make to the actions God will take on their properties if they deny telling truth.

⁴⁶ Robert L., *Rhetorical Devices for Speechwriters* (Washington, DC: CQ Press, 2010).

Yet, if-clause is the other repeatedly presented form of the sentences in oath text to warn the witnesses about the potential danger of denying facts about cases they witnessed. The following text demonstrates this point.

(5)

(2)	<i>yoon soba dubbadhe....</i>	‘if I speak a lie....’
(4)	<i>yoon soba dubbadhe....</i>	‘if I speak a lie....’
(26)	<i>yoon soba dubbadhe....</i>	‘if I speak a lie....’
(40)	<i>yoon soba dubbadhe....</i>	‘if I speak a lie....’
(50)	<i>yoon soba dubbadhe</i>	‘if I speak a lie....’
(52)	<i>yoon soba dubbadhe....</i>	‘if I speak a lie....’

The form ‘If I speak a lie...’ is subordinate to the main clauses omitted from the text. The subordination is made by *yoo*, the conjunction productive in the syntactic constructions of if-clause in *Afaan Oromo*. The clauses are presented in first person singular point of view to enforce witnesses to self-curse not to lie about cases. It is reiterated in the oath to give emphasis to the cause, i.e., ‘If I speak lie...’ of the effect presented in the main clauses. With this, a witness confirms that he understood the effects of the curse presented in the main clauses of the sentences in the oath if he/she speaks lie. This leads us to see the sentence level repetitions identified from the witness oath. Actually, sentence repetition subsumes the sounds, words, phrases and the if-clauses level repetitions discussed so far. The text presented here under shows the case.

(6)

(1)	<i>dhugaa malee soba hindubbadhu</i>	(x10)	‘except truth, I don’t speak a lie’
(7)	<i>yoo naafkenne hinguddatin</i>	(x4)	‘in case he gave me, let it doesn’t grow’
(17)	<i>qe’ee koo bofti haa dhaalu</i>	(x4)	‘let snake inherits my compound’
(19)	<i>qo’een koo qe’ee booyyee haa ta’u</i>	(x4)	‘let my home is that of pig’
(27)	<i>kan faca’e naafhinmargin</i>	(x4)	‘let what I sow does not germinate’
(33)	<i>kan daraare ija hingodhatin</i>	(x2)	‘in case it flowered, let doesn’t give seed’
(45)	<i>Yoo nan galche, nagaan na hinbulchin</i>	(x2)	‘in case He returned me in peace, let Him not allow me stay the night in peace’

As shown in the text, a sentence in the oath texts is repeated a maximum of ten and a minimum of two times. The maximal repetition, as in the first line of the text, emphasizes the major theme, i.e., a promise/declaration to tell truth. The rest of the lines iterated two to four times in the oath text confirm

that witnesses have already declared their loyalty to tell the truth by overtly cursing their *offspring* (self-perpetuation), *germ* (livelihood) , *dwelling* (ancestral home) and *peace* in the name of God.

4.4. PRONOUNS AND CONJUNCTIONS

Pronouns and conjunctions link the presupposed and/or entailed forms and meanings of the oath by referring back and forth to the texts. This contributes to organization of the text and coherence of its intended meanings. Pronouns can serve for self-reference. Conjunctions can refer to cause and effects of an action. They both refer to subjects, object, possessions, effects, etc. by pointing to forward, backward, and even going out of a text to form and establish connection to certain presupposed and/or entailed meanings of other components in a discourse.⁴⁷ Thus, pronouns and conjunctions can refer and infer to the intended messages of a text. Consider this example.

(7)

<i>Conjunctions and pronouns</i>	<i>Gloss</i>
... <i>malee</i> ...	‘...except...’
<i>yoo</i> ...	‘if ...’
... <i>koo</i> ...	‘...my...’
<i>kan</i> ...	‘that...’
... <i>na</i> ...	‘...me...’

As shown in text (7),*koo* ‘mine’*kan* ‘that’ and *na* ‘me’ are pronouns recapped in the oath. The first two are possessive pronouns; the last one, i.e., *na* is personal pronoun used as an object. These pronouns refer to a witness and his/her possessions. The conjunctions *malee* ‘except’ in conjunction with the word *dhugaa*, together *dhugaa malee* ‘except truth’ shows an ultimate and sole preference of witness to tell truth. The clause depicts that the decision a witness makes to speak truth can ultimately avoid speaking *soba* ‘lie’. The conjunction *yoo* links dependent and independent clauses which show a promise to tell truth, and the consequences of dishonoring the promise, i.e., telling lie.

⁴⁷Adugna Barkessa, The Discursive Construction and Representation of the *Waata* Identity (Addis Ababa University, Unpublished PhD Dissertation, 2017).

4.5.NEGATIVE SENTENCES

Almost all of the sentences employed in the text of the oath are negative both in forms and meanings. This is reflected by the verbs of the sentences. Sample of the negative sentences taken from the oath are presented below.

(8)

(3)	<i>Waaqni dhala naaf hinkennin</i>	‘let God doesn’t give me offspring’
(7)	<i>yoo naaf kenne hinguddatin</i>	‘in case He gave me, let it doesn’t grow’
(27)	<i>kan faca’e naaf hinmargin</i>	‘let what I sow doesn’t germinate’
(33)	<i>kan daraare ija hingodhatin</i>	‘in case it flowered, let doesn’t give seed’
(43)	<i>nagaan mana kootti na hingalchin</i>	‘let God doesn’t return me back to my home in peace’

Formally, the sentences in the text contain action verbs to which the discontinuous morpheme {*hin-....in*} is attached as a circumfix to mark negativity. The negative marker is productive in the verb morphology of *Afaan Oromoo*.⁴⁸ Semantically, all the sentences show the culturally and socially believed negative effects of the self-cursing a witness is expected to perform to prove that he/she is going to give factual information about a case on trial.⁴⁹

4.6. PARALLELISM

Parallelism is one of the rhetorical devices used in the oath a witness is expected to take in Oromia courtrooms. As an element of rhetorical device, parallelism is a product of balanced arrangement achieved through repetition of the same syntactic form. It creates a sense of symmetry and rhythm to draw attention to a particular part of message.⁵⁰ The use of parallel expressions helps to absorb the intended messages more effectively, retain and transmit them, and clarify the relationship between the messages.⁵¹ The

⁴⁸Addunyaa Barkeessaa, Sanyiifi Caasaa Jechaa (Addis Ababa, Keyline Printing Press, 2011).

⁴⁹ See subsection 5.8.2 for the negative effects of the self-cursing a witness who may lie has believed to have been encountered.

⁵⁰ Otieno, T.M., *Linguistic Description of the Rhetoric: Barack Obama’s Political Speeches*, Journal of Humanities and Social Science (2015), Vol. 20, No.9, Pp 80-92.

⁵¹ Maadia, M., *Modern Political Speech – Personal Style or Register?* (MA thesis, 1985) Ramat Gan: Bar-Ilan University. Kayam, O., *Transformative Rhetoric: How Obama Became*

text below presents parallel expressions employed in the witness oath for similar purposes to these sources.

(9)

(9) <i>yoo guddate hinmul'atin</i>	'in case it grew, let it be invisible'
(11) <i>yoo mul'ate hindubbatin</i>	'in case it is visible, let it be dumb'
(19) <i>qe'een koo qe'ee booyyee</i>	'my compound is the compound of pig'
(21) <i>dhalli koo dhala yuuyyee</i>	'met my offspring is the of spring of poor'

The paired parallel expressions presented in the text are composed of equal linguistic forms: sentences, words and syllable. The expressions in (9) and (11) are complex sentences containing dependent and independent clauses which contradict each other. Each of the parallel sentences is composed of three words and eight syllables. The sentences also contain similar repeated forms such as {*yoo...u...ate...hin...atin*}. In short, the two sentences are parallel because they are formed from the same number of words having the same forms, and the same sentence type. Similarly, the parallel expressions in (19) and (21) are simple and affirmative sentences. Each of the sentences is formed from four words with similar forms and repetitions in the words. The parallel forms reiterated in each sentences are {*koo...-yyee*}. The parallel structures give more attention to the negative effects of telling lie a witness believed to have encountered. According to Otieno⁵²), parallel structures used in any texts create an effect of balance, create rhythm, reinforce impact of the message, and echo intensity of the message of a text.

4.7. METAPHOR

Metaphor is the other rhetorical device identified from the witness oath. It associates non-human characters with that of human capitalizing on their similarities. It also constructs realities by comparing things implicitly.⁵³In everyday language practice, people choose metaphor to explain and reflect

the New Face of America:A Linguistic Analysis, Journal of Language and Cultural Education (2014), Vol. 2(2), Pp179-198.

⁵² Otieno, T.M., *Linguistic Description of the Rhetoric: Barack Obama's Political Speeches*, Journal of Humanities And Social Science (2015),Vol. 20, No.9, Pp80- 92.

⁵³Adugna Barkessa, *Discursive Strategies of Oromara Integration: A Critical Discourse Analysis of Abiy Ahmed's Political Rhetoric*, Ethiopian Journal of the Social Sciences and Humanities (2019), Vol. XV, No. 2; Van Dijk, T. A., *Politics, Ideology and Discourse* (Spain: Elsevier Ltd, 2006).

their attitudes and values to others, and to react to other's attitudes towards them in an implicit manner.⁵⁴The metaphors identified from the witness oath are presented and discussed as follow.

(10)

(18)	<i>qe'ee koo bofti haadhaalu,</i>	'let snake inherit my home'
(19)	<i>qo'een koo qe'ee booyyee haata'u</i>	'let my home be that of the pig'
(21)	<i>dhalli koo dhala yuuyyee haata'u</i>	'let my offspring be that of the poor'

As presented in the text, *bofa* 'snake' and *booyyee* 'pig' are entities expected to perform humanly activities such as *dhaaluu* 'inheriting' and *ta'uu* 'being' in the oath. In the the Oromo culture, children have birthrights to inherit both the tangible and the intangible heritages of their family. The witness oath we are analyzing denies this cultural practice of inheritance among the people, and wishes snake and pig occupy the rite of passage. In the culture, snake symbolizes cruelty and enmity. Pig symbolizes gluttonous behavior. It is believed in the oath that the inheritance of one's home and properties by these animals detach a witness from human beings. Thus, a witness is expected to curse him/herself to be inherited by the behavior of these animals, which are simple to understand in the culture of the people, if they lie. Robert⁵⁵ writes that analogy compares two things in which the more complex one is explained in terms of the simpler one. The other metaphorical expression used is *dhala yuuyyee* 'the offspring of poor'. The expression compares the offspring of a person required to give evidence for the case brought to a court with the offspring of an impoverished person. This is also wishing something bad to offspring if fails to tell truth.

4.8. SPEECH ACT

Speech act refers to speaker's commitment towards the proposition of their utterances. It is the act speakers or writers perform by words. Based on the communicative contexts, participants ask questions, give commands, and ask

⁵⁴ Zubair, S. Silent Birds: Metaphorical Constructions of Literacy and Gender Identity in Women's Talk in Journal of Discourse Studies (2007), Vol. 9, No.6, Pp766–783.

⁵⁵ Robert, *supra* note 46.

for apology, etc.⁵⁶ The speech acts employed in the witness oath include *Waadaa galuu* ‘top promise’ and *of abaaruu* ‘to self-curse’. As clearly presented in the oath text, a witness is expected to perform the speech acts sequentially or one after the other. Thus, a person called to a courtroom begins with a promise followed by self-cursing before providing information about a courtroom trial. Both speech acts are presented in explicit performative verbs which simultaneously name and perform the actions denoted by the verb in a text. The speech acts are described using illustrative examples in the next subtopics.

4.8.1. *Waadaa Galuu* ‘to promise’

Waadaa galuu is the speech act used in the witness oath to commit a witness to provide truthful evidence about a case. A promise is a type of speech act that a speaker employs to commit him/herself to some future actions. It depends on speaker’s sincerity to confirm the intended action.⁵⁷ The oath a person required to give evidence about a case in Oromia courtroom take begins with promising to give genuine information about the case he/she knows. Let’s see this example.

(11)

(1)	<i>dhugaa malee soba hindubbadhu</i>	‘except the truth, I don’t speak a lie’
(13)	<i>dhugaan dubbadha; dhugaa hinhaalu</i>	‘except the truth, I don’t speak a lie’
(23)	<i>dhugaa malee soba hindubbadhu</i>	‘except the truth, I don’t speak a lie’
(39)	<i>dhugaa malee soba hindubbadhu</i>	‘except the truth, I don’t speak a lie’
(51)	<i>dhugaa malee soba hindubbadhu</i>	‘except the truth, I don’t speak a lie’

The text promises not to tell lie about the case on trial in courtroom using the clause *soba hindubbadhuu* ‘I don’t speak a lie’. The expression *dhugaa malee* ‘except the truth’ demonstrates witnesses’ determination to provide only admissible information about the case they know. This indicates their understanding of the moral, social, psychological and legal benefits of telling truth, and crises of telling lie. Repetition of the lines in the text declare witnesses’ promise to telling truth, and their strong commitment to keep the

⁵⁶ Jay, T. and Janschewitz, K., *The Pragmatics of Swearing*, Journal of Politeness Research, (2008), Vol.4, No. 2, Pp267-288.

⁵⁷ See Haung, Y., *Prgmatics* (Oxford: Oxford University Press, 2007).

promise before providing the information they have about the issues they observe.

4.8.2. *Of Abaaruu* ‘to self-curse’

Of Abaaruu is the main speech act a witness is expected to perform immediately after he/she vowed or promised to tell truth. The illocutionary forces of the self-cursing focus on four themes. One of the themes is *dhala ofii abaaruu* ‘cursing one’s own offspring’. Consider the following text.

(12)

(4)	<i>yoon soba dubbadhe...</i>	‘if I speak a lie....’
(6)	<i>waaqni dhala naaf hinkennin</i>	‘let almighty God not give me a child’
(8)	<i>yoo naaf kenne hinguddatin</i>	‘in case He gave me, let Him not grow it for me’
(10)	<i>yoo guddate hinmul’atin</i>	‘in case it grew up, let it be invisible’
(12)	<i>yoo mul’ate hindubbatin</i>	‘in case it became visible, let it be dumb’

The self-cursing expressions presented in the text begin with cause and ends with effects. The cause presented is speaking lie (4). As the line demonstrates, speaking lie is resulted in the effects reiteratively appear in (6, 8, 10 and 12). With the cursing statements mentioned on these lines, a witness is expected to show his/her commitment not to lie wishing negative effects on their self-perpetuation. The independent clauses *hinkennin* ‘let Him not give’, *hinguddatin* ‘let it not grow’, *hinmul’atin* ‘let it not visible’ and *hindubbatin* ‘let it not speak’ show agreement to the belief in which God punish offspring of witnesses’ who tells lie. Like any other individual in the world, an Oromo is may worry for his/her self-continuity. He/she wants to have offspring for generation link or not to create generation gap. In the culture of the people, offspring is a valuable asset. There is no mercy for anyone who comes to an Oromo in the name of his/her children.

The other theme against which the self-cursing used is crop production. Crop production is the main livelihood source of the Oromo and the Ethiopian people in general. It is believed that witnesses give truthful testimony if they swear against the livelihood source. The example below illustrates this point.

(13)

(26)	<i>yoon soba dubbadhe</i>	‘if I speak a lie,’
(27)	<i>kan faca’e naaf hinmargin</i>	‘let what I sow does not germinate’
(29)	<i>yoo marge naaf hinguddatin</i>	‘in case it germinate, let it doesn’t grow for me’
(31)	<i>yoo guddate naaf hindaraarin</i>	‘in case it grew, let it doesn’t give flower’
(33)	<i>yoo daraare ija hingodhatin</i>	‘in case it flowered, let it doesn’t give seed’

These statements curse the series of actions expected in the crop production. The actions focused through the curse include geminating, growing, flowering and producing seed. The performative verbs *hinmargin* ‘let it not geminate’, *hinguddatin* ‘let it not grow’, *hindaraarin* ‘let it not flower’ and *ija hingodhatin* ‘let it not give seed’ are cursing the steps at which crops are produced. The curse wishes negative impact on the consumption and the consumer as well. It is, therefore, one of the terrifying strategies courtroom judges use against witnesses to boost acceptability of the information witnesses tell to the judge about the disputable case in courtroom.

Yet, the other theme of the curse a witness is expected to perform refers to dwelling. Cursing one’s own home is the strategy of frightening a person not to tell lie. The next text presents lines of the curse.

(14)

(16)	<i>yoon dhugaa haale</i>	‘if I deny truth’
(17)	<i>qe’ee koo bofti haadhaalu,</i>	‘let snake inherits my compound’
(19)	<i>qo’een koo qe’ee booyee</i>	‘let my compound is that of pig’

In these lines, witnesses are expected to call snake and pig on their dwellings. In the Oromo culture, both animals are presented negatively because of their characters. Snake is a poisonous and potential enemy of human being. Pig is a symbol of gluttonous behavior which is not acceptable in the culture. Inviting the poisonous and gluttonous behaviors of the animals using the expressions let snake inherit my dwelling and let my dwelling is the home of a pig’ (17 and 19) symbolizes the inconvenient and harmful residence wished to a witness who lies about a case he/she observes.

In both expressions, associating dwelling of a witness who lies with the residence of the animals is also dissociating him/her from human being. Thus, it is believed that witnesses tell truth because they don't want to face the inconveniences mentioned in the curse.

Nagaa 'peace' is the other theme against which self-cursing is expected to be performed by a witness. Self-cursing by referring to peace aims at widening the probability of telling truth about cases on trial and narrowing the ways of speaking a lie. Seemingly, peace is used as one of the themes of the oath due its prioritized sociocultural values among the Oromo people. This inevitably contributes to the reason why judges have chosen and brought the oath to courtroom to enforce witnesses to tell truth. Let's see the example below.

(15)

52	<i>yoon soba dubbadhe,</i>	'if I speak a lie,'
53	<i>nagaan mana kootti na hingalchin</i>	'let Him not return me back to my home in peace'
55	<i>yoo na galche nagaan na hinbulchin.</i>	'in case He returned me in peace, let Him not allow me stay the night in peace,

The expressions on the lines (53 and 55) are used to wish a bad fortune for the soul of a witness if he/she provides untruthful information. The bad fortune wished to negatively impact peace includes not going back to home and not stay the night in peace. This is emphasized by the phrase *not in peace* used in the text. With the curse witnesses are expected to make against their existence, the judge trust the evidence witnesses provide about cases.

In sum, promising and self-cursing are the main speech acts contained in the witness oath employed in Oromia courtrooms. Before giving information about cases on trial, a witness is expected to declare to tell only what he/she knows. Witness first promises to give trustable information, and then curses his/herself calling negative impact onto their children, germs, dwellings, and peace, if they give wrong information about the case observed. The negative impact of telling lie is extended from affecting offspring to germ, from germ to dwelling, from dwelling to livelihood source and then to peace. This is against the philosophy and livelihood sources of the Oromo people. Philosophically, the Oromo are highly valued self-perpetuation that link

generation. Germination is the main source of livelihood for them. Both self-perpetuation and germination link with the environment where they live. Above all, the Oromo value peace for existence. Therefore, it is believed that witnesses can be trusted when they swear in the elements discussed so far. The court judges seem to know such heart bit of the people and indigenized the witness oath in the courtroom. They are very much conscious to use the self-curse as a strategy of investigating truth. Unlike using Bible and Quran, which the people have little evidence in their culture and even most of them do not know the history and the examples given in the holly books, the witness very much aware of the consequence of the curse they have in their cultural memory.

4.9. DISCURSIVE STRATEGIES USED IN THE OATH

Discursive strategy is the other theme discussed in the section. The linguistic devices discussed so far realize the different discursive strategies identified from the witness oath employed in the courtrooms. The strategies identified from the oath are mainly corresponding with boosting admissibility of the information expected from witnesses. Among others, *authorizing*, *associating*, *intensifying*, *self-mentioning* and *total admission* are the major discursive strategies used in the witness oath.

Authorizing strategy allows involvement of the socio-culturally accepted customary power of the Oromo people in the legal decision making system in courtrooms. It is a legitimation by reference to tradition and law. It is also vested in impersonal traditional authority to legitimize (if already exist) and to constitute (if not exist) the beliefs and the custom people use for socialization and confirmation of the socio-cultural values⁵⁸. Interestingly, the attempt began to involve customary practices in legal decision making system in Oromia courtrooms seems legitimizing the role of traditional authority to solve cases brought to the legal context. This, hopefully, creates co-operation between courts and people to safeguard justice.

Associating the other discursive strategy identified from the courtroom oath, brought customary practices and beliefs to the legal decision making system

⁵⁸ Van Leeuwen, T., *Discourse and Practice: New Tool for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008).

The strategy associates the behaviors witnesses are supposed to acquire as a consequence of lying with the enmity and gluttonous of pig and snake. The association shows the socially and culturally accepted beliefs about the negative effects of telling lie on livelihood sources and generation link. This may enforce witnesses to give reliable information about the cases they know. Thus, it is reasonable to conclude that using culturally produced and accustomed oath is near to the psychology of people to enable them tell truth about cases.

Intensifying strategy magnifies power of the oath used in the courtroom to impose witnesses to support legal decision making system. The strategies magnify the illocutionary force of the speech act, for instance self-cursing, focuses on creating generation discontinuity, subsistence scarcity, human insecurity and residential crisis. It is believed that the self – cursing is resulted in negative effects, if a witness gives wrong evidence, and positive effects, in case he/she tells truth about the case under investigation. It is also believed that telling truth nourishes and telling lie deserts one's well-being.

Self-mentioning is the discursive strategy employed in the oath. Self-mentioning shows explicit presence of a speaker by using the frequent use of first person pronoun and possessive adjectives which show stance and a contextually situated determination of a speaker⁵⁹. The frequent use of first person singular pronouns *ani* 'I', *na* 'me' and the possessive adjective *koo* 'my' used in the oath demonstrate the explicate presence of a witness in the oath. This explicit presence of a witness and their verbal actions in the oath discloses accountability for the information they provide about a case. It also unveils a witness's determination to agree with the effects of the self-cursing believed to be happened for the information he/she gives to a courtroom trial. Each lines of the oath text used first person singular pronoun to show accountability of a witness for his /her words about a case under legal jurisdiction.

Total admission, as the other discursive strategy used in the oath, obliged witnesses to fully accept the belief about telling truth in a similar way to

⁵⁹ On Self-mentioning Strategy, see Hyland, K, *Meta-discourse* (London: Continuum Guides to Discourse, 2005).

Komter's observation in courtroom discourse where admission is taken as supportive.⁶⁰ This in turn, insists they believe in the alleged consequences of speaking a lie. The strategy blocks any alternatives of undesirable information and attempts to engage them in providing only facts whether it strengthens or weakens either of the disputed ideas. Unlike defenders and accusers who may partially admit a case to support the justice system, and/or partially deny it to defend themselves based on their own intentions, the oath limits witnesses to be one-sided, i.e., supporting justice.

4.10. OATH, IDEOLOGY AND POWER IN THE PROVISION OF TRUTHFUL TESTIMONY

The linguistic devices and discursive strategies discussed in the preceding topics and subtopics reveal that oath, ideology and power are inextricably linked to each other to boost the admissibility of information about cases. The devices and strategies used in the oath are framed by the culturally and socially constructed spiritual ideology that aimed at governing mental space of the witnesses. The ideology magnifies the negative discursive representation of untruthful testimony on self-perpetuation, livelihood source, dwelling and peace which are powerful to influence witnesses to tell truth about the case they observed. Involving such an oath with customary spiritual ideology in the legal decision-making process contributes to safeguarding justice.⁶¹ This provides substance to the institutional power vested in the courtrooms. Following Althusser, it is learnt that the power relations, by their very character, are always asymmetrical.⁶² The asymmetrical power relations, which are part of its ideologies, are negotiated and perpetuated through the oath-swearing practices in the courtroom. Therefore, it is argued that the study of oath used in courtroom is part of the study of its ideology and power.

⁶⁰ Komter, M. L., *Accusations and Defenses in Courtroom Interaction: Discourse and Society* (1994), Vol. 5, No.2, Pp165-187.

⁶¹ Milhizer, *supra* note 5.

⁶² Althusser, L., *Ideology and Ideological State Apparatuses in Lenin and Philosophy and Other Essays*, (1971), Vol.34, No.5, Pp.121-173.

The impersonal traditional authority and the power vested in the oath influences the witnesses to give factual information about the cases they know. Involving the cultural oath in the process of legal decision making is making the traditional authority complement to the legal authority to give the right decisions about cases on trial. Thus, analyzing the witness oath used in Oromia courtrooms is analyzing the role of the traditional authority embedded in the oath in the legal decision making process.

5. CONCLUSION

To conclude that the discussions made so far on the findings of the study demonstrate the linguistic devices and discursive strategies employed in the oath are powerful to impact witnesses to tell truth about cases they knew. The devices and strategies communicate the traditional values about speaking truth and lie already situated in the mental set-up of the Oromo people. With this, they activate the values witnesses have in their mental space and warn them not to lie by referring to the negative effects believed to be happened in their life. More importantly, the oath magnifies the negative effects of lying on livelihood source, offspring, dwelling and peace supposed to be happened in witnesses' life. Seemingly, the oath is incorporated into the legal decision making context based on its convening power to provide factual information to support justices. It can also be concluded that the language employed in the oath provides substances to both customary (religious) and legal authorities, and reflects the interlocking nature of language, law and power which determine the asymmetrical power relations between participants in courtrooms.

Appendix

1	J	:	Dhugaa malee soba hindubbadhu
2			Yoon soba dubbadhe
3	W	:	Dhugaa malee soba hindubbadhu
4			Yoon soba dubbadhe
5		:	Waaqni dhala naaf hinkennin
6	W	:	Waaqni dhala naaf hinkennin
7	J	:	Yoo naaf kenne hinguddatin
8	W	:	Yoo naaf kenne hinguddatin
9	J	:	Yoo guddate hinmul'atin
10	W	:	Yoo guddate hinmul'atin
11	J	:	Yoo mul'ate hindubbatin
12	W	:	Yoo mul'ate hindubbatin.
13	J	:	Dhugaan dubbadha; dhugaa hinhaalu
14			Yoon dhugaa haale ...
15	W	:	Dhugaan dubbadha; dhugaa hinhaalu
16			Yoon dhugaa hale
17	J	:	Qe'ee koo bofti haadhaalu
18	W	:	Qe'ee koo bofti haadhaalu
19		:	Qo'een koo qe'ee booyyee haata'u
20	W	:	Qo'een koo qe'ee booyyee haata'u
21	J	:	Dhalli koo dhala yuuyyee haata'u
22		:	Dhalli koo dhala yuuyyee haata'u
23	J	:	Dhugaa malee soba hindubbadhu
24			Yoon soba dubbadhe
25	W	:	Dhugaa malee soba hindubbadhu
26			Yoon soba dubbadhe
27	J	:	Kan faca'e naaf hinmargin
28	W	:	Yoo faca'e naaf hinmargin
29	J	:	Yoo marge naaf hinguddatin
30	W	:	Yoo marge naaf hinguddatin
31	J	:	Yoo guddate naaf hindaraarin
32	W	:	Yoo guddate naaf hindaraarin
33	J	:	Yoo daraare ija hingodhatin
34	W	:	Yoo daraare ija hingodhatin

35	J	:	Yoo ija godhate hinyaatamin
36	W	:	Yoo ija godhate hinyaatamin
37	J	:	Yoo nyaatame naaf hinsifaa'in
39	J	:	Dhugaa malee soba hindubbadhu
40			Yoon soba dubbadhe
41	W	:	Dhugaa malee soba hindubbadhu
42			Yoon soba dubbadhe
43	J	:	Nagaan mana kootti na hingalchin
44	W	:	Nagaan mana kootti na hingalchin
45	J	:	Yoo na galche nagaan na hinbulchin
46	W	:	Yoo na galche nagaan na hinbulchin.
47	J	:	Dhugaa malee soba hindubbadhu
48			Yoon soba dubbadhe
49	W	:	Dhugaa malee soba hindubbadhu
50			Yoon soba dubbadhe
50	J	:	Kan dhalate naaf hinguddatin
52	W	:	Kan dhalate naaf hinguddatin
53	J	:	Kan faca'e naaf hinmargin
54	W	:	Kan faca'e naaf hinmargin
55	J	:	Qe'ee ko bofti haadhaalu
56	W	:	Qe'ee ko bofti haadhaalu
55	J	:	Nagaan mana kootti na hingalchin
56	W	:	Nagaan mana kootti na hingalchin

THE QUEST FOR ETERNAL CLAUSES IN THE ETHIOPIAN CONSTITUTIONAL AND DEMOCRATIC REFORMS

*Solomon Emiru**

ABSTRACT

For continuity of states, some constitutions have eternal clauses, which are immune from amendments forever. However, the concept of eternity has never been recognized in any of Ethiopian constitutions despite long history of constitution-making processes. Ethiopians have been tackling to establish a viable, constitutional, and democratic government through making and remaking many constitutions in their political history. Among the constitutional reforms in Ethiopia are the 1931 and 1955 Monarchical Constitutions, the 1987 Socialist Oriented Constitution and the 1995 Federal Oriented Constitution. The chief challenge in the Ethiopian constitutional and democratic reforms is that the previous reforms have never been utilized as steppingstones for the new reforms. To this date, Ethiopians have neither developed their common constitutional culture nor recognized the eternal clauses on important political and constitutional matters. There is no consensus on the issue of national identity, state structure, the form of government, language policy, regional state formation and others. Currently, Ethiopia has also been facing multiple challenges, including ethnic tensions, sporadic border conflicts, massive internal displacement, drought, poverty, and gross human rights violations. For this reason, this Article argues that Ethiopia must introduce 'eternal constitutional clauses' on issues of common national interests.

Key words: *Constitution, Eternal Clauses, Ethiopia, Federalism*

* LL.B (Haromaya University);LL.M (Addis Ababa University);Assistant Professor of Law at Wollega University; email address: gutamasol@gmail.com

1. INTRODUCTION

Ethiopia introduced the first written constitution in 1931 in its constitutional history. Since 1931 to 2020, Ethiopia has enacted three types of constitutions. The first constitution was the Monarchical Constitution enacted in 1931 and revised in 1955 during the kingship of Emperor Hailesillase I. Following the 1974 Revolution, Ethiopia introduced a new system of government (Socialism). The Socialist Regime of Military Dictator led by Mengistu Hailemariam, named as ‘the Derg’ was governing Ethiopia without a constitution for around thirteen years. However, Derg enacted its constitution in 1987 as the People’s Democratic Republic of the Ethiopian Constitution (PDRE Constitution). Nevertheless, the fundamental freedoms and democratic rights recognized under this constitution had not practiced during the Derg era.¹

Of course, the 1974 Ethiopian Revolution had completely eliminated the feudal system and the emperor himself successfully. The slogan of the 1974 Revolution was ‘Land to the Tiller’; accordingly land was taken from the Landlords and redistributed to the Ethiopian farmers free of any charges. Nevertheless, the quest for ‘national identity’ or the right to self-determination was not practised under the Derg government. Furthermore, the right to a full measure of self-government was never guaranteed under the 1987 Constitution although it recognizes regional autonomy.

Moreover, though it was expected to come in to effect starting from the 1974 Revolution, the Derg refused to recognize and implement the right to self-determination of Nations, Nationalities, and Peoples of Ethiopia. This encouraged the establishment of various liberation fronts during the Derg Regime. For instance, the Eritrean People’s Liberation Front (EPLF), the Tigray People’s liberation front (TPLF), and the Oromo Liberation Front (OLF) were considered the major liberation fronts in Ethiopia during the Derg era. After a disastrous civil war had been fought between these liberation fronts and the Central Government, the Derg regime collapsed completely in 1991.

¹Girmachew Alemu, *Apology and Trials: The Case of the Red Terror Trials in Ethiopia*, African Human Rights Law Journal (2006), Vol. 6, Pp 64-85.

After the downfall of Derg Regime in May 1991, the Liberation Fronts agreed to establish a Transitional Government irrespective of their differences. Accordingly, the Peace and Democracy Conference took place from 1-5 July 1991 in Addis Ababa with the attendance of some 27 political parties, including the major political parties, the Ethiopian People's Revolutionary Democratic Front (EPRDF), the TPLF, the OLF, and others.² This Peace and Democracy Conference was resulted in the following important agreements:

The points on which agreement was reached included: first, establishing a Transitional Government made up of a coalition of democratic forces, whose main task would be to prepare the ground for National Election; second, convening a popularly elected constituent assembly to draft and to ratify a new constitution; third, prosecuting the members of the Derg and their henchmen for the heinous crimes they had committed against the people of Ethiopia; and fourth, handing over power to a democratically elected government after a transition of no longer than three years.³

Consequently, Ethiopia adopted the 1995 Federal Democratic Republic of Ethiopian Constitution in 1994. This constitution has incorporated several golden democratic and human rights principles in its contents. Additionally, the Preamble of the same constitution claims that this constitution is

2 Assefa Fiseha, Emergence and Transformation of Territorially Based Cleavages and Constitutional Responses in Ethiopia (Occasional Paper Series Number 28, Forum of Federations, 2019), P8.

3 See, the Peace and Democracy Conference which took place 1-5 July 1991 in Addis Ababa. And furthermore, the Peace and Democracy Conference attracted mass media and published on various newspapers both nationally and internationally at that time. For instance, a transitional programs of several opposition groups are published in special issue of Imbylta (June 1991), an Ethiopian quarterly journal of political opinion, published in Washington DC. Additionally, all the discussions during the Conference on Peace and Democracy from 1-5 July 1991 can be listened from the following websites: [https:// www.youtube.com/watch?v=5UkwtgBD8mw](https://www.youtube.com/watch?v=5UkwtgBD8mw)<https://www.youtube.com/watch?v=e61bzzbJF-k> <https://chilot.files.wordpress.com/2011/11/the-transitional-period-charter-of-ethiopia.pdf> <http://www.operationspaix.net/775-biographie-de-wodajo-kifle.html>

considered a covenant among the Nations, Nationalities, and Peoples of Ethiopia, in holding the country perpetually.⁴

The problem is that in all these constitution-making processes; the previous constitutions were completely repealed and replaced by the new constitution. For instance, the monarchical constitution of 1955 was all in all repealed by the 1987 People's Democratic Republic of Ethiopia. Similarly, the 1987 Constitution was dropped and replaced by the 1995 Federal Democratic Republic of Ethiopian Constitution [shortly the 1995 FDRE Constitution]. Therefore, the prior constitution cannot be used as a steppingstone for the later one.

In addition, the concept of eternity has never been recognized under any of these constitutions previously enacted in Ethiopia. Any laws including the constitution are indeed subjected to amendments to cope with time, technology, socio-political and economic conditions. Nevertheless, the notion of 'Eternal Clause' is related to the unamendability of certain important constitutional principles to ensure state's perpetual existence. That means, some clauses guarantee the immunity of certain parts of the constitution from any constitutional amendment.⁵ In the context of eternity, the amendment is a principle to update certain constitutions to cope with the changing world; however, eternity is an exception in which few principles in the constitution remain eternally unamendable.⁶ The reason why a certain constitutional principles remain eternally unamendable is to entrench basic human rights and to ensure democratic governance; and thereby to uphold the unity of the state. Nevertheless, eternal clause cannot be incorporated and justified for the sake of strengthening the power of the ruling government or

4 See the Preamble of the 1995 Federal Democratic Constitution of the Ethiopia: It says, "We, the Nations, Nationalities and Peoples of Ethiopia."

5 Preuss, Ulrich K, *The Implication of Eternity Clauses: The German Experience*, Isr. L. Riv.44 (2011), P430.

6See Article 79(3) of the German Basic Law of 1949, "Amendments to this Basic Law affecting the division of the Federation into *Länder*, their participation in principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible". Article 89 of 1958 France Constitution, "The Constitution of France provides that amendments of the Constitution of France cannot affect the Republican form of government or the territorial integrity of the country". These provisions show the eternity clauses both under German and France Constitutions respectively.

for any other purposes except for the sake of ensuring democracy and nurturing human rights principles as constitutional literature reveals.

Hence, the key problem assessed in this Article is connected to the lack of eternal constitutional clauses and its drawbacks in the Ethiopian constitution-making history. Thus, this Article strongly argues that if the concept of eternal constitutional clauses are recognized and accommodated in the present constitutional reforms, it will be utilized as a grand norm for all political parties and the ruling government to ensure a viable Ethiopian state perpetually. The problem in Ethiopia is that, whenever, there is a change of government, there is a change in all aspects: For instance, a change of constitution, a change of state structure, a change of ideology; a change of National Flag, a change of language policy, and others. Always there is a paradigm shift frequently, whenever a government change occurs in Ethiopia. Accordingly, lack of genuine democratic and constitutional culture, and the non-availability of eternal constitutional clauses in the Ethiopian constitutional and political history remains a serious challenge in present-day Ethiopian political reforms.

Accordingly, this Article will answer the following main questions: what is the purpose of recognizing eternal clauses under a certain constitution? Have the concepts of eternal clauses been recognized in the Ethiopian constitution-making history? If eternal constitutional clauses will be recognized or incorporated in the present-day Ethiopian constitution, is it possible to ensure common constitutional culture, and national consensus, especially, on the issue of national identity, state structure, the form of government, language policy, and regional state formation in the present-day Ethiopian federation?

However, Ethiopia has neither recognized eternal clauses nor utilized the prior constitution as a source for the later constitution in its constitution-making history. Ethiopia faced multiple problems as a state, which include but not limited to lack of common constitutional culture/values; lack of consensus on the issue of national identity/interest, state structure, the form of government, language policy, regional state formation, and others. Moreover, currently, Ethiopians are suffering from ethnic tensions, sporadic border conflicts, massive internal displacement, impoverishment, and gross human rights violations. Constitutional reform can be considered as an

element in resolving the complex problems faced by Ethiopians. This Article argues that incorporating eternal clauses on important and core constitutional principles has paramount importance in resolving some constitutional deficiencies in present- day federalist Ethiopia.

2. THE CONCEPT OF ‘ETERNAL CLAUSE’ IN A CONSTITUTION

Before delving into entertaining the concept of eternal constitutional clauses, I would like to briefly describe the concept and types of constitutional amendments. Simply, a constitutional amendment is a process of modifying or altering, or changing certain constitutional provisions or principles. However, there are different rules for amending the constitution which can be either strict or flexible.⁷It is noted that most provisions require a simple amendment procedure, whilst a minority of provisions are more difficult to amend; they enjoy special protection as they are deemed to be more fundamental.⁸

Furthermore, some countries have substantive limitations on the alteration or amendment of the constitution which are explicitly included in the text of the constitution (for example, the Constitutions of Germany, France, Romania, Kosovo, Moldova, Turkey, Ukraine). Among provisions which contain substantive limitations on the alteration of the constitution, there are explicit eternity clauses, with which all constitutional amendments must comply. Consequently, we may have amendable constitutional provisions that may be amended easily or strictly; as well as, non-amendable or eternal clauses in the constitutional amendment process.

On the other hand, the concept of ‘*eternal clause*’ is highly related to un-amendability issues or immune constitutional provisions from amendment by

7 European Commission for Democracy through Law (Report on Constitutional Amendment, Venice, 11-12 December 2009). Available at: [http://www.venice.coe.int/web/forms/documents/CDL-AD\(2010\)001.aspx](http://www.venice.coe.int/web/forms/documents/CDL-AD(2010)001.aspx)<accessed 16 June 2020> .

8 Roznal Y., Unamendability and the Genetic Code of the Constitution (New York University Public Law and Legal Theory Working Papers, Paper 514). Available at: http://lsr.nellco.org/nyu_plltwp/514, <accessed 14 May 2020>.

For instance, see, Article 104 and 105 of the 1995 Federal Democratic Constitution of the Ethiopia; amendments of human rights has strict procedures; it says, “*All rights and freedoms specified in Chapter Three of this Constitution, this very Article, and Article 104 can be amended only in the following manner:*”

any organs. Hence, some clauses guarantee the immunity of certain parts of the constitution from any constitutional amendment.⁹ Therefore, these clauses function as barriers or stop lines to constitutional amendment; any amendment violating those clauses would be unconstitutional in itself and, as such, would be invalid.¹⁰ Such unamendable or eternal clauses may be either formal, that is, explicitly included in the text of the Constitution, or implicit.¹¹ Explicit eternity clauses are included in nearly 35 percent of the world's constitutions (that is, 71).¹² However, it is also important to talk about judicial eternity clauses, that is, implicit eternity clauses, which are identified through the process of interpreting the Constitution by Constitutional Courts or other institutions exercising constitutional review.¹³

The contents of unamendable provisions or principles in the constitutions of different countries are almost similar though there may be slight differences. The contents of explicit unamendable provisions in different states may vary; but one can identify several common groups of components: For instance, 'form and system of government; state's political or governmental structure; state's fundamental ideology or "identity"; basic rights; state's integrity; and other provisions, unique constitutional subjects (for example, immunities, amnesties, reconciliation and peace agreements, taxation or rules governing nationality)'.¹⁴

2.1 THE SIGNIFICANCE OF 'ETERNITY CLAUSES' IN A CONSTITUTION

As elaborated hereinabove, the eternity clause can be defined as constitutional provisions or constitutional principles that are immune from amendments. Hereunder, the importance of 'eternal clause' in a certain constitution is assessed.

9 Preuss, Ulrich K, *The Implication of Eternity Clauses: The German Experience*, Isr. L. Riv.44 (2011), P430.

10. Prof. Dr. Dainius Žalimas, Presentation to the XVIIth Congress of the Conference of the European Constitutional Courts "Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles", June 28-July 1st, 2017, Batumi, P3.

11 *Ibid*.

12 *Id*,P3.

13 *Id*,P6.

14 RoznalY, Unamendability and the Genetic Code of the Constitution,*supra* note 8, P4.

2.1.1. To Mould Constitutional Identity

The concept of ‘Constitutional Identity’ is related to a certain nation’s history, values, and aspirations.¹⁵ That is, certain nation’s history, values, national interests, symbols, and aspirations should be protected by eternity clauses in the constitution. Hence, eternity clauses should be understood as protecting the core of fundamental constitutional principles and therefore leaving space for evaluative interpretation of these principles.¹⁶

As the Venice Commission has noted, concepts like “sovereignty”, “democracy”, “republicanism”, “federalism” or “fundamental rights”, that is, principles, most often protected by un-amendability, over the years have been subject to continuous evolution, both at the international and national level, and should properly continue to be so in the years to come.¹⁷ Therefore, eternity clauses, properly understood, should be seen not as imposing “dead hand constitutionalism”, but as ruling out amendments that would violate the very substance of relevant constitutional principles.¹⁸

2.1.2 Safeguarding the Basic Values of Substantive Democracy

Truly speaking, a constitution should not become an instrument for democratic suicide by inserting eternity clauses without a justifiable cause. Nevertheless, rarely it is necessary to make some fundamental democratic and human rights principles unamendable forever under certain constitutions. For instance, some constitutions, like the German or Czech Constitution, comprise clauses, explicitly declaring the unamendable nature of the democratic form of government.¹⁹ Other constitutions, like that of Kosovo,

15Dainius Žalimas, Eternity Clauses: A Safeguard of Democratic Order and Constitutional Identity (President of the Constitutional Court of Lithuania), P1.

16*Ibid.*

17*Ibid.*

18*Ibid.*

19See Article 9 (2) of the Czech Republic's Constitution of 1993 with amendments through 2002.

- 1) This Constitution may be supplemented or amended only by constitutional acts.’
- 2) Any changes in the essential requirements for a democratic state governed by the rule of law are impermissible.
- 3) Legal norms may not be interpreted so as to authorize anyone to do away with or jeopardize the democratic foundations of the state.

prohibit [*albeit* indirectly] amendments diminishing the constitutional rights and freedoms.²⁰ Obviously, democracy and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. These democratic rights and human rights are universally applicable and becoming parts and particles of international customary laws.²¹

Consequently, independence, democracy, and the inherent nature of human rights and freedoms are associated with the highest constitutional protection through the consolidation of their absolute un-amendability.²² In the light of the notion of the Constitution as integrity, this inviolability means not only the prohibition on altering or revoking constitutional provisions consolidating these values, but also the prohibition on adopting amendments to the other articles of the Constitution that would deny any of such values.²³ Accordingly, eternity clauses are very useful in upholding and protecting democratic governments across the globe. Thus, the eternal clauses in a certain constitution have paramount importance in strengthening the essence of rule of law, inalienable human rights, and safeguarding democratic order in a certain country.

20See the 2008 Constitution of the Republic of Kosovo, Art.144 (3).

‘The President of the Assembly of Kosovo refers proposed Constitutional amendments before approval by the Assembly to confirm that *the proposed amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution.*’

21 For example, the Preamble to The North Atlantic Treaty states that “the Parties to this Treaty are determined to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law.” The well-established dictum of the European Court of Human Rights is stating that “democracy is without doubt a fundamental feature of the European public order”. Similarly, Article 10 of the 1995 FDRE Constitution of Ethiopia says, “Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable.”

22 Prof. Dr. Dainius Žalimas, Presentation to the XVIIth Congress of the Conference of the European Constitutional Courts, Cited at *supra* note 10, P4.

23*Ibid.*

3. THE PLACE OF ETERNAL CLAUSES IN THE ETHIOPIAN CONSTITUTION-MAKING HISTORY

3.1.THE CONSTITUTION-MAKING HISTORY IN ETHIOPIA: GENERAL OVERVIEW

Constitution-making is the most important event in the political life of a country. A constitutional moment is a revolutionary event. It is a moment of constitutional festivity and it is a moment of negotiating national identity too. Unfortunately, very few nations are blessed with a constitutional moment. Since in the history of the constitution-making process, very few nations are successful in freely participating in its making and unmaking process. Accordingly, from history, we have witnessed that most of the world constitutions were imposed by monarchies or dictators. Even in modern times, though the name of the world government incorporates the nomenclature ‘*Democratic Republic*’; their nations have never conferred on people the chance of freely participating in the making and unmaking of their national constitutions. Consequently, most of the the world states’ constitutions have been enacted as per the interest of the dominant political parties in their respective countries, not as per the interests of their people.

The constitution-making and unmaking process in Ethiopia is also like the above illustrations. Hence, the Ethiopian history of the constitution-making process has proven that the people of Ethiopia have never participated either directly or indirectly in their constitution-making process. Ethiopians have never been participated in making and re-making their constitution neither directly nor through their representative in a democratic and transparent manner. In its history, Ethiopia has seen three types of constitution, namely: monarchical constitution [1931-1974]; socialist constitution [1974-1991] and federal oriented constitution [since 1991].

Accordingly, Ethiopia had written constitutions since 1931; nevertheless, the constitutional making had never been participatory, inclusive, and legitimate. The making processes and the contents of both 1931 and 1955 monarchical constitutions were not democratic. Thus, during the monarchical era [from 1931-1974], Ethiopia had nominal constitutions. The absolute power was

vested in the emperor himself. Consequently, the emperor himself was considered the chief executive and commander-in-chief of the national army forces; he was considered the lawgiver, the parliamentary legislation was never enacted unless he signed; and furthermore, the emperor himself was accepted as a fountain of justice; the final decider on legality and constitutionality at his imperial Chilot [bench].²⁴

In the aftermath of the 1974 Revolution, the Military Dictatorship called ‘the Derg’ had introduced Socialism as a new system of government ideology in Ethiopia. The Derg ruled Ethiopia without a constitution for thirteen years [from 1974-1987]. The Derg government enacted its socialist-oriented constitution in 1987 as the People’s Democratic Republic of the Ethiopian Constitution [The 1987 PDRE Constitution]. This constitution introduced many improvements on paper; like the Principle of Separation of Power, Secularism, and others; however, it had never been practiced by the then government. Nevertheless, political parties were banned; there was no right to run for or contest elections.²⁵The regime of military dictator led by Mengistu Hailemariam refused to recognize the right to self-determination of nations, nationalities, and peoples of Ethiopia. This encouraged the establishment of multiple liberation fronts as explained hereinabove.

3.1.1 The History of the 1995 FDRE Constitution Making

The process of constitution-making is as important as its substance to determine the acceptance of a certain constitution as democratic or not. The strength of the participatory constitution-making process is that it secures the consent of the majority elites and stakeholders.²⁶ All have to be included because, in divided societies, inclusion is a prerequisite to genuine consent.²⁷ More broadly, it is a process of constructing a political consensus around constitutionalism in society as a whole.²⁸ This means that not only the elites but also the people at large consent to it.²⁹ As a result of this process, people

24 Ethiopian Constitution of 1931 established in the Reign of Majesty Haile Sellassie I, 16th July 1931.

25 Kifle Wadajo, *The Making of the Ethiopian Constitution* (1991), P135.

26 Kifle Wodajo, *Id*, P7.

27. *Ibid*.

28. *Ibid*.

29 *Ibid*.

will have a sense of ownership of the constitution.³⁰ They identify with, uphold, and safeguard it.³¹ The participation of all the political, ethnic, and socio-economic groups in this democratic process fosters or strengthens in all of them the awareness that they are part of the same polity.³² Therefore, in the process of constitution-making, the various stakeholders should be in the dialogue and reach on an understanding or consensus to ensure the legitimacy of the constitution.

However, the process of the 1995 FDRE Constitution making had encountered many shortcomings: For instance, during its drafting stage, the OLF-one of the principal actors during the Transitional Period had left the transitional process. Despite the nominal coalition structure of the EPRDF, from the beginning, the TPLF provided the leadership, ideological direction to majority of the fighters of the movement.³³ Regional elections were held in most of Ethiopia on 20 June 1992 but, after alleged intimidation and other irregularities, the OLF boycotted the election and withdrew from the government.³⁴ Its forces then launched an armed insurrection against the government.³⁵ So, as we see from these explanations at the drafting stage the 1995 FDRE Constitution was not participatory or all-inclusive.

A constituent Assembly was formed after a separate election was held on 5 June 1994 to complete and ratify a new constitution. In both elections (the 1992 regional elections and the 1994 election), there was evidence of human rights violations and in the latter case 39 parties participating, most of them were members or supporters of the government, while the major opposition forces, including the OLF, the All Amhara People's Organization (AAPO) and a coalition of southern parties boycotted them.³⁶The most important opposition parties those representing the Oromo and the Amhara withdrew from the electoral competition during the transition. The EPRDF and its

30.*Ibid.*

31.*Ibid.*

32. *Id*,P8.

33.John Young: Regionalism and Democracy in Ethiopia (Vol.19,No.2) (1998) Stable URL:<http://www.jstor.org/stable/3993156>), P194.

34. *Ibid.*

35. *Ibid.*

36.Ugo Mattei: The New Ethiopian Constitution; First Thought on Ethnical Federalism and the Reception of Western Institutions (1995), P6.

alliance won 539 seats, leaving 18 seats for other parties or independent candidates; only in Addis Ababa, where independent candidates won 12 out of 27 seats, indicative of semblance of competition.³⁷ Though Ethiopia experienced a disastrous civil war which led to the fall of the dictator (the Derg) in 1991, yet Ethiopia failed in enacting a legitimate constitution in the post-conflict era.

Nevertheless, during the making process of the 1995 FDRE Constitution, many international principles were incorporated by its drafters to make it more democratic. Especially, Chapter Three of the 1995 FDRE Constitution guarantees most rights recognized in the Universal Declaration of Human Rights (UDHR).³⁸ Rights recognized in other international instruments like International Convention on Civil and Political Rights (ICCPR) were incorporated into this constitution.

Also, the all-inclusive 1995 FDRE Constitutional making process was contentious; hence, it was not all-inclusive in its drafting stage since most of the political parties such as the OLF and AAPO have left the transition. Additionally, its contents were criticized by some scholars such as Tsegaye who have listed the major challenges of the Ethiopian federalism in contemporary Ethiopia as follows³⁹:

The threat of secession and internal fragmentation, managing extreme interstate imbalances, the task of state-building especially in the economically impoverished and historically underserved states, power-sharing in the executive office, the quest to have more than one federal working language, choice of capital cities (both at federal and state level) and the promotion of uniform human rights standards in the face of the intensely polarized legal system.

However, the preamble of the Constitution talks about, living together based on equality, building of common interest, and contribution to the emergence of a common outlook, rectifying historically unjust relationships and by

³⁷*Ibid.*

³⁸ See, Chapter Three of the 1995 FDRE Constitution, Arts. 14-44.

³⁹ Tsegaye Regassa, State Constitutions in Federal Ethiopia: A Preliminary Observation (A Summary for the Bellagio Conference, March 22-27, 2004), P20.

further promoting our shared interests and to live as one economic community.

Furthermore, the 1995 FDRE Constitution has incorporated some important pillars of democracy such as, Sovereignty of the People, Supremacy of the Constitution, Sanctity of Human and Democratic Rights, Secularism and Accountability and Transparency of the government officials.⁴⁰ But, the 1995 FDRE Constitution had failed in incorporating the so-called eternal constitutional clause; even discussions had never been conducted on this issue during its drafting phase. That is why, this Article strongly argues that it is possible to build the Ethiopian constitutionalism and constitutional culture on the 1995 FDRE Constitution for the future rather than dismissing this constitution, and go for a completely new constitution in the present Ethiopian constitutional reforms.

4. RETHINKING FOR ETERNAL CONSTITUTIONAL CLAUSES, AND UMPIRING INSTITUTIONS IN ETHIOPIA

As assessed hereinabove, Ethiopia is neither successful in nurturing its constitutional cultures; nor in utilizing earlier constitutions for developing the later one. Always, the change of the government resulted in a radical change in the constitution and constitutional culture in Ethiopia. Undeniably, some changes happened in Ethiopia were supported by a revolution which brought a paradigm shift in the overall political and constitutional aspects. For instance, the 1974 Revolution, which dismantled the feudal system drastically, shifted the ideology of the Ethiopian politics to socialism. The change was from absolute monarchy to socialist government (from monarchy to republic). The 1991 Ethiopian Revolution (May be Ethnic Revolution or Multiculturalism) resulted in ideological change from socialism to capitalism. When radical political and economic change occurs, there may be a tendency of eradicating all legacies of previous regime. Still, it was possible to consider eternal constitutional clauses on the area of national identity, national interest, national symbol, and common national consensus, especially, under the 1995 FDRE Constitution. Nevertheless, the drafters of the 1995 FDRE Constitution had not been deliberated on the issue

⁴⁰FDRE Constitution, Arts. 8-12.

of eternal clauses, during their discussions on various constitutional principles; consequently, it was not incorporated in the 1995 FDRE Constitution.

Of course, incorporating the eternal clauses in a constitution is not an end by itself since establishing genuine, independent, and functioning constitutional institutions, to secure the values of eternal clauses is also necessary in Ethiopia. As a result, impartial and independent umpiring constitutional institutions those interpret and adjudicate constitutionality issues; both in concrete and in abstract cases must be introduced to benefit from the values of eternal clauses in the present Ethiopian federation. Therefore, to make the concept of eternal constitutional clauses more workable; it is highly necessary to introduce an independent constitutional adjudicatory organ, like the Constitutional Courts, through removing politically sensitive institution, like the House of Federation, in the current ongoing Ethiopian constitutional and political reforms.

4.1 THE NEED TO INTRODUCE ‘ETERNAL CLAUSE’ IN THE ETHIOPIAN CONSTITUTION

4.1.1. To Establish a Common Constitutional Identity/Value

As explained hereinabove, Ethiopia has never been blessed in adopting a legitimate constitution since its creation. The previous constitutions have not been utilized as a steppingstone for the new ones. Always a change in government results in a change in the constitution and political ideology. That means, there is a frequent paradigm shift in the Ethiopian political and constitutional system. For instance, the monarchical system itself strived a lot to imitate the monarchy of Japan through transplanting the Japanese monarchical constitution. Nevertheless, the Japanese model was not compatible with the Ethiopian circumstances, as Japan is a nation-state while Ethiopia is a highly diversified one. Hence, Emperor Haileseilassie I was forced to review his 1931 Constitution and enacted the 1955 Revised Constitution of Ethiopia which was a direct replica of the West-Ministerial Style at the time. Again, it had never worked at the time; then the 1955 revised monarchical constitution was completely changed to the Socialist oriented constitution of 1987. Furthermore, the 1987 socialist constitution of

Ethiopia was also replaced by the 1995 federal oriented constitution of Ethiopia.

At this juncture, one can understand that Ethiopia has shifted from a monarchical and unitary system to a socialist and unitary state structure; and then transformed into a multinational federation. Amid all these political turmoil's, there has been no consensus on the issues of constitutional identity or important national values and interests. For instance, there is no agreement on several issues including, *national identity*, *a national symbol* like National Flag and National Working Language, *Structure of state* [federalism or unitary structure, multinational or geographical federation], *System of government* [a parliamentary system of government or presidential one]. Additionally, *the establishments of regional states* are also another anomaly. Moreover, the status of *the capital city, Addis Ababa* and other cities like *Dire Dawa* is also among the challenging issues in present-day federalist Ethiopia.

Furthermore, Ethiopia has been disturbed by divergent political ideologies and political parties. *Firstly*, there are political groups that strongly claim for federation [Hence they put federalism as the best option for state structure and government system in Ethiopia]. *Secondly*, unionist forces are claiming to restore the old unitary state systems and thereby to ensure a nation-state in Ethiopia. This group condemns federalism; specifically, ethnic federalism as a dangerous system that will result in disintegration and civil war at the end of the day. *Thirdly*, there are political groups that strongly claim for the right to self-determination up to secession. These groups or political parties comprise of Ethnic-based Liberation Fronts; and therefore, they are struggling to make their ethnic group independent from domination or to strengthen multicultural federation. These groups need to agree on common constitutional value to introduce eternal clauses in the Ethiopian constitution.

4.1.2 Strengthening Democracy and Rule of Law in Ethiopia

Of course, the term democracy and rule of law are omnipresent in the modern political world. One may find these terms everywhere on the paper even in the dictatorial regimes. Nevertheless, practising democracy and rule of law in a certain country is a difficult task both for the government and the opposition parties.

Ethiopia has been striving a lot to ensure rule of law and democracy for a long period. Especially, upon the introduction of federalism in 1995 through adopting the federal constitution in the same year; democracy and rule of law were incorporated in the constitutional text, and repeatedly attempts have been made by the Ethiopian government to implement the principles of rule of law and democracy. For instance, the multiparty system was introduced and elections were taken place many times in Ethiopia as a symbol of democracy.⁴¹ However, still, even under the federal democratic republic-oriented governance system, Ethiopia has failed to conduct a free, fair, and democratic election since 1991. On the other hand, gross human rights violations had taken place during these elections.⁴² Furthermore, Ethiopian People's Revolutionary Democratic Front (EPRDF) announced hundred percent victories in the election that was conducted in 2015. Hence, these acts of conducting undemocratic elections erode democracy and rule of law in Ethiopia.

Beside this, ensuring rule of law is another difficult agenda in the Ethiopian political and democratic reforms. Rule of law is directly related to establishing a limited government in a certain country. It is a concept which

41 Ethiopia had conducted her first national wide multiparty oriented election in 1992. From 1992 onwards, Ethiopia had been conducting periodic elections per five years until today [1992, 1995, 2000, 2005, 2010, and 2015]. Now, also there will be nationwide a multiparty election in 2020 which is postponed into 2021 because of COVID_19.

42According to the European Union Election Observation Mission Final Report on the Ethiopian Legislative Elections of 2005; in the post 2005 National Election of Ethiopia; thousands of people were killed in the post-election throughout the nation. Especially, hundreds of peoples were massacred in Addis Ababa [capital city] in the post-election violent oriented demonstrations.

refers to a government based on principles of law and not of men.⁴³ The nature of limitations will vary with the society, culture, political and economic arrangements; but the need for limitations on the government will never be obsolete, where and when rule of law is respected.⁴⁴ Today, rule of law is the foundation of good governance. This requires adherence to constitutional supremacy, recognition that government and the governed are equal before the law, acknowledgment that government itself is limited by the law and cannot engage in any arbitrary exercise of power, and recognition that individuals are endowed with certain inalienable rights that cannot be denied even by legitimately constituted governments.⁴⁵

Certainly, rule of law depends upon the notion that claims powers of state and government can be exercised legitimately only following the applicable laws and according to laid down procedures; which are almost rare in the Ethiopian scenario. Therefore, it is very important to introduce eternity clauses under the Ethiopian constitution to ensure rule of law in Ethiopia.

4.1.3 To Entrench Human Rights and Fundamental Freedoms in Ethiopia

In general, human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent, and indivisible.⁴⁶ The pertinent elements of human rights are incorporated in international treaties, international customary laws, covenants, declarations, national constitutions, laws like UDHR, ICCPR, ICESCR, UN Charter, and others. The concept of human rights and fundamental freedoms are also incorporated under the 1995 Federal Democratic Republic of Ethiopian Constitution. Human rights and freedoms,

43 Alok Kumar Yadav, International Journal of Law and Legal Jurisprudence Studies Vol. 4 No.3), P6, available at: http://ijlljs.in/wp-content/uploads/2017/08/Rule_of_Law.pdf<accessed on 21 May 2020>.

44 Brian Z. Tamanaha, On the Rule of Law: History, Politics and Theory(Cambridge: Cambridge University Press, 2004), P101.

45Alok Kumar Yadav, *supra* note 43, P3.

46Vienna Declaration and Programme of Action (1993, para.5).

emanating from the nature of mankind, are inviolable and inalienable.⁴⁷ The 1995 FDRE Constitution has entrenched human rights and fundamental freedoms broadly. Particularly, Chapter Three of the FDRE Constitution guarantees human and democratic rights.⁴⁸

5. PROPOSED ETERNAL CONSTITUTIONAL CLAUSES IN ETHIOPIA (RESEARCHER'S PROPOSAL)

There is no concept of eternal clauses in any of the previous Ethiopian constitutions including the current federal oriented constitution. However, the 1995 Federal Democratic Republic of Ethiopian Constitution introduces more stringent procedures on amending some specific constitutional provisions.⁴⁹ Accordingly, there is a difference between the rules on the amendment of constitution which can be strict or flexible ones as per the 1995 FDRE Constitution; but, the concept of eternal constitutional clauses has never been recognized under this Constitution.

As per Article 104 of the 1995 FDRE Constitution, initiation of the constitutional amendment follows the following procedures:

Any proposal for a constitutional amendment, if supported by two-thirds majority vote in the House of Peoples' Representatives, or by a two-thirds majority vote in the House of the Federation or when one-third of the State Councils of the member states of the Federation, by a majority vote in each Council have supported it, shall be submitted for discussion and decision to the general public and to those whom the amendment of the Constitution concerns.

However, strict procedures are imposed to amend the human rights and fundamental freedoms recognized under chapter three of the 1995 FDRE Constitution as per its Article 105 as follows:

47 FDRE Constitution, Art. 10.

48 FDRE Constitution, Arts.13-44.

49 FDRE Constitution, Arts.104 and 105.

1. *All rights and freedoms specified in Chapter Three of this Constitution, this very Article, and Article 104 can be amended only in the following manner:*
 - (a) *When all State Councils, by a majority vote, approve the proposed amendment;*
 - (b) *When the House of Peoples' Representatives, by a two-thirds majority vote, approves the proposed amendment; and*
 - (c) *When the House of the Federation, by a two-thirds majority vote, approves the proposed amendment.*
2. *All provisions of this Constitution other than those specified in sub-Article 1 of this Article can be amended only in the following manner:*
 - (a) *When the House of Peoples' Representatives and the House of the Federation, in a joint session, approve a proposed amendment by a two-thirds majority vote; and*
 - (b) *When two-thirds of the Councils of the member states of the Federation approve the proposed amendment by majority votes.*

However, the researcher strongly argues that imposing stringent amendment procedures on core human and fundamental freedom is not enough to hold Ethiopia as a single nation perpetually, and thereby to establish a constitutional identity for the Nations, Nationalities, and Peoples in this federation. Therefore, the researcher has proposed the following constitutional provisions as an '*eternal constitutional clauses*' in the ongoing constitutional and democratic reforms in present-day Ethiopia:

5.1 FEDERAL AND DEMOCRATIC STATE STRUCTURE

Although there are different grounds to impose unamendable/eternal constitutional clauses; many states recognize their structure of state or system of government as an eternal clause. The best example is the German scenario. According to the German Basic Law, the state of Germany remains federal forever; or federalism remains state structure eternally or unamendable constitutional provision in Germany.⁵⁰

50 See the 1949 Basic Law of Germany, Art.79 (3):“Amendments to this Basic Law affecting the division of the Federation into *Länder*, their participation in principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible.”

In the same scenario, Ethiopia had been governed under absolute monarchies since its establishment in the late 19th century. From Minilik II to Haileselassie I [from 1889-1974] absolute monarchies ruled Ethiopia. Though the great revolution was conducted in 1974 and socialism was introduced to Ethiopia; the quest for the national identity of numerous Nations, Nationalities, and Peoples of Ethiopia had never been answered until 1991. However, after disastrous civil wars were conducted between various liberation fighters and the central government of Ethiopia⁵¹; federalism was introduced to Ethiopia in 1991 upon the collapse of socialist-oriented military dictator [the Derg regime] in post-1991.

Accordingly, federal oriented state structure has been recognized as a response to the quest for national identity, right to self-determination and as a rectification to the past historically unjust relationship among the Ethiopian Nations, Nationalities, and Peoples. Of course, the federal-state structure is recognized under the 1995 FDRE Constitution⁵²; nevertheless, it is subjected to amendment as per Article 104 and 105 of the same constitution.

Therefore, ‘*a Federal and Democratic State structure*’ shall be declared as an eternal constitutional clause in Ethiopia, to guarantee the right of self-determination for the Nations, Nationalities, and Peoples of Ethiopia. Hence, the federal-state structure shall be recognized as unamendable constitutional provisions in the ongoing constitutional and democratic reforms in present-day federalist Ethiopia.

As this researcher argues, there may be two justifications for claiming ‘a federal and democratic state structure’ as an eternal constitutional clause in Ethiopia:

51The main liberation fighters during the regime of military dictator led by Mengistu Hailemariam [the Derg regime] includes: The Eritrean People’s Liberation Front (EPLF), The Tigreyan People’s Liberation Front (TPLF) and The Oromo Liberation Front (OLF) in Ethiopia.

52 See Article 1 of the 1995 FDRE Constitution: “This Constitution establishes a Federal and Democratic State structure. Accordingly, the Ethiopian state shall be known as the Federal Democratic Republic of Ethiopia.”

Firstly, Ethiopia was an empire established through war and conquest by king Minilik II in the late 19th century. Minilik II had subjugated many independent peoples like the Oromo, Wolaita, Sidama, Somalis, Hadiya, and others after bloody wars were conducted. Since then, this empire has never democratized. The victor and the vanquished people had been living together for more than a century and a half in the Ethiopian Empire. Accordingly, the 1991 ethnic revolution [federalism] was introduced to mould a classless society in Ethiopia in which all people are considered themselves as victors. The Nations, Nationalities, and Peoples of Ethiopia also agreed to rectify their historically distorted relationship in all aspects. Hence, a federal and democratic state structure was introduced as a guarantee for the Nations, Nationalities, and Peoples of Ethiopia, which bestows the right to self-determination upon all the Nations, Nationalities, and Peoples of Ethiopia. Consequently, federal and democratic state structures shall be declared an eternal constitutional clause in Ethiopia.

Secondly, currently, unionist forces are claiming to restore the old unitary state systems and thereby to ensure a nation-state. Especially, these groups condemn federalism; specifically multicultural federalism as a dangerous system that will result in disintegration and civil war at the end of the day. Thus, the unionists and lovers of the monarchical systems are struggling to dismiss the federal and democratic state structure in contemporary Ethiopian politics. They are striving a lot to kick out the multicultural federation and to restore the unitary state which propagates one language, one flag, and probably one religion.⁵³ Therefore, the suppressed Ethiopian Nations, Nationalities, and Peoples shall struggle a lot to declare a federal and democratic state structure as an eternal constitutional clause to save themselves and the countries from disintegration.

5.2 HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Human rights are rights related to the nature of mankind. Hence, democratic governments must be based on the universally recognized human rights

⁵³The unionist political forces claim Amharic as an Ethiopian language, Amhara culture as an Ethiopian culture, most probably Orthodox Christianity as a state religion in Ethiopia similar to the past monarchical governments of the Ethiopian Empire in the same manner with their ancestors, the Amhara kings.

frameworks. Also, the sanctity of human rights is recognized as one pillar of the FDRE Constitution and human rights and freedoms, emanating from the nature of mankind are inviolable and inalienable.⁵⁴ Nevertheless, these human rights and fundamental freedoms have not been respected and enforced by the Ethiopian governments. Though human rights and fundamental freedoms have been incorporated in the contents of the 1995 FDRE Constitution; these rights are not immune from the amendment.⁵⁵ Therefore, it is very necessary to create Ethiopian constitutional identity/basic constitutional values on these several elements of human rights and freedoms. Accordingly, the protection of fundamental rights, the protection of human dignity, the respect for the supreme federal constitution, and the sovereignty of the people shall be governed under eternal constitutional clauses.

6. CONCLUSION

Eternal constitutional clauses have paramount importance in ensuring a certain country's integrity, to entrench human and fundamental freedoms, and thereby to create that country's constitutional identity/values perpetually. Accordingly, incorporating eternal constitutional clauses in a certain constitution is very useful in establishing unshakable constitutional guarantees which can be utilized as a ground norm in that specific state. With slight differences, most constitutions contain eternal constitutional clauses on the following constitutional topics: form and system of government; state's political or governmental structure; state's fundamental ideology or identity; basic rights; state's integrity; and other provisions, unique constitutional subjects (for example, immunities, amnesties, reconciliation and peace agreements, taxation or rules governing nationality).⁵⁶

Ethiopia as a country also has been suffering from several constitutional challenges in its political history. The main challenge in the Ethiopian constitution-making and remaking process is that the prior constitution has never been utilized as a steppingstone for the later constitutions. As a result

54 FDRE Constitution, Art. 10.

55 See FDRE Constitution, Art.105.

56 Roznal Y, *supra* note 8.

of this, Ethiopians have neither created their constitutional identity/values nor recognized the eternal clauses on core constitutional and political principles. Consequently, Ethiopians have not reached a consensus on various constitutional and political issues, which include but not limited to the issue of national identity, state structure, the form of government, language policy, regional state formation and others to this date. Therefore, Ethiopia has been facing multiple challenges as a result of these diverging interests on basic constitutional and political values. Hence, this article argues that Ethiopia should consider introducing ‘eternal constitutional clauses’ on grand constitutional and political values during the ongoing constitutional and democratic reforms currently.

THE LEGAL STATUS OF COMMUNAL LAND TENURE SYSTEM IN ETHIOPIA AND ITS CONGRUENCY WITH THE FDRE CONSTITUTION

*Nigatu Bekele*¹

ABSTRACT

The article investigates the factors behind the dwindling condition of communal lands and their legal status in Ethiopia in light of the country's international and regional commitments. As the nation is comprised of an overwhelming proportion of agrarian community, who in addition to their individual farmlands for crop production are highly dependent on communal land and resources such as timber, firewood, traditional medicine, fodder and thatching grass and places for ritual ceremonies. Currently, a nationwide, communal land on which the life of the rural mass is based on is admitted to be on the brink of literal disappearance. Even though a number of factors ranging from climate change, population growth and others may be ascribed to the dwindling of communal lands and landed resources, this study argues, through a doctrinal analysis, that the denial of legislative recognition on its part, categorically adds fuel to an unfettered extinction. Thus, the writer urges government both at federal and regional (state) level ought to accord sufficient legislative recognition of communal land tenure as well as protection of legitimate tenure rights of the rural poor which has survived for ages.

Key words: *Communal Land, Land Tenure, Land Rights, Indigenous Peoples, Rural Community, Livelihood*

I. INTRODUCTION

Land is naturally limited resource whereas interests upon it are numerous. Individuals desire to have land for personal purposes such as building dwelling house, business premises and farming. The state on its part seeks to

¹ LL.B (Mekelle University); LL.M (Hawassa University); Lecturer of Law at Wolaita Sodo University, School of Law. Email: debbybekele@yahoo.com. As my first journal article, in directing the how-to-write, a sheer part of the credit goes to Dr. MuraduAbdo, Associate Professor of Law at Addis Ababa University.

establish public institutions under its private domain and roads, railways, airports, recreation centers etc...falling under the public domain. Indigenous agrarian and pastoral communities also desire to make use part of the same parcel for pasture, source of water, timber, medicines, and the list goes on... Based on a number of different rationales², states across the world³ adopt one form of land tenure system⁴ or another so as to successfully respond to the differentiated interests over the land. Such land tenure systems (forms of landholding) having been manifested in governmental policies, get blessings of the lawmakers so that contrary activities will be effectively sanctioned.

Internationally, the rights of indigenous agricultural, pastoral and mixed tenure holders have got recognition in major human rights instruments. Among others, the United Nations Declaration on Rights of Indigenous People⁵ (UNDRIP) affirms that indigenous people have the right to the full enjoyment, collectively or individually, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), and International Human Rights Law.

²Parker Shipton, *Mortgaging the Ancestors: Ideologies of Attachment in Africa* (Yale University Press, 2009), P2.

³ For example, Shipton claims that numerous African governments, with advice, support, and some arm twisting from outside Africa, have been gearing up at the start of the millennium to title farmland as private property in the hands of individual or group owners to make it more marketable and able to be mortgaged.

⁴Throughout the world, there are four very well-known land tenure systems. The first one is a private land tenure which assigns rights over land to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization. The second one is communal land in which a right of commons may exist within a community where each member has a right to use independently the holdings of the community. For example, members of a community may have the right to graze cattle on a common pasture. The third one is open access land tenure system, where specific rights are not assigned to anyone and no-one can be excluded. This typically includes marine tenure where access to the high seas is generally open to anyone; it may include rangelands, forests, etc... where there may be free access to the resources for all. The last type, state land tenure, is a category in which property rights are assigned to some authority in the public sector. For example, in some countries, forest lands may fall under the mandate of the state, whether at a central or decentralized level of government.

⁵ Resolution adopted by the General Assembly on the 107th plenary meeting 13 September 2007, which is not ratified by a few states, including Ethiopia.

The UNDRIP has included the rights of the indigenous people to self-determination; freedom from discrimination; control over the development that affects them; cultural rights in economic, social, and political including education, art, and literature; recognition of their customary laws; and redress rights in the event of takings of indigenous knowledge and property.⁶ It confirms the right to traditional knowledge; collective rights; the right to self-determination; the right to be consulted and as a state's duty to consult; rights to lands, territories, and resources, including to strengthen and maintain their spiritual ties to the land traditionally owned, occupied, and used; and *recognition of their land tenure*.⁷ In a related manner, the International Convention on Civil and Political Rights (ICCPR), under article 1(2), prescribes that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

In contemporary Ethiopia, the issue of land tenure system hangs on the private versus state land tenure dichotomy. Scholars have fiercely argued against each other's side usually ignoring or at least not prioritizing issues of communal land tenure systems, which are practised in over 61% of the nation's total landmass by pastoralists and other indigenous communities. Even though there is a meager provision in subordinate laws regarding communal holdings⁸, these laws denied a concrete and practical basis which the state and private holdings retained as such. In other words, communal

⁶ UNDRIP, Preamble.

⁷ Article 26 specifically provides that (1) Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. (2) Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. (3) States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned

⁸ For example, Proc. No.456/2007, Art.2 (12); Proc. No. 110/2007(SNNPRS), Art. 2(14).

land is both given by, and subject to conversion to private holding at the prerogatives of the state.

As a distinct category, communal land tenure is a system which is characterized by non-exclusive use in which a group of people have co-equal rights.⁹ The resources falling in this category may include community pastures, forests, wastelands, common dumping and threshing grounds, watershed drainage, village ponds, rivers, as well as their banks and beds.¹⁰ Since access to such land is exclusive to the identified local community, management would be carried out by the community by developing certain locally crafted norms.

The writer contends that the neglect of the concept of communal land tenure in the FDRE Constitution, the supreme law of the land and its subordinates might result in a situation of communal land tenure insecurity, and thus total/partial loss of livelihood in the rural society of Ethiopia. Against this backdrop, the article intends to examine the existing legal framework in addressing the problem and the kind of legislative mechanism so as to stop the dwindling of communal lands.

This article is organized into four sections. Accordingly, the first section is an introduction, aimed at showing the framework of the concept in general, and acting as a blueprint to navigate through. The second section is devoted to an investigation into the legal status of communal lands in Ethiopia, on the one hand, and the driving forces behind the dwindling pace of the same resources, on the other. At the end, conclusions and recommendations follow.

II. NATURE AND FORM OF LIVELIHOOD PERSPECTIVES VIS-À-VIS CLTS

Rural livelihood is almost completely based on agriculture, whether farming, animal rearing or their combined form. Rural households often pursue diverse livelihood strategies, including farming, herding, off-farm

⁹ Liz Alden Wily, *The Tragedy of Public Lands: The Fate of the Commons under Global Commercial Pressure* (International Land Coalition, 2011) ILC 4.

¹⁰*Ibid.*

employment, and the exploitation of natural resources through hunting, fishing, and gathering. According to Chambers and Conway, livelihood comprises the capabilities, assets (stores, resources, claims and access), and activities required for a means of living: a livelihood is sustainable which can cope with and recover from stress and shocks, maintain or enhance its capabilities and assets, and provide sustainable livelihood opportunities for the next generation; and which contributes net benefits to other livelihoods at the local and global levels and in the long and short term.¹¹

Central to the framework is the understanding that the relative availability of various “capital assets” shapes the livelihood options of rural households in developing countries. These assets include financial, physical, human, social, and natural capital.

Livelihood perspectives with regard to communal lands try to explain the role of such lands as an alternative resort in easing the burden attached to the lands of the peasant primarily used for crop farming.

III. THE LEGAL ASPECTS OF COMMUNAL LAND RIGHTS IN ETHIOPIA

As far as the Ethiopian jurisprudence on land tenure in general is concerned, countless critics were forwarded on matters such as the denial of the government in loosening the awkward restrictions in the transfer of land rights. This does not, however, connote that communal land rights are not affected in a decisive manner. From top to bottom, almost all legislations exhibit fundamental problems from the perspective of recognizing and protecting communal lands on which a sheer number of the rural poor depend on. Therefore, the FDRE Constitution and pertinent laws on rural land will be the subject of rigorous scrutiny in the above context.

3.1.THE FDRE CONSTITUTION

The recent Constitution (unlike its predecessors which inculcated a tradition of a highly centralized state structure) substantially brought about decentralization of governmental power based on ethnic federalism, from

¹¹Chambers, R. and Conway, G.R., Sustainable Rural Livelihoods: Practical Concepts for the 21st Century (Brighton: Institute for Development Studies, 1991, IDS Discussion paper #296).

which local governance over resources can be assumed. A renowned personality recited:

Since 1991, Ethiopia has embarked upon a bold experiment in the conduct of public life. The hallmark of experiment is a readiness to face the fact of ethnic diversity. New political arrangements aim to shape the Ethiopian identity around the country's constituent nations and nationalities . . . Even in this era of politics of identity, Ethiopia's resolve to extend full public recognition to her varied national communities is unique. It [the right to self-determination including and up to secession] is now a constitutional entitlement. All cultural communities are entitled to fair representation in the institutions of state and federal government. Territorially based nationalities exercise wide powers of self-government in political, economic, cultural and educational affairs. The result is a political order open to cultural diversity, self-expression and autonomy.¹²

The manner in which the principle of popular sovereignty is articulated in the Constitution influences the rights of communities as reflected in various provisions such as those related to federal structure as well as the supremacy of the Constitution. Constitutional laws normally guarantee rights and freedoms and are thus considered as 'rights documents'. In this regard, the FDRE Constitution is no exception, and almost one-third of its provisions are designated to 'Fundamental Rights and Freedoms'. In light of the inclusion of group rights to which the Constitution anticipated the rural farming and pastoral communities as the main beneficiaries, they have the right to self-determination under the Constitution which encompasses, among other things, the right to a full measure of self-government. Such a right can be taken to mean that the Constitution is liberal as far as the exercise of communal land rights is concerned.

¹² Andreas Eshete, Ethnic Federalism: New Frontiers in Ethiopian Politics (In Proceedings of the First National Conference on Federalism, Conflict and Peace Building, Ministry of Federal Affairs of the Government of the FDRE, Addis Ababa, 2003), P142.

Nonetheless, a critical look into the Constitutional provisions display that the above assertion is not always true. In this regard, the definition of private property in the FDRE Constitution is a crystal clear example:

*Private property is any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen... Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvement he brings about on the land by his capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it.*¹³

The gist of this sub-provision shows an emphasis on improvement. In other words, unless an improvement is made on land which exists naturally, it becomes hard to establish a legally enforceable right. In the words of Muradu:

*The Constitution has thus adopted the concept of improvement. Under this Constitution, for any person to have a legal claim over land, they must show that they have made an improvement traceable to their labor and/or capital. One cannot claim land without establishing improvements thereon. Unimproved land in this sense belongs to the state. Those who merely extract the bare natural fruits of communal land cannot under this approach claim to have a right over those resources for they have not met the requisite condition for claiming such right.*¹⁴

It is evident that one can arrive at a probability that the FDRE Constitution recognizes communal land rights by way of positive interpretation of the contents of Article 39 in a holistic approach. However, such an articulation invites a heavy debate over the issue of communal land rights. In other words, it may be argued that the collective rights mentioned under Article 39

¹³ The 1995 FDRE Constitution (hereafter the Constitution), Art.40 (2 & 7).

¹⁴ Muradu Abdo, State Policy and Law in Relation to Land Alienation in Ethiopia (University of Warwick, 2014), P 204.

can effectively be exercised only if the rights of NNP to own, possess and manage their communal lands using their own system are also explicitly recognized as a distinct tenure system.

Despite the fact that an abstract form of joint ownership of the people and the state over land is proclaimed in the Constitution, it was also established in black and white that the government is the only personality with the power to administer the land.¹⁵ To put it in a nutshell, the concept of communal land tenure has no constitutional recognition in the Ethiopian legal system. Many other writers on this point stress that this kind of standing inculcates a perpetual disregard for communal land tenure:

*This perpetuates the perception that community land tenure is less important and therefore, less secure form of tenure relative to private and public land tenure which are already provided for under the Land Act and Land Registration Act (of Kenya). References to community land in these laws in a sense pre-empts innovating landing of issues under the yet to be enacted Community Land Bill. It is therefore likely that the perception of community tenure as transient, and the parceling out of community land into individually held pieces, ostensibly as a defense against future land-grabbing, will persist. This raises the possibility that constitutional recognition of community land rights might eventually be inconsequential as the subject matter itself is fast disappearing before the necessary law can be enacted.*¹⁶

As will be seen immediately below in conjunction with the data obtained from the field research, the few segments of communal lands and resources for which legal scholars and other developmental partners are lobbying on the brink of literal disappearance.

¹⁵FDRE Constitution, Art.40 (3).

¹⁶Constitution of the Republic of South Africa (No.108 of 1996), Art. 25 (5-8).

3.2. SUBSIDIARY LEGISLATIONS: FEDERAL VS REGIONAL DISCREPANCIES

3.2.1. The Federal Rural Land Law

On the contrary, it has been long since a handful of African¹⁷ and other states have duly recognized the relevance of communal land tenure system into their formal legal system with the view to move in tandem with international and regional commitments pledged towards observing the rights of indigenous pastoral and small-scale agricultural as well as forest dependent communities. Concomitantly, framework legislation on land was subsequently issued by the Ethiopian Federal Government which sets the basic tenets for the regional governments to administer the land under their respective jurisdiction.

In fact, despite the federal framework legislation governing the whole land of the nation, regional states always enact a similar legislation with an equal footing with that of the federal law. Some critics say that it is unconstitutional for regions to enact law on land, which is reserved to the federal government. The regional governments are supposed only to administer land based on the federal laws for that matter. In the next subsection, the author tries to show whether the legislation on land endorsed the concept of communal land tenure (which has long been practised by the rural society)¹⁸.

This law is entitled as “FDRE Rural Land Administration and Land Use Proclamation.” It was adopted in July, 2005 replacing its predecessor, Proclamation No. 89/1997. The scope of application of the law is throughout the country, as envisaged under Article 4 of the proclamation. Regional governments are given the power to enact rural land administration and use laws, which consists of the detailed provisions necessary to implement this

¹⁷In this regard, the Communal Land Rights Act of the Republic of South Africa, the Community Land Bill and 2010 Constitution of Kenya are the prominent ones.

¹⁸Up to now, we have been concerned with norm changes initiated by the law to be followed by behavioral changes. But, unless we define social change tautologically as identical with norm changes, which seem unjustifiable, we must accept three possible types of change—norm change followed by behavioral change, behavioral change followed by norm change or law as response to change.

proclamation.¹⁹ The proclamation states “peasant farmers/pastoralists engaged in agriculture for a living shall be given rural land free of charge”.²⁰ Any person who is a family member of a peasant farmer, semi pastoralist or pastoralist having the right to use rural land may obtain rural land from his family by donation, inheritance or from the competent authority.²¹

Thus, the means of acquisition of rural land is either through family inheritance or donation, or through government provision. Since land is owned by the State and the people, peasants’ title to the land is only of a usufruct in nature. The proclamation defines “communal holding” as “a rural land which is ‘*given by the government*’ to local residents for common grazing, forestry and other social services”.²² It is a bare fact that human community preceded government in its modern form. It follows therefore, that such communities maintained certain identifiable plots of land for common purpose. In the ancient and medieval times, kings have accorded due regards for such communal possessions in different parts of the world.²³ For example, the Kawo (king) of Gofa ethnicity in Ethiopia believed that communal land is sacred, as such. The book entitled *yegamo-gofa hizboch tarik* has this to say:

There were also reported to be different kinds of lands in addition to the family holdings. Basically, land is classified as agricultural, grazing, settlement and other social services such as fields for funeral (bale), (qaa’e) wedding (yaagano) fortress (ola-mitha) and ritual ceremonies. Generally speaking, lands of special relevance such as mentioned above are under the supervision of the bitantte (landlord).²⁴

The definition of communal land in the federal rural land proclamation is an assertion that the government is the ‘*giver*’ of communal holding and thus, it

¹⁹ Federal Rural Land Use and Administration Proclamation No. 456/2006 (here in after FRLUA), Art. 17(1).

²⁰FRLUA, Art.5 (1)(a).

²¹FRLUA, Art.5 (2).

²²FRLUA, article 2(12)

²³*Ye Gamo-Gofa hizboch tarikketinteske 1974* (Gamo-Gofa Zone Information Department, 2002), P75.

²⁴*Ibid.*

is an act of putting the cart before the horse. A government which did not exist when traditional communities came into being since time immemorial can in no way claim of giving communal land. Rather, it would have better recognized that there were lands long been possessed by communities for various common purposes.

3.2.2. The SNNPRS Rural Land Use and Administration Proclamation No.110/2007

Practically, to administer rural land, the regional states enact land law based on the framework legislation of the federal government.²⁵ However, the wordings of the constitution in this regard does not entrust them to enact a law, rather simply administer based on the federal law.²⁶ Be that as it may, SNNPRS rural land use and administration proclamation seems a little bit aware of the age old possession of communal lands and thus followed an approach directed towards recognizing communal lands being used for long time by a given community.²⁷ In light of the age old trend of regional states reflecting a carbon copy of federal laws, such a trend of clearly recognizing communal land is highly commendable.

3.2.3. The Amhara National Regional State Rural Land Administration and Use Proclamation of 2017

This Proclamation mandated rural land management and rights and use of rural land in Amhara National Regional State. In principle, it applies to all rural lands but provisions of special laws (relating to forestry, wildlife protection, bio-diversity resources, natural resource and environmental protection, mines developments etc.) shall continue to apply. The legislation concerns, mainly; the right to acquire land; land re-distribution; the right to hold land; land use; measurement of land and certification and registration of landholding rights; expropriation of land for public use; dispute resolution; transfer of a landholding right; obligations of the land user. Whereas the right to ownership of land is vested in the state and the public, it is impossible to transfer the land holding to other in sale or in exchange by another

²⁵ See the FDRE Constitution, Art. 51 (5).

²⁶ See the FDRE Constitution, Art.52(2).

²⁷ SNNPRS Rural Land Use and Administration Proclamation No.110/2007, Art.2 (14).

property. Any farmer residing in the region, regardless of gender or any other reasons of difference, have equal right to landholding.

With regard to communal landholding, the vision of the law seems exactly similar with that of the SNNPRS rural land use and administration proclamation. As a result, a clear recognition of communal landholding can be deduced from the definitional part of the legislation which goes:

*“Communal Holding” means rural land which is out of the ownership of the government or private holding and used by the local people in common for grazing, forestry and other social services.”*²⁸

11/ “Communal landholding” means land which is neither state owned nor individually held; and which is held and used by communities for grazing, forestry, and other social services, etc.

3.2.4. Expropriation of Landholdings for Public Purposes, Payments of Compensation and Resettlement Proclamation No. 1161/2019

This proclamation has also taken account of the existing reality of rural livelihood which is supported by communal lands to greater extent. Like its Amhara and SNNPRS counterparts, it explicitly recognizes communal land tenure system. The proclamation reads:

*“Communal landholding” means land which is neither state owned nor individually held; and which is held and used by communities for grazing, forestry, and other social services, etc;*²⁹

The proclamation further goes to the extent of awarding Displacement Compensation for Communal Landholding. According to the proclamation, the valuation method and manner of payment to permanent and temporary expropriation of communal land holdings is determined in a directive to be issued by Regional States, Addis Ababa, Dire Dawa City Administrations

²⁸ See the Revised Rural Land Administration and Use Determination Proclamation No.133/2006, Art. 2 (5).

²⁹ Expropriation of Land Holdings for Public Purposes, Payments of Compensation and Resettlement Proclamation No.1161/2019, Art. 2 (11).

and take into consideration: a) Valuation of displacement compensation for communal landholding based on the use of the communal land; or the lost benefits and livelihood of the displaced People. b) based on the clearly identified members of the community using the communal land c) based on the clearly determined method of allocating the displacement compensation money or the use of it in kind to all members of the communal landholding community.

With respect to compensation for expropriation of communal land, the intergenerational nature of the later makes it impossible to compensate the future generation. Therefore, the lack of clarity of the law in this regard deserves rethinking so that compensations are not oriented only to the current generation.

3.2.5. The Revised Draft Federal Rural Land Legislation

The previous successive laws on rural land including the federal constitution, to date, experienced blatant opposition by the advocates of private ownership on accounts of lack of efficiency and refusing to release the people from indefinite, involuntary attachment to the rural land.³⁰ Unlike the traditional expression of *the law and practice*, a critical look at the draft law will uncover whether the quest of communal land tenure is satisfied or not. This stems from the fact that the community is ahead of the statutory law in maintaining communal land tenure as a third distinct type. Therefore, such an incident forces one to analyze a certain empirical phenomenon in a vice-versa, i.e, *the practice and the law* fashion. Put in a nutshell, statutory laws are in a gradual process of endorsing the behavior of the rural community as a norm deserving sanction.

IV. MAJOR ISSUES ADDRESSED

a) Abandonment of the one-size-fits-all approach.

The absurdity of governing the whole nation by a single, uniform legislation is clearly felt by everyone. The referrals in the draft federal rural land law that majority of the details of the rules governing the land shall be decided based on laws to be enacted by regional states according to their specific

³⁰ Draft Federal Rural Land Proclamation of 2014, Preamble, Paragraph 2.

circumstances may be aimed to show the departure from the one-size-fits-all approach pursued by the previous laws.

b) *Dedication to observe international commitments on pastoral land rights.*

The draft land law, in its preamble reiterated that due emphasis will be accorded to the customary land use and management practices of the pastoral community. The duty imposed on regional land laws to accord due recognition to customary institutions, land use, management and conflict resolution mechanisms and the attendant tasks of support and follow up³¹ is a good turn. This will in the future, put a tougher task on the government to follow a hands-off approach as far as respecting the integrity of communal lands on which the livelihood of the pastoralists is based.

c) *Indications that land and other resources could be held communally*

Article 2(4) of the draft legislation; while defining government holding *by definition through exclusion* implied that communal lands do in fact exist irrespective of governmental provision.³² This positive tendency is reinforced by a robust recognition of communal land *per se* in article 2(11) as a land held by local people for social, economic and other purposes. Accordingly, the phrase ‘given by’ is changed by the phrase ‘held by’. The categories of land tenure as expressed in article 5 of the draft law are also unequivocal indication that recognition of communal land tenure is increasingly becoming an imperative.

d) *Registration and certification of communal lands*

The previous legislation simply provided that communal land is a land given by the government to local residents for a number of purposes. It did not provide for the registration and certification of communal lands *per se*. In the draft legislation, however, in addition to the recognition of communal land

³¹ Draft Federal Rural Land Proclamation of 2014, chapter 7, Art.19.

³² The draft law defines government holding as a holding which is neither private nor communal, but includes governmental holdings (which is a viscous definition resulting from poor draftsmanship), forest lands, wildlife sanctuaries and protected areas, lakes, rivers and others held in a similar nature.

tenure as a distinct type of its own, registration and certification creates an opportunity through which a wholesale appropriation or gradual contraction in the size of communal lands will be abated.³³ In this connection, security of communal landholdings at the time of registration is taken to be the duty of the registering organ.³⁴

e) Conversion of communal land to private holding prohibited.

The previous legislations on land put the option of turning communal land tenure at the will and whim of the government. In other words, the mere fact that the government believes that it is feasible to do the conversion suffices to make it a reality. However, the draft law has made an unequivocal departure indicating that regional governments can dictate neither partition nor conversion of communal land to private on their own. Conversion will only be effected after having conducted sufficient research with affirmative findings and concerted willingness on the part of pastoral and farming community. However, in a situation where genuine progress of rule of law is at a stake, the probability of manipulating the pure consent of the community through elite capture is feared to materialize.

V. PENDING ISSUES

a) The concern of small-scale peasants and other communal land dependent communities

The benefit that communal land yields to small-scale farmers and other poorer sections of the rural community shall not be underestimated. Even though expanding agriculture on communal lands is not as bad as such, it benefits only the farmer and his/her family blocking the fortunes of the greater multitude who lived on the resources of the communal holding. Their issue needs to be clearly and unequivocally considered in the rural land laws to be enacted in the future.

³³Draft Federal Rural Land Proclamation of 2014, Arts. 1 and 2.

³⁴Draft Federal Rural Land Proclamation of 2014, Art.32 (3) (c)).

b) Rental of communal lands of pastoral and small-scale peasants

In a time when the existing communal lands are far less beyond the demands of the rural population, the possibility of renting such resources may facilitate manipulation of the interests of the mass by a few corrupt political and economic elites.³⁵ In addition to that, the draft legislation does not clearly indicate the modality of sharing benefit gained from rental of communal lands among the inhabitants surrounding a communal land. Even though the presumption is that the local community, not the state is direct beneficiary to that end, an unequivocal indication on the issue brings about certainty at the time of enforcement.

c) Separate legislation on communal land tenure

The global, regional and local threats on communal land tenure system as exercised by indigenous peoples in Sub-Saharan Africa in general and Ethiopia in particular is of such a nature that a separate legislation capable of addressing their concerns in a wholesale manner is of prime importance. Therefore, a legislation addressing solely the subject matter of communal land tenure and attendant problems need to stand on its own.

VI. CONCLUSIONS AND RECOMMENDATIONS

6.1. CONCLUSIONS

The Article has investigated the legal status of communal land rights in Ethiopia from the point of view of livelihood perspective. Accordingly, the article has investigated to test the doctrinal congruency between the commitments the country has made while signing normative instruments to observe at international and regional level on the one hand and the municipal laws on the other. The bill of human rights and other soft laws of global and regional origin require that the state should not intervene in certain people's link with what they have traditionally been attached for livelihood.

After a critical look into the Ethiopian laws, unfortunately, it can be said that neither recognition nor protection is accorded to the concept of communal land rights. Even though recent legislation on rural land tends to regard

³⁵Draft Federal Rural Land Proclamation of 2014, Art. 21.

communal landholding as distinct in itself, the provisions carry with themselves a number of pitfalls. Last but not least, without having the wordings for the definition of private property in the FDRE Constitution reshuffled in a way which gives full recognition to the lands to which local communities have traditional attachment, land rights as a sub-category of human rights cannot be free from obstruction.

6.2. RECOMMENDATIONS

Legal and policy documents dealing with land tenure in Ethiopia are based more or less, on the theory of *the tragedy of the commons*. Consequently, from the two alternatives offered by the proponents of this theory, i.e., privatization or state control of the commons, the latter approach (*the revisionist perspective*) is opted for by the Ethiopian government. Researchers such as Clarke and others have found that “theoretically sound policies in sub-Saharan Africa have either been unworkable in practice or have failed to achieve the intended objectives”. In this regard, the Ethiopian legal and practical scenario is no exception. It has, therefore, prompted the author to recommend the following:

First and foremost, there is a pressing need to make communal land rights equal in weight and standing to the other two forms of tenure regimes. With this conviction, the law should clearly define ‘community’ by making use of parameters such as: how the community is organized; the rules that hold the community together; and who holds the rights within that community. It is important note that the definition adopted for ‘community’ is very flexibly so as to be non-exclusionary and to allow for evolution, flexibility and adaptability over time. Definitions simply based on culture or ethnicity alone should be avoided as it can ignite inter-ethnic tensions, conflict or violence. It is also important that membership to a community should be based on use of land and not on family lineage or transfer of title. In this regard, legal proof of claims on communal land should be aligned at least, by formalizing landscape-based evidence.

Secondly, the law should clearly provide for demarcation of communal land such as maps and boundaries, in order to protect community land from encroachment. Special attention should be accorded to communal land in or around urban areas in order to ensure that they are properly vested and used.

Within the communal lands, communal areas, customary rights of way and shared land use and access rights should be legally protected.

Third, the principles of protection should be clearly spelt out. These should detail among other things, how the community rights are recognized and protected; registration of rights to land; multiple land users including women and children; land use planning and sustainability issues; processes of compulsory acquisition of community land; rights of way and grazing rights; and conversion of communal land to other uses. Of particular interest is the urgent need to explicitly establish and protect women's and children's right to exercise a meaningful use right over communal land as this has traditionally been opted out in many customary practices.

Fourth, the laws should clearly state who can transact the community land on behalf of the community and the nature of permissible transactions. Here, it is important that the ultimate land rights to community land be vested in communities and not under the name of any individual members of the community to avoid cases of misappropriation of community land by group representatives as was the case in the past. The laws should also provide for and encourage the creation of community bylaws and land and natural resource management plans.

Fifth, the laws should provide on how rights are to be enforced including rights and entitlements of individual members within communities.

Sixth, the laws should state clearly how the community land rights are to be delivered i.e. registration of titles.

As a matter of practical intervention, the author recommends the following:

In a state where transformation from agriculture towards industry in its infancy, the importance of land, especially rural land is a way out to meet the needs of the ever expanding young population. Thus some portions of the Communal lands may be granted for venturing into agriculture with careful scrutiny. In other words, the government shall have the duty to protect the Communal lands from being grabbed by individuals who are not in a pressing need for land to meet basic items of livelihood.

The existing normative conflict between the federal and regional governments in recognizing communal lands is also worth noting. In light of the SNNPRS and ANRS rural land laws which boldly recognize communal land laws, the federal counterpart is lagging behind. To be in tune with the FDRE Constitution which claims to create a one economic community, it becomes imperative to amend the land laws so that sufficient recognition is accorded to communal lands *per se*.

To save communal lands both in size and quality, traditional institutions of communal lands administration need to come back to their revival by the assistance of the government. A strong traditional leadership in land administration with effective and conclusive decision-making power needs to be entrenched into the rural society.

Given the pressures of projected population growth, increased resource demand and a trend towards privatization of communal land, the commons are under increasing threat. Unclear and ineffective tenure arrangements only exacerbate the situation. Practical solutions are therefore needed now more than ever. This paper advocates for recognizing their legitimacy and empowering communities to manage the commons through secure tenure and mandating state agencies to build the effectiveness and accountability of local institutions. If the implementation issues can be overcome, increasing security of communal tenure can provide a basis for more sustainable management of the commons and offers hope that the sustainable development promised under international law can be more than rhetorical.

CONTRACTUAL ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OWNERSHIP SYSTEM UNDER ETHIOPIAN LAW

Kumela Firisa *

ABSTRACTS

This study aims to examine the immovable property ownership transfer system in general and that of Ethiopia, as a civil law country, in particular. It attempts to bring forth the globally recognized French casual consensual model, German Abstract tradio model and the mixed systems of immovable property ownership transfer to the attention of readers. The article also tries to locate the Ethiopian system of immovable property ownership transfer into the perspective of the recognized models of immovable property ownership transfer for better understanding. For the transfer of ownership of Immovable property under Ethiopian law, two main cumulative conditions of valid underlying cause (contract) and Registration in the Registry of Immovable property are required to be met. The registration requirement under Article 2878 of the Ethiopian Civil Code along with some of the Supreme Court cassation decisions leads to the conclusion that Ethiopia adopted the French Model of casual consensual real property transfer system where ownership transfer upon consent only without further requirement of title transfer registration. Consequently, the registration requirement under these scenarios seems only for publicity purpose having only declarative effects with third party protection in mind. Considering the property law provisions of the same code and other legislations concerning real property registration, however, it appears that Ethiopia as a system adopts the mixed system of immovable property ownership transfer where both the valid contract, as a legal ground, and registration of title transfer as a mode of acquirement(not only for publicity purpose) are requirements. The Ethiopian system of immovable property transfer, being approached from the above seemingly contrasting views, appears to be ambivalently oscillates between the systems of casual consensual and casual tradition systems of immovable property ownership transfers. The paper, therefore, juxtaposes the contract and real property law provisions of Ethiopian law, on the one hand, and the Supreme Court Cassation Division decisions, on the other hand, in contending that Ethiopia adopted mixed model of immovable property ownership transfer.

Key Words: *Immovable Property, Ownership Transfer, Registration of Title Transfer; Mixed System of Property Transfer, Legal Ground for Transfer, Manner of Acquisition*

* LL.B (University of Gondar), LL. M Candidate (Bule Hora University). Currently serving as Woreda public prosecutor;Email address: kumelafirisa@gmail.com or firrisaakumalaa@gmail.com). The author would like to thank Husen A.Tura(LL.B, LL.M, LL.D at the Law School of University of Eastern Finland) for his valuable comment and suggestions on the first and early draft of this manuscript. My thanks go also to the anonymous reviewers of this article for their constructive and encouraging comments.

1. INTRODUCTION

The origin of private property remains a mystery.¹ After one discovers the source of private property, one still must justify the rules governing its transfer.² Legal rules require owners to go through prescribed rituals, such as transferring possession of the property or noting one's interest in a public filing system.³ The various rules governing the transfer of ownership rights in property ensure that whoever owns a piece of property can dispose of it or its incidences readily and that who acquires an interest can be confident he is acquiring good title or rights to the property.⁴ Admittedly, the legal terminologies, "acquisition of ownership" and "transfer of ownership" carry different connotations in legal parlance. Given the derivative mode of acquisition of ownership, where the title of the transferee (new acquirer) is dependent on the validity of the title of the transferor (former acquirer), it can be said that the same rule regulates both acquisition and transfer modes.⁵ That means, the rule for one who transfers is the rule for one who acquires ownership in case of derivative acquisition of immovable property.⁶ Thus, it is in this context that this paper uses these terminologies throughout this paper.

Systems of acquisition and transfer of property in general and that of immovable property might be different across jurisdictions. Countries of continental civil law system and common law system adopt different systems

1Baird, Douglas, Thomas Jackson., Information, Uncertainty, and the Transfer of Property (Centre for the Economic Analysis of property Rights, Economics and Law Workshop Papers, 83 – 05, London, ON: Department of Economics, University of Western Ontario, 1983).

2*Ibid.*

3*Ibid.*

4*Ibid.*

5 For example, the Ethiopian Civil Code recognized four modes of acquiring property (See Arts.1151 – 1183). These are occupation, possession in good faith, accession and Usacaption. Whilst these are original modes of acquiring property, only the latter two modes apply in relation to immovable property. What is discernible from this is that the Ethiopian Civil Code does not regulate the derivative acquisition of immovable property ownership independently. Therefore, the same rules regulating transfer of ownership of immovable property (Article 1184, 1185, 1189 and 1190) apply in the derivative acquisition of immovable property.

6That is why transfer of ownership has been stipulated as a ground for extinguishment of ownership for the transferor and a base for acquisition for the transferee under Art.1189 of Civil Code of Ethiopia.

of acquisition and transfer. Some of the states within the continental civil law system, as will be seen here under, adopt French model of the casual consensual system of immovable property ownership transfer where the consent of the contracting parties is sufficient to transfer ownership without the requirement of registration as a constitutive element.⁷ Other countries follow the Germanic model of abstract tradition (formalism) system of immovable property ownership transfer. In this latter system, the consent only of the contracting parties at the time of conclusion of the contract does not suffice to transfer the ownership of immovable property. In this system, as will be explained later, both the dispositive or obligatory agreements and the real agreement are needed for immovable property to be transferred but subject to the principle of abstraction and differentiation where the real agreement has a separate existence. Besides, other civil law countries adopt a mixed system of immovable property ownership transfer via contract. In this system, both valid underlying cause as a legal ground for transfer and *titulus* (mode of transfer) are requirements to transfer the ownership of immovable property. The registration is mandatory as in the case of an abstract system.⁸ Contrasting to the abstraction model, however, this system does not recognize the independent existence of the real agreement.

The contractual immovable property ownership transfer system that Ethiopia adopted in this regard might be conceived to follow the French model of transfer system considering the status quo public and scholastic perception.⁹ Because; the Ethiopian Civil Code has been adapted from the law of those nations (Egypt, France, Greece, Italy, and Switzerland, and countries with modern codifications) with whom Ethiopia has "cultural, commercial and maritime connections among which French law played a general and

⁷The registration requirement in this system serves only the purpose of publicity for protection of third parties (for opposability purpose) as opposed to being constitutive element, where transfer cannot be effected, even between the contracting parties themselves without registration of transfer of title.

⁸This means that registration under this system serves not only the purpose of publication as in the case of the casual consensual model, but also plays the constitutive role between the transferor and the transferee.

⁹ Paul Brietzke, *Private Law in Ethiopia*, Journal of African Law (1974), Pp149 -167. Brietzke contends that the predominant flavor of the Ethiopian Codes is French-in approach, style and, to a large extent and substance.

pervasive role.¹⁰ The paper, relying on qualitative doctrinal method, has argued, despite the above perception, that most of the Ethiopian Civil Code and other property law provisions along with some practical court cases (case laws) have shown some deviations from the French consensual model of immovable property ownership transfer and registration system in its approach towards the underlying issue.

The main purpose of this paper, therefore, is to search out where the Ethiopian law on transferring immovable property lies from the two recognized models of immovable property ownership transfer. In doing so, comparative method has been adopted for better understanding of the Ethiopian system. Thus, South African, Armenian, and German legal systems as an abstract system, has been compared with the French legal system (also Portugal, Belgian and Italy). These countries have been chosen for being an example of a causal system, and the Netherlands, Serbia, Austria, Swiss, Spain and Kosovo systems, which can be described as a mixed system. The comparative method has been applied to help readers get better understanding of the Ethiopian system of immovable property ownership transfer.

This paper, therefore, is hoped to provide great help for property rights institutions, legal practitioners, and the general public in increasing their awareness as to the immovable property ownership transfer system that Ethiopia adopted so that they can play their own respective roles. It can also be used as a wakeup call for the Federal Supreme Court Cassation Bench and lower-level courts in the proper application of the rules regulating the transfer of real property ownership and the legal processes to that end in a consistent manner.

Accordingly, the following research questions will be addressed in due course. Firstly, what is the practical meaning and effect of the registration requirement under Article 2878 of the Civil Code of Ethiopia considering the system of contractual (derivative) transfer of immovable property ownership? The paper will examine whether it serves only the purpose of

10 Norman J. Singer, *Modernization of Law in Ethiopia: A Study in Process and Personal Values*, Harvard International Law Journal(1970), Vol. 11, Pp.73-125.

publicity as it appears to be so and understood so far. Secondly, do decisions of the Federal Supreme Court, as case laws, delivered so far regarding transfer and acquisition of immovable property based on this provision certainly discernible, predictable, and consistent? Thirdly, which model/system of immovable property ownership transfer that Ethiopia, as a civil law country, adopted? Fourthly, does the real property registration system that the country adopted have effect on the determination of immovable property ownership transfer system?

The paper is structured under four sections in order to address these research questions. Section one, as described hereinabove, presents the introductory discussion and the research questions to be addressed in this study. Section two of the paper discusses relevant global continental immovable property ownership transfer systems. It specifically, sheds light on the French and French-influenced model of casual consensual property transfer system, German and German-influenced abstract tradition (formalism) system of property transfer system and the mixed model of immovable property ownership transfer system. Section three discusses the immovable property ownership acquisition and transfer system currently in existence under Ethiopian law, by examining the provisions of the contract of sale of immovable and real property laws, on the one hand, and practical court cases dealing with immovable property ownership transfer on the other hand. It particularly, describes the registration requirement under Article 2878 of the Civil Code as one of the legal conditions that are required under Ethiopian law in order to successfully transfer ownership of immovable property. This section also touches upon the effect of the immovable registration system adopted by a country. The fourth and last section of the paper recaps the major issues discussed by the paper in the way of summary and recommendations.

2. SYSTEMS OF ACQUISITION AND TRANSFER OF OWNERSHIP OF IMMOVABLE PROPERTY

The rules of acquisition of ownership of immovable property differ in various legal systems of civilian (continental) legal tradition.¹¹

¹¹Milos Zivkovic, Acquisition of Ownership of Real Property in Serbian Law: Departing from the Titulus – Modus System? P.112

Understanding these differences, which are quite significant from the doctrinal point of view, is an excellent exercise for a better understanding of each particular national system.¹² A major manifestation of the distinction between the law of obligation and the law of property in Civil Law systems is the relationship between contract for sale and conveyance (property transfer).¹³ Different scholars followed different paths in classifying basic systems of property transfer in continental law system but with similar ends. Shusei, for instance classified two ways of acquiring property in modern continental law; consensualism and formalism.¹⁴ Lie also mentioned two major groups within the world systems that deal with the relationship between contract for sale and conveyance of property in civil law systems: Consensual System *Vs* *Traditio* system.¹⁵ Lie, further, divides the *Traditio* approach into causal and an abstract system depending on whether the property transfers is determined by the invalidity of the sale contract.¹⁶

Another categorization highly like that of Lie is the way Vliet classified the world's property transfer systems. According to *Vliet*, many of the world's legal systems for the transfer of property fit into one of the three types of transfer systems. These are the causal consensual system, the causal tradition system and the abstract tradition system.¹⁷ According to *Velencoso*, however, there are four basic systems of immovable property transfer especially in continental legal systems. French and French - influenced systems of *titulus adquirendi* system (purely causal consensual system), German and German - influenced abstract system (abstract *traditio*), *Titulus et modus* system (*Titulus modus adquirendi*(causal tradition system), and the common law system which uses a complicated process known as 'conveyance' to transfer ownership.¹⁸ This process consists of various stages, and in some countries

12 *Ibid.*

13 Chen Lei, Land Registration System in China: Past Problems and Prospects, Pp 375 - 390

14 Ono Shusei, *A comparative Study of Transfer of Property Rights in Japanese Civil Law*, Htotsubashi Journal of Law and Politics, Vol.31, Pp1-22.

15 Chen Lei, *Supra* note 13, Pp375 – 390.

16 *Ibid.*

17 Lars Van Vliet, *Transfer of Properties Inter Vivos* (Maastircht University, Maastircht European Private Law Institute, 2017), P7.

18 Luz M. Martinez Velencoso, *Transfer of Immovable and Systems of Publicity in the Western World: An Economic Approach*, 6J. Civ.L. Stud. (2013). Available at: <https://digitalcommons.Law.I su.ed/JCLS/vol/6/iss1/5>, Pp142 – 176; Chen Lei, *Supra* note 13.

(such as England and Wales) the acquisition process is only achieved with the inscription of title in the land registry.¹⁹

2.1. CASUAL CONSENSUAL SYSTEM OF IMMOVABLE PROPERTY TRANSFER

In this system, it is basically contract that transfers ownership (also called *titulus adquirendi*). According to Velencosso, in legal systems that are French influenced such as Portugal, Belgian and Italy the agreement between the parties' transfers ownership.²⁰ Under this system, it does not differentiate the moment of conclusion of contract from the moment of conveying the ownership.²¹ In this system, ownership is conveyed directly by a contract which has an effect translative meaning "to sale is to alienate", reads the maxim in French, which is explained by the fact that the contract on conveyance is executed now it is formed.²²

According to the Code Napoleon, the property is acquired and transferred upon mere declaration of consent in the contractual obligation without the need of creating neither a system of registration of interest and delivery.²³ What is indeed important under this system is the intention at the moment the obligatory agreement comes in to being (at the time of conclusion of the contract) since the mutual intention to transfer and to receive real rights is already contained and is the essential stipulation in the obligatory agreement.²⁴ Since the party's consensus at the time of conclusion of a valid contract of sale itself is sufficient to pass ownership, intention at the stage when the thing is delivered (the *animus* or mental disposition which delivery is incidental to) is therefore irrelevant.²⁵ Thus, this latter act of delivery is no separate requirement for the transfer of real rights, and it is also no juridical

19M. Martinez Velencoso, *Supra* note 18.

20 Chen Lei, *Supra* note 13.

21 M. Zivkovich, *Supra* note 11.

22 *Ibid.*

23 Andrea Pradi, *Transfer of Immovable in a European Perspective*. Andrea P.(eds.), *From Contracts to Registration, An Overview of the Transfer of Immovable Property in Europe (Universita Degli Studi Di Trento(2015), Vol. 19. Pp1-13*; see also O. Shusei, *Supra* note 14.

24 Pjw Schutte, *The Characteristics of an Abstract System for the Transfer of Property in South African Law as distinguished from A Causal System*, PER/PELJ 2012(15)3. Pp.121/183, See also, Vliet, *supra* note 17, P13.

25 Schutte, *supra* note 24; See also, Vliet, *supra* note 17, P13; Art.1138 of the Code Napoleon of 1804; Lie, *supra* note 13.

act that can be construed as an independent real agreement that is detached from the obligatory agreement.²⁶ It is nothing more than a mere physical act utilizing which the transferee is placed in control of the thing so that he can exercise his power as owner.²⁷ The French causal consensual transfer system does not require a transfer of possession.²⁸ This system is derived from Articles 711²⁹ and Article 1138³⁰ of the French Civil Code of 1804.

In a consensual casual transfer system, it seems as if the transfer of ownership necessarily depends on the validity of the obligatory contract.³¹ It is valid and enforceable obligatory agreement that transfers real rights.³² That means the invalidity of the underlying contract directly affects the validity of the transfer. A valid cause (*iusta causa/causa traditio*) giving rise to the transfer is a *sine qua non* for the transfer of ownership in such system. The Causa is all-important; hence the term causal system and *iusta causa* is a requirement for the transfer of property.³³ It is this *iusta causa* in the sense of valid and enforceable obligatory agreement or another juridical fact that obliges the transferor to deliver the thing in a causal system. Should the agreement be null and void or avoided with retrospective effect, for the non-compliance of the formality requirements for instance, the transfer will be invalid for there is no legal basis (*causa*) for delivery; no real right or ownership will be transferred.³⁴ The seller then would be said to have an

26 PJW Schutte, *Supra* note 24.

27*Ibid.*

28 Van Vliet, *supra* note 17, P7.

29Under Book iii which deals with the modes of acquiring property, Article 711 of the French Civil Code Provides that" Ownership in goods is acquired and transmitted by succession, by donation between living parties, or by will, by the effect of obligations."

30*Ibid.* Article 1138 reads " The obligation to deliver the thing is perfect by the consent merely of the contracting parties. It renders the creditor proprietor, and puts the thing up on his risk from the instant at which it ought to have been delivered, although the delivery have not been actually made unless the debtor should have delayed delivering it; in which case the thing remains at the risk of the later. See also Article 1582 which provides that ' A sale is an agreement by which one person is bound to deliver a thing, and another to pay for it. It may be made by an authentic act, or under private signature. Article 1583 of the same provides that " It is complete between the parties, and the property is acquired in law by the purchaser with regard to the seller, as soon as the thing and the price are agreed on , though the thing have not been delivered nor the price paid.

31 Van Vliet, *supra* note 17, P7.

32 Pjw Schutte, *Supra* note 24.

33*Ibid.*

34*Ibid.*

action of revindication (claiming back the property based on ownership).³⁵ In a casual system, therefore, the transferor finds himself in a favourable position in relation to other parties while bona fide third parties undoubtedly get the worst of the deal since they have no protection against the disadvantageous consequences of delivery owing to a void obligation.³⁶ Legal system in which transfer system that needs a valid causa tradition where the validity of the transfer does depend on the valid causa traditions (the legal ground for the transfer, e.g. the contract of sale) is called a causal transfer system.³⁷

2.2. ABSTRACT (TRADITION) SYSTEM OF IMMOVABLE PROPERTY TRANSFER

This category of rules on acquiring ownership by contract with the existing owner, attached primarily to German Law, is the system upon which the ownership is transferred by a special kind of legal act, so called legal act of disposition, which comes as an act of fulfilment of the contract by which the transferor undertook the obligation to convey ownership, the legal act of obligation, irrespective of the validity of the latter.³⁸ This system dictates that although a contract creates obligations, the transfer of property requires an additional element, delivery or act of conveyance to transfer a property right.³⁹ Attempting to translate this into the language of the *titulus/modus* system, one could say that the *modus*, understood as a legal act (contract) of disposition, transfers the ownership, irrespective of the validity of the *titulus*.⁴⁰ In an abstract system, the obligatory agreement is not sufficient for the transfer of real rights as in consensual system, the thing should also be delivered and there should be a valid real agreement which consists merely of the mutual intention to transfer and to receive real rights.⁴¹ German law provides that a transfer of ownership requires the actual delivery and transfer of a title and it also sees delivery itself as a contract (distinct legal act), based upon which the ownership is conveyed (or in case of real property, which

35 Van Vliet, *supra* note 17, P7.

36Pjw Schutte, *Supra* note 24.

37 Van Vliet, *supra* note 17, P7. See also Lei, *supra* note 13. The Dutch, Swiss or Austrian transfer systems are called causal.

38 Martinez Velencoso, *supra* note 18.

39 Lei, *supra* note 13.

40 Martinez Velencoso, *supra* note 18.

41 Pjw Schutte, *Supra* note 24.

enables conveyance by registration).⁴² So, it can be said that there are two separate contracts, the one that forms the legal ground for conveyance (obligatory act), e.g. sale contract, and the other that conveys ownership (real agreement/dispositive act) in the narrower sense, and that is delivery (for movables) and registration (for immovable).⁴³

The obligatory agreement creates only an obligation which obliges the parties to perform, but it does not result in the transfer of real rights.⁴⁴ Thus, the buyer with the conclusion of the contract does not acquire ownership as a result of the obligatory agreement as in the case of French Model of consensual transfer system. Therefore, after the conclusion of this agreement, no vindictive claims against the seller arises as the buyer is not yet the owner of the property.⁴⁵

Dispositive Legal Acts (real agreement), on the other hand, involve extinguishing or encumbering rights.⁴⁶ This means that this legal act results in the acquisition of an existing right by another party.⁴⁷ The transfer of the title is defined as the mutual consent for the transfer of ownership at the time of conveying ownership.⁴⁸ It is not, therefore, a statement of intent, but an intention to transfer occurring at the time of transfer that transfers ownership in this system.⁴⁹ The essential elements of the real agreement, therefore, are an intention on the part of the transferor to transfer ownership and the intention of the transferee to become the owner of the property. To bring about the transfer, the transferee also must take control of the thing through act of delivery (*traditio*), or immovable need to be registered.⁵⁰ The principle of traditionalism, as opposed to the principle of consensualism, applies in

42 Martinez Velencoso, *supra* note 18; See also *Article 929 of BGB (German Civil Code)*.

43 *Ibid.*

44 Pjw Schutte, *Supra* note 24.

45 Kornel Sadowski, *The Abstraction Principle and the Separation Principle in German Law*; Adam Mickiewicz University Law Review, Pp.238-243

46 *Ibid.*

47 *Ibid.*

48 *Ibid.*

49 *Ibid.*

50 Pjw Schutte, *Supra* note 24.

this system.⁵¹ Under the formalism (tradition) system, the transfer of property is effective only after either delivery or registration of the interest.⁵²

Therefore, it can be said that this system of property transfer rests on two basic principles; the principle of differentiation and separation and the principle of abstraction.⁵³

2.2.1. Separation and Differentiation Principle

According to the separation principle, the contract creating obligation aiming at conveying ownership and the contract or legal acts that conveys it are differentiated and separated.⁵⁴ This means that the transfer of ownership requires not only sales, or donation agreement, but also an agreement on actual property transfer which is real agreement.⁵⁵ Then, according to this principle, a defect in an obligatory contract will not invalidate a contract on ownership transfer.⁵⁶ This means that the real agreement has an independent existence from the dispositive agreement in the abstract system of immovable property transfer.⁵⁷

2.2.2. Abstraction Principle

The abstraction principle provides that the obligatory act is abstract in the sense that its ineffectiveness does not affect the effectiveness of the dispositive act.⁵⁸ According to the abstraction principle, the validity of the conveyance contract is independent of the validity of the obligatory contract⁵⁹ and ownership can be transferred in the absence of a valid obligatory contract if there was a valid real agreement together with registration as required in the tradition systems.⁶⁰ It may therefore happen that after the conclusion of the two agreements, the obligatory contract is not

⁵¹*Ibid.*

⁵² Ono Shusei, *Supra* note 14.

⁵³ Martinez Velencoso, *supra* note 18.

⁵⁴ Sadowski, *supra* note 45.

⁵⁵ *Ibid.*

⁵⁶*Ibid.*

⁵⁷*Ibid.*

⁵⁸ Ono Shusei, *Supra* note 14.

⁵⁹ Martinez Velencoso, *supra* note 18.

⁶⁰ Chen Lei, *supra* note 13. See also Sadowski, *Supra* note 45. Although abstract theory does not require a valid underlying contract (e.g. sale), ownership will not pass -despite registration of transfer - if there is a defect in the real agreement.

valid, but this does not affect the validity of the contract which transferred the ownership and thus the purchaser becomes the owner of the property and the property remains on his hand based on the abstract real agreement.⁶¹ According to Sadowski, this in turn ensures the effectiveness of contracts on ownership transfer.⁶² This separation of the causal and real abstract agreement also contributes to the stabilization of the position of the purchaser.⁶³

A characteristic of abstract system in general and that of the German law in particular is that the contract on the actual transfer of ownership is disconnected casually (causa regarding obligatory agreement is not a substantive law requirement for the transfer of real rights) from the contract that details the obligations of the parties, in such a way that nullity of the contract detailing the contractual obligations does not affect the validity of the transfer of ownership.⁶⁴ The causa concept refers rather to the mutual intention to transfer and to receive real rights, which is nothing less than the real agreement.⁶⁵ The real agreements can avoid contractual defects, such as fraud, duress, or mistake since they are submitted to officials at the registry.⁶⁶

2.2.3. Requirements of Notarization and Registration in Germany

The German Law, in addition to the requirement of the real agreement, needs the contract of transfer of immovable property to be notarized. Under German law, the contract of sale or any other contract requiring a transfer of immovable property is in principle void if it is not laid down in a notarial deed.⁶⁷ Ownership of immovable property, however, cannot be acquired directly as a result of a notarised contract of sale between the seller and the buyer. A civil law notary is often required in the German model for a

61 Kornel Sadowski, *Supra* note 45.

62 *Ibid.*

63 Ono Shusei, *Supra* note 14.

64 Martinez Velencosso, *supra* note 18, P157.

65 Schutte, *Supra* note 24.

66 Ono Shusei, *Supra* note 14.

67 Van Vliet, *Supra* note 17, P20.

property right simply cannot exist without it being both notarized and registered.⁶⁸

If the title to the property effectively to transfer to the buyer, final registration of the transfer of ownership in the land registers, in addition to obligatory and real agreements, is a precondition for acquiring ownership of immovable property in Germany.⁶⁹ However, if such a contract is void only for want of a notarial deed and the contract has been followed by a transfer of ownership and registration in the land register, the contract will be affirmed.⁷⁰

Therefore, it can be concluded that, the conveyance, that is, the transfer of ownership, consists of two elements: the real agreement about the transfer⁷¹ and the entry in the land registry.⁷² The property transfer systems of South Africa⁷³ and Armenia⁷⁴ can be placed under this system.

2.3. CAUSAL TRADITION/MIXED SYSTEM OF IMMOVABLE PROPERTY TRANSFER

This system of transfer is the concept that requires both *iustus titulus* (a contract or other legal act aiming at transfer of ownership) and *modus acquirendi* (mode of the transfer itself).⁷⁵ In this system, the property transfers as a result of the causal agreement and *modus*, i.e., formalism.⁷⁶ The idea behind this system is that the contract itself is merely a legal ground, *iustus titulus*, for the acquisition of ownership, and that ownership is acquired, based on such contract, by a special act, called *modus acquirendi* or mode of acquisition in the strict sense.⁷⁷ The contract, as legal ground creates merely an obligation to convey the ownership, but the conveyance itself is carried out through a different act, *modus acquirendi* (delivery in

68 Lei, *Supra* note 13, P 379.

69 That means, it is also necessary for the two parties to conclude an agreement that ownership is to be transferred and for that transfer to be registered in the land register.

70 Van Vliet, *Supra* note 17, P20.

71 See Arts. 873 and 925 of BGB (German Civil Code).

72 German Civil Code, Art. 873.

73 Schutte, *Supra* note 24.

74 See Arts. 561 - 563 and Art. 568 of Civil Code of Republic of Armenia.

75 M. Zivkovich, *Supra* note 11.

76 Ono Shusei, *Supra* note 14.

77 M. Zivkovich, *Supra* note 11.

respect of movables and registration in respect of immovable property).⁷⁸ Both *titulus* and *modus* are required for the transfer of ownership in this system.⁷⁹ Otherwise, if the legal ground, e.g. a sale contract, is void or avoided, there would be no valid acquisition despite registration since registration without valid legal ground is itself invalid.⁸⁰ Therefore, it can be understood that the moment that the contract aiming at transfer of ownership is formed is different from the moment of acquisition of ownership, by a different act, the *modus*, which in case of real property is registration, where the validity of the underlying contract is a condition for the acquisition based on delivery, respectively registration.⁸¹ The purpose of the *modus* is making the conveyance public (visible to others), therefore the *modus* is required with third parties in mind.⁸²

Immovable property transfer systems of Spain and Netherland⁸³, Austria⁸⁴, Swiss⁸⁵, Serbia⁸⁶, Kosovo⁸⁷ and Finland can be categorized under this mixed system of the immovable property transfer system. The Spanish system requires the conclusion of a contract (a title) and tradition (the delivery of possession to pass the ownership, which is the *modo* or correct form).⁸⁸ A distinctive characteristic of the Spanish system is the causal relationship between the contract and the transfer of title and thus, if the contract is invalid, the transmission of ownership cannot be said to have taken place.⁸⁹

Austrian and Swiss Law also admit formalism system, but not the necessity of abstract real agreement unlike in Germany where formalism and necessity of the abstract real agreement in the separation theory are combined.⁹⁰ Only

78 *Ibid.*

79 *Ibid.*

80 *Ibid.*

81 *Ibid.*

82 *Id.* P114.

83 Martinez Velencoso, *Supra* note 18, P157.

84 Ono Shusei, *supra* note 14. See also *M. Zivkovic, Supra* note 11.

85 Ono Shusei, *Supra* note 14.

86 Zivkovich, *supra* note 11, P119.

87 Haxhi Gashi, *Acquisition and Loss of Ownership under the Law on Property and Other Real Rights (LPORR): The influence of the BGB in Kosovo Law*, *Hanse Law Review* (2013)

88 Martinez Velencoso, *Supra* note 18.

89 See Arts 605 - 608 of the Civil Code of Spain on the Registry of Property.

90 Ono Shusei, *Supra* note 14.

a causal agreement is required for the agreement of sale and, thus, no distinction is drawn between causal and abstract real agreements.⁹¹ This way of transfer of property, called *titulus et modus acquirendi* theory, is adopted also in Austrian Civil Code ABGB.⁹² The Austrian system is based upon differentiating the moment the contract aiming at ownership transfer is formed from the moment of acquisition of ownership by a different act, a *modus*, which in case of real property is registration.⁹³ The situation is the same in Swiss law. In Swiss, the property transfers as a result of the causal agreement and *modus*, i.e. formalism.⁹⁴ In relation to real property, the Swiss Civil Code requires registration to transfer property.⁹⁵

Serbia as a civil law country has also adopted this mixed system of the real property transfer system. *ZIVKOVICH*, in this regard, provides the following regarding the Serbian system of real property transfer.

In the area of regulation of matters of acquisition of ownership on the ground of a contract with previous owner, the Serbian law, traditionally, adopts a model the solution of the Austrian law (section 380 of the 1811 Austrian Civil Code - ABGB), providing that the right may be acquired from the predecessor, who is the owner, if two requirements are fulfilled i.e. that there exists a fully valid contract aimed at the conveyance of ownership (iustus titulus), that there is the act of handing over (delivery) for movable objects, and/or the act of filing the right into land books or the transfer of a title deed, for immovable property (modus acquirendi).⁹⁶

On the ground of legal transaction, in Serbia, the right of ownership over immovable object shall be acquired by means of filing it into a public book.⁹⁷

91 *Ibid.*

92 See Art.380 of the Austrian Civil Code (ABGB)

93 M. Zivkovich, *Supra* note 11.

94 Ono *Shusei*, *Supra* note 14.

95 *Ibid.*; See also Art 656(1) of Swiss Civil Code (ZBG).

96 M. Zivkovich, *Supra* note 11, P119.

97 *Ibid.*; See also Article 33 of ZOSPO (Law on Basic Ownership Relations).

3. THE ETHIOPIAN SYSTEM OF ACQUISITION AND TRANSFER OF OWNERSHIP OF IMMOVABLE PROPERTY

3.1. THE SOURCES OF PROPERTY RIGHTS UNDER THE ETHIOPIAN LAWS

In Ethiopia, property rights get legal protection mainly under the FDRE Constitution, the 1960 Civil Code, other Codes, some other pieces of legislation and laws that establish and define the powers and functions of judicial and administrative institutions.⁹⁸ FDRE Constitution provides that "every Ethiopian citizen has the right to the ownership of private property."⁹⁹ It defines private property as any tangible or intangible product which has value and is produced the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances specifically empowered by law to own property in common.¹⁰⁰ It further provides, regarding immovable property, that every Ethiopian shall have full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labour or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it which of its is to be determined by law.¹⁰¹

3.2. ACQUISITION OF IMMOVABLE PROPERTY RIGHTS UNDER ETHIOPIAN LAWS

The term immovable property includes parcels of land, and all things connected permanently to the land, such as the houses, apartment buildings, factories, stores, etc.¹⁰² Rights which people hold to the immovable property include the right to use, the right to get economic benefits from it, the right to subdivide it into smaller parcels or units and the right to transfer any of the

98 Elias N. Stebek, etal, Property Rights Protection and Private Sector Development in Ethiopia (PSD Hub publication No. 23, Property Rights Development Hub, Ethiopian Chamber of Commerce and Sectoral Associations, Addis Ababa, 2013), P14.

99 FDRE Constitution,Art.40(1).

100 FDRE Constitution,Art. 40 (2).

101 FDRE Constitution,Art. 40(7).

102 J. David Stanfield,Immovable Property Registration Systems: Hopes and Fears (*For Presentation to the Congreso Iberoa De Registro De Propiedad Lima, Peru, 3-7 November, 2003*), P1.

above rights to another person.¹⁰³ Likely, in Ethiopia, immovable property is defined both under the 1960 Civil Code and other legislations relating to immovable property registrations. Under the Civil Code, Objects of property or all goods in general have been defined as movable or immovable.¹⁰⁴ Accordingly, immovable comprises lands and buildings.¹⁰⁵ The Urban landholding adjudication and Registration Regulation also defined the term immovable property as ‘urban land and related properties and includes buildings and permanently planted perennial crops.’¹⁰⁶

In Ethiopia, land is owned by the state and the people of Ethiopia, and thus individuals do not have a private right greater than transferrable possession right for several years for a fee over land as opposed to other chattels and immovable properties.¹⁰⁷ In addition, individuals can privately own residential houses and apartments on the land (home ownership), albeit not the land on which the buildings are situated.

According to the norms of Civil Code, the grounds for the origin or acquisition of property rights in general and immovable are legal rights, or legal relationships. For systematic purposes, a distinction is made in civil law jurisdictions between original and derivative acquisition.¹⁰⁸

103 *Ibid.*

104 Civil Code of the Empire of Ethiopia, Proclamation Proc. No. 165/1960, Neg. Gaz., Extraordinary Issue, No.2,(hereinafter ‘ECC’). Art. 1126

105 BECC, Art.1130; See also the Addis Ababa City Government Immovable Property Registration and Information Agency Establishment Proclamation, No. 22/2002, Art. 2 (4). See also Federal Urban Real Property Registration and Information Agency Establishment Council of Ministers Regulation, No. 251/203, Art. 2(4). This regulation uses the term real property instead of immovable property. It provides that ‘‘ real property’’ means a parcel of land or a parcel of land together with immovable property on the land.

106 Federal Urban Landholding and Registration Council of Ministers Regulation. No. 324/2006, Art. 2 (9) (FURLR, hereinafter).

107 Article 40(3) of the FDRE Constitution provides that "The right to ownership of rural and urban land, as well as of all natural resources , is exclusively vested in the state and in the peoples of Ethiopia. Land is common property of the Nations, Nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of exchange.

108 Fasil Alemayehu, Law of Property Teaching Material (Prepared under the Sponsorship of the Justice and Legal System Institute, 2009), P 63

3.2.1. Original Acquisition

Original acquisition mode involves the creation of a new property right, which is independent of any pre-existing rights over the same thing.¹⁰⁹ This mode of acquisition differs from the derivative acquisition of property rights in which an existing property right is transferred from the transferor to the transferee, and the latter's right depends on the right of the former.¹¹⁰ This mode of acquisition of ownership includes occupation,¹¹¹ possession in good faith,¹¹² accession¹¹³ and usucaption/acquisitive prescription.¹¹⁴ The first two modes solely apply for movables while the latter two apply to immovable.¹¹⁵ That means, immovable property can originally be acquired only through accession and usucaption under Ethiopian law.

3.2.2. Derivative Acquisition

Derivative acquisition refers to the mode of acquisition of right of ownership through transfer from one person to another.¹¹⁶ It is a mode of acquisition in which the right and title of the transferee (new acquirer) is dependent on the validity of the right (title) of the transferor.¹¹⁷ According to Article 1184 of the Ethiopian Civil Code, the title to derivative acquisition can be based up on a contract, *mortis causa* disposition (will), a court decision or an order by a law. However, the law requires the title being objectively valid. Hence, the governing principle here is that no one can transfer a better title or right than he himself has, and where the transferor is not an owner or of his right is defective, the transferee will not acquire right of ownership or will acquire a defective right.¹¹⁸ Given this, it can be said that the same rule regulates both acquisition and transfer considering the meaning of derivative acquisition of ownership of the real property as articulated in the preceding section of this

109 *Ibid.*

110 *Ibid.*

111 ECC, Arts 1151 and 1191.

112 ECC, Arts. 1161 - 1169.

113 ECC, Arts.1171 and 1183.

114 ECC, Arts. 1168 and 1150.

115Elias N.Stebek, *Conceptual Foundations of Property Rights: Rethinking De facto Rural Open Access to Common - Pool Access in Ethiopia*, Mizan Law Review (2011), Vol. 5, No.1. P. 6 .

116 Fassil Alemayehu, *Supra* note 108.

117*Ibid.*

118*Ibid.*

paper. The main purpose of this paper, therefore, is to critically examine the Ethiopian system of transfer of ownership of immovable property within the meaning of the derivative acquisition of ownership of immovable property.

3.3. TRANSFER OF OWNERSHIP OF IMMOVABLE PROPERTY UNDER ETHIOPIAN LAW

Pursuant to Article 1184 of the Civil Code of Ethiopia, right of ownership may be transferred from the owner to another person by a contract which may be contract of sale¹¹⁹, contract of donation¹²⁰ or contract of barter¹²¹ and will or by virtue of the law which may be through inheritance (intestate) or by court order. The principle, of "*nemo dat quod non habate*" applies here too. Therefore, for a person to transfer a perfect right of ownership, he/she must have a perfect right to ownership.¹²² That is, one must have a legally protected property right to transfer it to another person.¹²³

3.3.1. Conditions Required for Contractual Transfer of Immovable Property Ownership under Ethiopian Law

To have an accurate understanding regarding the conditions required for the valid contractual transfer of ownership of immovable properties in Ethiopia, one needs to have a comprehensive reading of the general and special parts of contract law relating to contract in general, sale of immovable,¹²⁴ the federal law of authentication and registration of documents,¹²⁵ property law (both in the Civil Code and other legislations together).¹²⁶ Accordingly, these legal conditions can be summarized, being put into the perspective of global

119 ECC, Arts. 2266 and 2875.

120 ECC, Arts. 2427ff.

121 ECC, Arts. 2408 and 2409.

122 Alemayehu, *supra* note 108, P77.

123 See also FSCCD, *Vol. 15, File No. 88084. The case between Wagayehu Tamiru Vs Askale Wasane etal . Date - November 19, 2006; See also Volume 20, File Number 112190. Amhara region, Aykal city Municipality Vs Shek Shamsu Mahammad, March 28, 2008.*

124 ECC, Art. 1723 and Arts. 2877 & 2878.

125 Authentication and Registration of Documents Proclamation No. 922/2008. Federal Negarit Gazette No. 39 (Hereinafter, ARDP). Art. 9(1).

126 That means, one needs to have an accurate understanding of Articles 1184, 1185 and 1190 and Article 1553 - 1646 of the Civil Code on the one hand and Federal urban Landholding and Registration Proclamation No. 818/2006 and Regulations and directives subsequent to this proclamation on the other hand.

continental immovable property ownership transfer system (casual consensual *Vs* abstract tradition system of property transfer), into two main ways of transfer of ownership. That is, for the acquisition of ownership of immovable property under Ethiopian law, two main conditions are required to be met. These are: valid underlying cause (valid contract/titulus) and registration in the registry of immovable property (mode of acquisition).

3.3.1.1. The Requirements of Valid Underlying Cause

This condition requires valid legal title (*ius tutulus/iusta causa*) in the meaning of an obligatory contract as the reason of transfer(cause). That is, there should be a cause, or legal ground for the transfer, meaning there must be the justification for the transfer of ownership as exemplified by a contract (contract of sale, donation, or a testament, or under law (an order made by a court of law following court attachment or winding up of intestate succession or an expropriation order).¹²⁷ This requirement of valid underlying cause (contract), under Ethiopian law, further, comprises two main validity requirements under itself.

A) Written Formality Requirement of the Underlying Cause

The cause of the transfer of ownership shall be reduced into writing in relation to immovable property under Ethiopian law.¹²⁸ Contracts relating to immovable properties and special movables, owing to their special nature and contribution to the economy are required to be made in writing in Ethiopia.¹²⁹ Muradu Abdo supports this assertion in relation to special movables *albeit* admitting that the requirement that contracts pertaining to special movables must be reduced in to writing is made no patent nowhere in the civil code.¹³⁰ He provided the following;

127 Muradu Abdo, *Transfer of Ownership over Motor Vehicles (Case Comment)*, Journal of Ethiopian Law (2001), Vol.23, No. 1. Pp.27-35. *Muradu praised the Federal Supreme Court, in the case between Habtab Tekle Vs Esayas Leke and Bezabeh Kelele(delivered on sene 22, 1980), for recognizing the rule that special movables are similar to immovable property and that the rules designed to regulate the latter may apply, with the necessary changes, to the transfer of the former for the purpose of transfer.*

128 ECC, Arts.1723 (1) and 2877, 1719(2), 1720(1), 1727(2) and ARDP, Art. 17(1).

129 See for instance, ECC, Arts. 1723 and 1186 (2) and Art. 6(1-4) of Proclamation No. 682/2002.

130 Muradu Abdo, *Supra* note 127.

In our contract law, form is an exception; written formality is required only if the law or the parties require so. Yet, there are reasons to argue that written contract is mandatory in relation to juridical acts pertaining to transfer of motor vehicles. First, reducing the transactions over motor vehicles among those who involve in such transactions has become a settled practice in the sense that it is followed by at least most of the community of car dealers and owners, which has been observed repeatedly and regularly over a long period of time. These features, I think, have elevated such practice to the status of customary rule. If this is the case, the making of the contract pertaining to transfer of motor vehicles in writing must be a term of such contract dictated by custom by virtue of Article 1713 of the Civil Code. In the second place, there is at least one occasion whereby administrative authorities require parties to a contract in connection with transfer of motor vehicles to produce a written contract. Contracts in connection with motor vehicles are required to be authenticated by law. Such act of authentication obviously requires the production of written documents. Thus, special law and custom require that the making of contracts conclude to transfer ownership over motor vehicles must be made in a written form.¹³¹

The contracts to transfer ownership of special movables do not only required to be made in writing but also need to be authenticated like that of immovable. Transfer of ownership in respect of special movables requires a cause, i.e. a contract of sale, or donation or a testament or a court order.¹³² The cause should be accompanied by registration and issuance of a certificate of title by a proper authority.¹³³ Possession of a special movable alone does not make one an owner thereof.¹³⁴ For the purpose of transfer, special movables are elevated to the status of immovable property.¹³⁵ This position has also been upheld by the Federal Supreme Court cassation bench

131 *Ibid.*

132 Muradu Abdo, *Subsidiary Classification of Goods under Ethiopian Property Law: A commentary*, Mizan Law Review (2008), Vol.2. No.1, Pp 53-91.

133 *Ibid.*

134 *Ibid.*

135 *Ibid.*

in its decision of January 13, 2005.¹³⁶ The Supreme Court in this case decided that for one to claim a title transfer over special movables on the basis of contract of sale, should produce an authenticated contract of sale of the vehicle among other documents before the registering institution.¹³⁷ The court in this case particularly made clear that a transfer of title of an ownership on special movable from the seller to the buyer can only be validated if the contract is made in writing.

The formality requirement of written form can also be viewed in two aspects under Ethiopian law. One aspect of the written form is the requirement of attestation by two witnesses.¹³⁸ The term “attestation” means affirming to be true or genuine or certifying to the verity of a copy of a document formally by signature.¹³⁹ That means, it shall be signed before the relevant authentication institution by two witnesses.¹⁴⁰ Documents that are required to be made in writing, such as contracts of transfer of ownership of immovable properties by selling or donation; contracts of establishing collateral or guarantee right on immovable properties; and public will shall be signed before the relevant authentication and registration institution by two witnesses.¹⁴¹ A contract of sale of immovable property, for instance, is invalid unless it is signed by two witnesses despite its authentication with a notary.¹⁴²

The second aspect of the written formality requirement may be sought in such a way that certain contracts and the contracts made required to be made in a special form are required to be evidenced only in writing.¹⁴³ This aspect

136 FSCCD Vol.14. File No. 81406. The case between Ahmed Ibrahim Vs Said Hagerlawi, Decision delivered on January 13, 2005.

137 ECC, Arts. 1723 and 1186 (2) and Art. 6 (1-4) of Proclamation No. 682/2002.

138 See ECC, Arts. 1727(2) and ARDP, Art.17(2).

139 Henry Cambell Black, Black's Law Dictionary(Revised Fourth Ed, 1968), P.780 cited in Melkamu B. Moges and Alelegn W. Agneheu, *issues on the Role of Formal Requirements for validity of Immovable Transactions in Ethiopia: The case of Amhara Region* (Bahirdar University Journal of Law (2015),Vol. 6.No.1, P.53.

140 ECC, Art. 1727(2) and ARDP, Art. 17(1)(a).

141 ARDP, Arts. 17(1)(A), (b), and (c).

142 FSCCDD Volume 12, File Number 57356, the case between Meseret Bekele Vs Elza Somonella. Decision delivered on February 23, 2003.

143 See ECC, Arts 2472 & 2003. Article 2003 provides that " Where the law requires written form for the completion of contract, such a contract may not be proved by witnesses or presumption unless it is established that the document evidencing the contract has been destroyed, stolen or lost.

of the written form is essential in the proving of the existence of the contract required to be in the special form. That means, in Ethiopia, the writing requirement performs an evidentiary and precautionary function.

In Ethiopia, unlike in France, the writing requirement is included in the Civil Code along with the provisions on general contracts and different special contracts. In France, the writing requirement is included along with the provisions on proof of obligations.¹⁴⁴ Contrarily, the writing requirement and proof of contracts are dealt with separately under Ethiopian Civil Code.¹⁴⁵ The provisions requiring authentic acts are placed with the provisions on proof of contracts under the Ethiopian Civil Code.¹⁴⁶ The writing formality requirement, however, is found among the substantive provisions governing various contracts. In contrast, in France, the provisions requiring authentic acts are not placed with the provisions on proof of obligations, but are found among the substantive provisions governing various contracts.¹⁴⁷ The failure to reduce a contract to writing where required by law renders the contract void and reduces the status of the contract to mere draft in Ethiopia.¹⁴⁸

B) Requirement of Authentication and Registration (Notarization) as Validity Requirement

The written form is not the final part of the formation of the contract pertaining to immovable property transaction under Ethiopian law.¹⁴⁹ Writing a contract is the first phase of the processes and not the end of it in relation to transferring the ownership of immovable property. Regarding authentication, Article 1723(1) of the Civil Code provides that ‘a contract creating or assigning rights in ownership or bare ownership on an immovable

144 French Civil Code, Arts.1322-48

145 See ECC, Articles 2001 - 2029 for proofs in relation to contracts.

146 See ECC, Arts.2007, 2010, 2011, 2014 & 2015.

147M. Thomas Arceneaux, *Writing Requirements and the Authentic Act in Louisiana Law: Civil Code Articles 2236, 2275, 2278*, 35 La. L. Rev. (1975) Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol35/iss4/4>

148 See ECC, Art. 1720(1).

149 Both substantive laws and the Supreme Court Cassation Division decisions urge contracts in relation to immovable must be in written form and authenticated to be valid and effective. The Ethiopian Federal Supreme Court Cassation Division has delivered many decisions which ought to be obeyed both by federal and regional courts of all levels as a law regarding the formality requirement that the contracts regarding immovable property should comply with to be valid.

or a usufruct, servitude or mortgage of an immovable shall be in writing and registered with a notary. Under this provision, authentication is provided as a prerequisite for the validation of the contract. As we see from this provision, authentication has equal binding force of law as writing does have; and as per this provision, both writing and authentication requirements are essential elements for the legal effects or validity of the contract pertaining to immovable. But, this provision does not provide for the effect of noncompliance with the requirement of authentication unlike in case of the effect of the non-fulfilment of the writing requirement on contract of sale of immovable under Article 2877 & 2878 of the Civil Code. This practically triggers debates among legal professionals and within courts as to whether the authentication requirement under article 1723(1) is for validity of the transactions on immovable.

The FSCCD has also reached different rulings on the issue.¹⁵⁰ Before the Gorfe case,¹⁵¹ which was decided in 1999 E.C, the courts especially the Federal Supreme Court held that authentication by notary was not necessary to validate contracts on immovable property.¹⁵² The main relevant reasons given for this were that Article 1723(1) does not put the consequence of failure to authenticate the contract, that the Ethiopian Civil Code under Article 2877 provides that failure to meet the written requirement invalidates the contracts in relation to immovable property while it fails to provide the same consequence for authentication and that Article 2877 which requires a written form of requirement for validity prevails over Article 1723(1), a provision that renders neither written form nor authentication a validity requirement, according to the principle of legal interpretation the special prevails over the general.¹⁵³ In the Gorfe case, however, the FSCCD held that a contract of sale of an immovable can only be valid if both requirements of writing and authentication are fulfilled.¹⁵⁴ This means that a contract of sale of immovable property will be deemed

150 Melkamu B. Moges & Alelegn W. Agegneh, *Issues on the Role of Formal Requirements for Validity of Immovable Transactions in Ethiopia: the Case of Amhara Region* (Bahir Dar University Journal of Law, 2015), Vol. 6, No. 1. Pp 50 – 85.

151 FSCCDD, Volume 4, File No. 21448. The case between Gorfe Warqineh Vs Aberash Debarge et al (hereinafter, the 'Gorfe Case') delivered on April 30, 1999.

152 Melkamu B. Moges & Alelegn W. Agegneh, *Supra* note 150.

153 *Ibid.*

154 *Ibid.* See also *Supra* note 151, Gorfe Case.

inexistent or null and void failing to meet these requirements.¹⁵⁵ According to the court, public policy demands that special protection be given to contracts relating to immovable properties.¹⁵⁶

The Federal Supreme Court Cassation Division, in its other decision¹⁵⁷ has modified its decision in Gorfe case. The court held in this decision that the scope of interpretation given by the Court on Articles 1723 and 2878 in the Gorfe case does not include the situation where the parties to the contract admit the existence of the contract but provide objections on the basis of the fact that the contract has not been authenticated before notary. The purpose of authentication under Article 1723 according to the court in this volume is to evidence the existence of the contract of sale between the contracting parties. This means, the contract will not be invalidated for the mere fact that it has not been authenticated where the parties at suit have not denied the existence of the contract.

In another case, the FSCCD ruled that any objection regarding authentication requirements under Art. 1723(1) of the ECC may not be raised by the court but by the parties to the suit.¹⁵⁸ The court in this case reasoned from the perspective of the person who can invoke invalidity of the contract of transfer of immovable property based on noncompliance with the formal requirements. The court admits in this case, like in the Gorfe case, that the contract to transfer ownership of immovable property is invalid if not fulfilled the formal requirement under Article 1723(1). Therefore, it can be considered as an affirmation of the stand of the decision of the same court in the Gorfe case in relation to the validity requirement of authentication.

This author also argues that the authentication requirement under Article 1723(1) of the Civil Code is a validity requirement even between the contracting parties. It is worthy of enquiring the provision of the federal documents authentication and registration proclamation No. 922/2008 about the underlying issue. The proclamation clearly provides that authentication is

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ See the FSCCDD, F.No. 36887 delivered on October 18, 2001 E.C. The case between Alganesh Abebe Vs Gebru ishete Gebre and Warqit Ishetu Husen.

¹⁵⁸ See the FSCCDD, Vol.10. F.No.43825 delivered on December 6, 2002 E.C. The case the Guardian and Tutor of child Kokebe Tefera Vs Ato Ayalew Kasaye. *Et al.*

a validity requirement in only three cases. These cases involve documents that shall be authenticated and registered in accordance with the appropriate law, a power of attorney or revocation of power of attorney, and memorandum and articles of association of business organizations and other associations, and amendments thereof.¹⁵⁹ It is very important here to shed a light on the scope of term ‘documents that shall be authenticated and registered in accordance with the appropriate law. This author argues that regarding the contracts on transfer of ownership on immovable therefore, it can be said that Article 1723(1) which requires every contract pertaining to immovable property to be authenticated and registered can be considered as an appropriate law, within the meaning of Article 9(1) of the document authentication and registration proclamation number 922/2008. Contrarily, Melkamu B. Moges & Alelegn W. Agegneh did not consider Article 1723(1) as appropriate law. They provided the following reasons:

Article 9 of the Authentication and Registration of Documents Proclamation excludes transactions on immovable property from the list of the transactions that require authentication for their validity. In fact, these transactions are mentioned clearly but they are deemed to be “documents submitted for authentication and registration which places them under the transactions to be authenticated” if requested by the concerned parties.¹⁶⁰

Given the objective of authenticating documents is protecting citizens’ rights of producing private property, use and transfer through legal means and thereby supporting the justice system and ensuring the rule of law,¹⁶¹ the author argues that documents pertaining to immovable property transactions are included under the umbrella of the term “documents that shall be authenticated and registered in accordance with the appropriate law” under Article 9(1) (a) of the proclamation. Because the proclamation itself defines the term “document” as any contract, will, document of power of attorney or revocation, a document translated from one language into another by a licensed translator, copy of a document, document of vital event, education and professional certificate, memorandum or/and articles

159 See ARDP, Art. 9(1)(a, b, c).

160 Melkamu B. Moges & Alelegn W. Agegneh, *Supra* note 150, P.71.

161 See ARDP, Art.7(3).

of association, minutes or any written matter submitted for authentication and registration in accordance with this proclamation'¹⁶²

Therefore, it can be concluded that the written contract which is intended to transfer ownership of immovable property by sale or donation¹⁶³ shall be

162ARDP, Art. 2(1).

163There have been debates and controversies whether the contract of donation on immovable is required to be made in writing and must be authenticated to be valid under Ethiopian law. The Federal Supreme Court Cassation in the case between Makowanent Warrede Vs Meskerem Dagnaw et. al., in volume 8, File No. 34803 delivered on october 27, 2001 , has decided that the contract of donation is not required to be made in writing and be authenticated under Ethiopian Law. The main reason for the court to hold this position is the fact that the special law in the Civil Code regulating the contract of donation of immovable property does not clearly dictate the donation contract to be made in writing and be authenticated. Rather, Article 2443 of the Civil Code orders the contract to be made in the form governing the making of the public will (881_883) to be valid. The court goes on to saying that the provision of Article 1723(1) is a general provision of the law and the provisions of Article 2443 and 881 which deal with the form of the contract of donation are special provisions. If there is a discrepancy between the general provision of the law and special law, therefore, the provisions of the special law will prevail and applicable. Admittedly, Article 1723 regulates only the formality requirements that the contracts on immovable should follow without providing for the effect of non observance of the formalities. This does not, however, mean that some contracts in relation to immovable property can optionally avoid this formality requirement for the mere fact that the special laws regulating these specific kinds of contracts have not provided for the formality requirement of writing and authentication like in the case of contract of sale. The other thing misleadingly understood in this respect is that Article 1723(1) and other provisions of the special contracts like that of donation are contradictory and consequently applying the 'special law prevails over the general' principle of interpretation. This author contends, however, that these provisions are not contradictory so that they can be applied without the need to recourse to the principle of interpretation. Therefore, considering the cumulative reading of Article, 1723(1) of the Civil Code, Article 9(1) (a) of proclamation number 922/2008 and Article 49(4) (b) of regulation number 324/2006, a contract of donation, among many other contracts on transfer of ownership of immovable, is one of the contracts that create rights of ownership over immovable property so that it is mandatory to be made in writing and be authenticated. Particularly in relation to the writing requirement, it can even be inferred from the cumulative readings of Article 2443 and 881 of the Civil Code that the contract of donation is required to be made in written form. Because, though the provision doesn't order the written form clearly, the public will is not valid if not made in writing. What is special with it is that it is only the testator who is allowed to write it. It can be inferred from this provision also that the contract of donation must be made in writing. In addition, it is provided in the federal urban landholding and registration regulation that the

authenticated and registered in the notary offices.¹⁶⁴ A document is notarized to protect persons from signing unimportant document. It assures the parties to an agreement that this document and no other is the authentic document which is intended to be given full force and effect.

Some of the justifications to have authentic acts are that they perform both evidentiary and cautionary functions.¹⁶⁵ When the formality is required for a particular act, it serves the cautionary purpose, and, if omitted, the act is null and void. In most of the developed world, most transfers are by written legal instrument.¹⁶⁶ In Louisiana, for instance, transfers are generally by the authentic act (i.e. signed and witnessed by a notary public and two witnesses) and signed by the seller and buyer.¹⁶⁷ Being in authentic form makes the instrument self-proving as to the parties signatures, property transferred and the consideration.¹⁶⁸ The authentic acts are presumed to be genuine for that they are conclusive of evidence of their contents. In Ethiopia too, properly authenticated, and registered documents are presumed to be genuine and conclusive evidence of their contents.¹⁶⁹ Consequently, they may be challenged only with the permission of the court, during proceedings, for good cause.¹⁷⁰ However, it has not been provided in the law explicitly regarding on what points that one can challenge the presumption of the conclusiveness of an authentic act. It is possible to imagine these points to be related to the insufficiencies of forms which have been held to vitiate an

property registering institution effects transfer of title over immovable property in case the cause of transfer is donation, if an authenticated donation contract is produced by the applicant. This also presupposes that the contract of donation to transfer ownership over immovable property should be authenticated by a notary.

164See ECC, Art.1723 (1) & ARDP, Art. 9(1)(a). Art. 2(2) of the Proclamation defines Authentication as 'to Authenticate a document' as an authorized public notary officer witnesses the signing of a document by the person who has prepared such a document and followed by signing of a document and affixing a seal by the same public notary officer signs and affixes a seal on the document signed in his absence by ascertaining its authenticity through an affidavit or specimen signature and/or seal.

165W. Riddick, *Economic Development and Private Ownership of Immovable Property: A Comparison of Louisiana and Haiti*, Electronic Journal of Comparative Law, P.7.

166Ibid.

167Ibid.

168Ibid.

169See ARDP, Art. 23(1).

170ARDP, Art.23 (2).

authentic act that are the failure of the notary and witnesses to sign the act, the failure to sign in the presence of the notary and witnesses, authentication by unauthorized organ and the failure to include the date of the act on its face. Therefore, the notary institutions play scrupulous role in the process of immovable property transfers in Ethiopia.

Therefore, it can be concluded from the holistic readings of Article 1723(1) of Civil Code, Article 9(1) (a) & article 17(1) of proclamation number 922/2008 and other cassation decisions of the supreme court like in the Gorfe case, which this author also adheres to, that contractual transfer of immovable property ownership has not any legal effect unless authenticated and registered in the notary public offices. That means, an authentication is a validity requirement for contracts pertaining to transfer of ownership of immovable under Article 1723(1) where non-observance of it results in nullity of the contract for all intents and purposes.¹⁷¹ It is reaffirmed by the cassation decision of the Federal Supreme Court that a contract to establish or transfer the right of ownership, usufruct, servitude, or mortgage on immovable property is not valid if not made in writing and be registered before the notary.¹⁷²

However, these requirements of writing and authentication formalities stipulated under Article 1723(1) of ECC and Article 9(1) of ARDP do not

171Fekadu Petros, *Effect of Formalities on the Enforcement of Insurance Contracts in Ethiopia*, Journal of Ethiopian Law (2008), Vol 1. , No.1, P7.

172 FSCDD Vol.19, File No. 99124. *The case between Seble Mamo, Dawit Girma Vs Heirs of Tesfaye Bezabih and Tirunesh Hayilu, February 28, 2008. The court, in the belief of the author, erroneously stated in this decision that the contracting parties can optionally use an institution entrusted with the duty of registering (in the language of the court and article 1723) contracts on immovable property even after the coming into force of the proclamation regulating the authentication and registration of federal documents. The courts in Ethiopia have been believed to have a power of authentication along with the notary as alternative authenticating institution so far being stipulated in the Civil Code. Pursuant to the new Ethiopian Federal Documents Authentication and Registration Proclamation and Regulation, however, they have been snatched such a power albeit not clearly. That is, the courts cannot be taken as an alternative institution in charge of authentication of documents along with notaries today as before at least after the coming into force of the Proclamation. Now a day, the contracting parties cannot optionally go to the court therefore to get their contract authenticated according to the later proclamation. This means, this proclamation, in effect, has repealed Article 1723 of the Civil Code in relation to courts as an authentication institution.*

have application in relation to ownership of immovable property emanating from the law.¹⁷³ What the law requires in this case is registration of rights acquired by law in the immovable registry offices.¹⁷⁴

The function of authentication is performed pursuant to the federal document's authentication and registration proclamation before federal Document's Authentication and Registration Agency at federal level¹⁷⁵ and before different organs of the regions of the Ethiopian Federation. This proclamation dictates that regions constituting the Ethiopian federation should also establish corollary organs with the authority of authenticating documents in enforcing the proclamation.¹⁷⁶ Yet, regional states in Ethiopia haven't established agencies carrying out the task of authenticating documents up until now. In Oromia, this task is dispersed over different executive organs and the prosecution offices.¹⁷⁷ It is the justice office that carries out the function of authenticating documents in Amhara region.¹⁷⁸

3.3.2. THE REGISTRATION (MODUS ADQUIRENDI) REQUIREMENT

This requirement is the acquisition form (modus acquirendi) which is affected through the registration of title. Transfer of ownership right over

173FSCDD Volume 9, File No. 38666. *The case between the Ethiopian Development Bank Vs Balambaras Tasfaye G/yesus*

174 Federal Urban Land Landholding Registration Proclamation No. 818/2006, Federal Negarit Gazette.No. 25 (Hereinafter, 'FULRP). Art. 30(2).

175Federal Authentication and Registration of Documents Agency Establishment Council of Minister Regulation No.379/2008.

176 ARDP, Art.5(1).

177 *In Oromia regional state, the prosecution offices at different levels carries out the function of authentication of documents residually. That means, it conducts the task of notarization only after exhausting that the power to authenticate that particular legal act/document brought before it is not granted for other government organs. In Oromia, the transport authority notarizes documents in relation to vehicles(the author have a doubt on this(Proc.No. 213/20011 Art. 34(9)), Urban land administration offices, though legally subjected to argument, are practically understood to have such power in relation to immovable in towns(Proc.No. 213/2011 Art. 20(17)), the offices of workers and social affairs are empowered legally to authenticate the contract of employment between the employer and employee(Proc. No. 213/2011 ,Art. 31(17), Rural land administration offices are empowered to authenticate contracts in relation to rural land uses(Proc. No. 213/2011 Art. 26(7).*

178 *Melkamu B. Moges & Alelegn W. Agegneh, Supra note 150.*

immovable things and special movable things is effected by striking out the name of the transferor and entering the name of the transferee in the registers of immovable things and special movable things respectively and issuing a new title deed in the name of the transferee¹⁷⁹ as opposed to ordinary corporeal chattels where the right of ownership is transferred by possession.¹⁸⁰ This is what the law calls the registration step in the processes of acquiring and transferring immovable property rights in Ethiopia. In other words, the physical delivery of the immovable sold with all documents enabling the transfer of title to the transferee itself is not enough to transfer ownership of immovable property. Therefore, it is an entry in the register of an immovable property, where the property to be transferred is situated which completes the transfer process. This practically means the issuance of certificate of title by the relevant government property registering institution. The previous title certificate issued in the name of the transferor should be surrendered to the institution for cancellation by such institution and a new title certificate in the name of the transferee shall be issued and the property must subsequently be registered by the institution in the name of the transferee.¹⁸¹ The registering institution does this upon the submission of the appropriate documents with an application for registration.¹⁸² Notaries,

179Alemayehu, *supra* note 108, p 77; See also Arts 1185, 1189, 1190 of the Civil Code of Ethiopia.

180See ECC, Arts. 1186(1) & 1143 - 1145. In case of ordinary movable things, the Civil Code provides for different alternatives of delivery of possession. Accordingly, possession may be transferred by delivery or handing over of the thing, or by delivery of the documents representing the thing or constructively by declaration of the possessor of a thing that from that time on he will hold the thing in the name of the creditor who failed to refuse to take delivery. See also ECC Arts .2274 & 2324.

181Muradu Abdo, *Supra* note 127.

182Urban Landholding Adjudication and Registration Council of Ministers Regulation No. 324/2006(Hereinafter, 'ULARR'), Federal Negarit Gazette No. 83. Art. 49(4)(a - e). According to this provision, any person may transfer his rights on the registered landholding through inheritance, donation, sale or other legal means when, *inter alia*, the documents enabling the transfer of title, such as authenticated contractual agreement or sales agreement if the transfer is made by a contract or as a contribution in a share company, authenticated document of transfer if it is made by donation, authenticated contract of assignment if the transfer is made by assigning one's rights and other evidences entitling transfer of title given by appropriate organ, are submitted.

courts, financial institutions and revenue collecting bodies have to cooperate with the registering institution in this regard.¹⁸³

From all the above conditions of transfer of ownership of immovable properties in Ethiopia, one can conclude that, according to Ethiopian law, the transfer of ownership of an immovable property requires both valid (written and authenticated) contracts between the transferor and the transferee as a legal ground (*causa*)¹⁸⁴ and the registration of the change of ownership title in the immovable property rights Registry where the property is situated (*Titulus /modus system*).¹⁸⁵ Consequently, the registration requirement under Ethiopian law is a requirement not only to inform third parties (publicity) but also a requirement to transfer real property and as such plays a constitutive role.¹⁸⁶ The establishment, modification, transfer and lapse of right in real property, which is required to be registered, shall take effect upon being registered.¹⁸⁷ According to this requirement, third parties are made aware of property rights registered and not only a deed of ownership under Ethiopian law of immovable property registration. Regarding the seemingly confusing interpretations on the effect of authentication (Article 1723) and registration for publicity (Article 2878) of the Civil Code, Fekadu Petros says the following:

Under the Ethiopian Civil Code, contracts relating to immovable property are required to be written and registered. The effect of registration and publicity have sometimes been misleadingly interpreted as though these

183 See *FULRP, Art.53(2)*. This article provides that "Courts, financial institutions and revenue collecting bodies shall directly submit or allow access to the registering organ all documents they generate that have to do with the rights, restrictions and responsibilities subject to registration in connection with landholding.

184ECC, Art. 1723(1) & ARDP, Art. 9 (1).

185ECC, Art. 1185 and FURLP, Art. 30(2).

186 See *ECC, Art.*

187Urban Landholding Registration Proclamation, 2014, Proc. No.818/2014(*hereinafter, 'FULRP'*). *With regard to market transactions relating to immovable property, it is proclaimed under Par.4 of the preamble of the proclamation, that the proclamation is enacted to put in place legal framework which is up to date and efficient and to enhance the contribution of land and immovable property to the development of free market economic system and to certify land and immovable property right to the possessor, who develops on the land, and to ensure his possession security. Furthermore, the proclamation in its preamble paragraph 3 also appears to aspired to minimize disputes that may be arised in relation to land and immovable property and establish transparent and accountable working system and making government services efficient and enable the possessor to enjoy the property he develops.*

requirements were intended for the protection of the third parties' interest alone, as is often implied from Article 3089 (1) and 2878 of the Civil Code. The debate in this regard has recently been settled by the Cassation Panel of the Supreme Court in its decision of May 10, 2007. The Court has thus laid down a binding precedent to the effect that there are two registrations involved in the contracts for the transfer of immovable properties. The first type of registration (Article 1723) involves authentication of the contract at notary for the purpose of validity, while the second phase involves registration (Article 2878) in the registers of immovable properties for publicity and transfer of ownership. Non observance of the second does not render the contract ineffective as between the parties, while non observance of the first results in nullity of the contract for all intents and purposes.¹⁸⁸

The two terms ‘authentication and registration’ are often confused with one another by lawyers and judges under Article 1723 on the one hand and the registration under Article 2878 as well as under property right registration legislations on the other hand in relation to contracts pertaining to immovable¹⁸⁹ The nature and legal effects of authentication and registration in line with Article 1723(1) of the ECC and authentication and registration law on the one hand and the registration pursuant to Article 2878 of the Civil Code on the other hand has been clarified by the supreme court's decisions.¹⁹⁰ Accordingly, in both of the cases the court has made clear that, the purpose of authentication (not registration in the strict sense of the term), requirement under Art. 1723 is to make the contract valid between the contracting parties while the purpose of the registration requirement under Article 2878 is to raise the registration of the contract in the registry of immovable against third parties as a defence.

Therefore, it is understandable that the acts of authentication and registration are different in nature, purpose and as to the organ that carries out both tasks. The acts of authentication and registration are conducted at different levels, and institutions entrusted to perform the acts of registration and authentication thus differs accordingly. The act of authentication is carried out before notarial institutions empowered to do so. The act of registration,

188Fekadu Petros, *Supra* note 171.

189 Melkamu B. Moges & Alelegn W. Agegneh, *Supra* note 150.

190 See FSCCDD, Vol. 4; File No. 21448 (Gorfe Case). See also FSCCDD, Vol 8, File No. 34803.

however, is carried out by the property registration institutions in the immovable registry offices. The notarial institutions first authenticate the written contracts produced by the contracting parties and file it by giving the identification number in the institution. What the notary officer must do next is registering (in the sense of filing) the document it authenticates and deposit the copy of each document in the institution.¹⁹¹ Therefore, registration in the notary offices can be considered as part of the task of authentication. The public notary institution does not deposit the document it authenticates only but also register and deposit other documents where the law provides for the deposit of a document within the institution up on submission.¹⁹² It can be understood from this that the notary institution deposits these copies of documents for evidentiary purpose after authenticating validity. It shall also give the requested copy or evidence up on request by an interested person, or evidence about the document deposited in the institution.¹⁹³ The registration (not in the strict sense of the term) with the notary institutions serves the legal certainty and security for the purpose of the validity of the contract between the contracting parties.

The other type of registration is registration in the registry of immovable property to be made in accordance with Articles 1185 and 2878 of the Civil Code. This kind of registration is the registration of transfer of ownership for the purpose of publicity (for the protection of third parties) and transfer of the property from the former owner to the newer one. It is performed by the relevant government administrative authority with the power of issuing ownership title up on production of the relevant documents. This phase of registration is the step which completes the process of transfer of ownership.

3.3.2.1. The Effect of Registration System on the Transfer System

Understanding the immovable property registration system that one country adopted has a great help to understand the nature and characteristics of the transfer of immovable property ownership system that certain national jurisdiction adopted. The Real Property Registration System differs in

¹⁹¹See ARDP, Art.18(1).

¹⁹² ARDP, Art. 18(2).One of such scenarios is the document of public or holographic will which may be deposited with the notary offices in accordance with Article 89(1) of the Civil Code of Ethiopia.

¹⁹³ARDP, Art. 18(2).

contents of registration, in its organization, how registration is made, substantial effects of registration, the protection (non-protection) of the good faith and bad faith, and the effects towards third parties depending on the country and the legal families. According to how the registers are organized and the degree of the effectiveness attributed to them, it is possible to divide them into two main categories.¹⁹⁴ These are; the deeds registration system and the title registration systems.

A deed registration system; means that the deed itself, being a document which describes an isolated transaction, is registered.¹⁹⁵ The defining characteristic of this system is that documents are registered without the identification of the latest genuine title holder, that is to say the documents are not examined beforehand as part of a process to establish the identity of the titleholder, but merely have to comply with certain formal requisites.¹⁹⁶ This type of system is also termed the “opposability system” and is currently used in **France, Belgium, Portugal and Italy**.¹⁹⁷ Some scholars also call this the French model of the registration system.¹⁹⁸ The French Model, also called the casual consensual system, is characterized by the fact that the consent of the parties itself shall give effect to the sale contract in transferring land without the need of creating a system of registration.¹⁹⁹

In the so-called Latin legal systems believed to have been influenced by the Code Napoleon such as French, the Italian and Belgium, inscription in the land registry does not form the part of the mechanism of transfer, and the function of the land registry in these countries is primarily to give publicity to titles over the property.²⁰⁰ That is, the inscription of a right over an immovable is therefore only useful when a subject wishes to invoke that right against third party for the purpose of making the transaction effective against third parties (declarative effect - registration declares only a transfer that has already happened by the virtue of the contract) than against the

194Martinez Velencoso, *Supra* note 18.

195Jaap Zevenbergen, *Systems of Land Registration Aspects and Effects (PhD Thesis, University of Melbourne, 2002)*, Netherlands Geodetic Commission, Delft, the Netherland, P.48.

196Martinez Velencoso, *Supra* note 18.

197*Ibid*.

198 *Chen Lie, supra* note 13, P379.

199 *Ibid*; See also Andrea Pradi, *Supra* note 23.

200Martinez Velencoso, *Supra* note 18.

person whose property is encumbered.²⁰¹ Therefore, it is fair to conclude that, in French, the contract conveys the ownership only between the parties, and that registration (inscription) is required for it to produce contra omnes effect.²⁰²

The title registration system, on the other hand, means that not the deed, describing e.g. the transfer of rights is registered, but the legal consequence of that transaction, i.e., the right itself (title).²⁰³ That means, rights are inscribed in the registry, and it does not consist of a collection of original documentation on the property, as does the registration of deeds system.²⁰⁴ So, the right itself together with the name of the rightful claimant and the object of that right with its restrictions and charges are registered.²⁰⁵ With this registration, the title or the right is created and one can, therefore, immediately see who the owner of certain property is.²⁰⁶ This system is called German Model Registration System (also constitutive system)²⁰⁷ which is currently in place in Germany, Austria, Switzerland, Spain and England.²⁰⁸ Each time a legal fact occurs that aims at changing the right holder to a parcel, it is not the documentary evidence ('deed') of that fact as such that is registered but a right.²⁰⁹ A deed or form saying who is giving up rights and who is gaining them is presented to the registrar.²¹⁰ The registrar will, after thorough checks, change the name of the right holder listed with the parcel, dispossessing the previous right holder.²¹¹ The title registration

201 Martinez Velencoso, P164. See also Chen Lei, *Supra* note 13. See A. Pradi, *supra* note 23 (2015). Registration, according to this system, does not have a constitutive effect rather a declarative effect, i.e, it declares the fact of transfer between the seller and the buyer and nothing more.

202 M. Zivkovich, *Supra* note 11; See also Art.33 of ZOSPO (*Law on Basic Ownership Relations*).

203J. Zevenbergen, *Supra* note 195.

204 Martinez Velencoso, *Supra* note 18.

205J. Zevenbergen, *Supra* note 165.

206 *Ibid.*

207 Chen Lie, *Supra* note 13, P.379.

208 Martinez Velencoso, *Supra* note 18.

209J. Zevenbergen, *Supra* note 195.

210 *Ibid.*

211 *Ibid.*

system, therefore, plays constitutive role without which ownership of immovable property cannot be passed successfully.²¹²

Coming to Ethiopia, the Ethiopian immovable property registration system appears to adopt constitutive (title registration) system on the fact that the proclamation stipulates that a change of certain property rights will take effect when they are duly registered.²¹³ It seems that, like the German and Torrens System, registration is of the essence for conveyance of a property interest in Ethiopia. It is logical, therefore, to conclude that the type of land registration system in Ethiopia is the title registration system in which parcel based and unique identification code approaches have been adopted. The preamble of the proclamation²¹⁴ also bears a witness that the principles of legal cadastre such as registration of possession, getting the consent of the possessor during transaction, making registration of possession open to public, clearly identifying the possession and the possessor through unique identification codes, which are basic characteristics of the title registration system, have been recognized under Ethiopian law.²¹⁵

3.3.2.2. The Effect of Non-registration Requirement under Ethiopian Law

The relation between registration requirements under Ethiopian contract law and property law provisions need to be analysed to understand the effect that the registration system has on the property transfer system under Ethiopian law. In Ethiopia, the effect of non-registration under the proclamation²¹⁶ compared with the effect of non-registration under the Civil Code provisions of the contract law seems different.²¹⁷ As to the effect of registration, Article 2878 of the Civil Code provides that ‘the sale of an immovable shall not affect third parties unless it has been registered in the registers of immovable property in the place where the immovable sold is situate.’ This means that a

212 In this system, the rights of the new buyer are interred in the registry of immovable not only for the purpose of publicity, but also to practically generate an ownership right for the new buyer.

213 FULRP, Art. 30.

214 FULRP.No. 818/2006.

215 FULRP., Preamble Para 5

216 FULRP.

217 ECC, Art.2878 Provides that "the sale of an immovable shall not affect third parties unless it has been registered in the registers of immovable property in the place where the immovable property sold is situated."

sale contract relating to immovable property can be raised against any third person if the contract is already registered in the land registry. Non-registration does not, however, affect validity of the contract of sale between the parties to the contract. The effect of non-registration under urban land registration laws deviates from that of the Civil Code. Under these laws, non-registration can be raised as a defence against any person.²¹⁸ Under the Civil Code non-registration cannot be raised as a defence between the contracting parties.

D) Article 2878 of Ethiopian Civil Code

The Ethiopian Civil Code, under the title regulating contract of sale of immovable property, particularly Article 2878, does not seem to require registration as a requirement to transfer ownership of immovable property.²¹⁹ It rather, seems to require registration for publicity of the fact of the transaction that took place in relation to certain immovable property to third parties. It appears, under this provision, that registration is not a mandatory and constitutive element as regards the contracting parties.²²⁰ Although some of the provisions of the Code appear to provide for registration as a requirement for transfer of ownership, these provisions do not dictate mandatorily, albeit as publicity requirement, the registration as a constitutive element of transfer of ownership of immovable property.²²¹ What seems to be registered under Article 2878, therefore, is only the contract deed without effecting the title transfer. This means, simply, registering the contract deed (as in the case of the French model with only declaratory effect) is thought to

218 See FULRP, Art. 47.

219 The provision reads “the sale of an immovable shall not affect third parties unless it has been registered in the registers of immovable property in the place where the immovable sold is situate.”

220 Because, under Art.2878 of the Civil Code, the requirement of registration seems only for the purpose of publicity to make third parties know or aware that the transaction took place on certain immovable property concerned

221ECC, Arts. 2879, 2875 & 2281. According to these provisions of the Code, the seller has the duty to furnish to the buyer all the documents necessary to enable the buyer to cause the transfer of the immovable to be registered in the registers of immovable property and such obligation shall be deemed to be an essential stipulation of the contract of sale. It is also provided under the Code that the seller shall take the necessary steps for transferring to the buyer unassailable rights over the thing. See ECC, Article 2281. The provisions of the title of the code regulating contracts relating to the assignment of rights are applicable on contracts of sale of immovable as per Article 2875 of the same code.

be enough to publicize the fact that an owner of certain immovable property has sold (transacted with) his property with another, to third parties.²²²

Some of the decisions of the Federal Supreme Court Cassation division also affirm this position of the provision of the Civil Code. The Federal Supreme Court in trying to explicate the difference between the registration requirements under Article 1723 and that of Article 2878 held that the purpose of registration requirement under Article 2878 is to raise the registration of the contract in the registry of immovable against third parties as a defence.²²³ The court also reaffirmed this in its other related decision.²²⁴ According to the court's decision, in this case, the contract of sale to transfer ownership of immovable property from one person to another should be registered under the law before the relevant body to have effects on third parties. The court further held that it should be invalid in case of non-compliance and the seller should repay what he has received because of the contract. Furthermore, it is made clear in this decision that for one to raise the contract of sale as a defence against third parties, he/she has the burden of proving that the contract of sale is registered in accordance with the law.

The Supreme Court Cassation bench in the case between Kebede Arragaw Vs Commercial Bank of Ethiopia upheld the above position too.²²⁵ The high court, in this case, held the correct position that registration is not complete without title transfer. According to high court, the contract of sale cannot be raised against third parties unless title transfer is registered in the registry of immovable. That means, the registration or attachment only of the contract without transferring title is not enough to constitute the act of registration. The author of this paper argues in support of the position of the high court in

222 It may happen most of the time that the possibility where the seller of immovable property has already delivered the physical possession of an immovable property retaining the title to the property with himself.

223 See FSCDD Vol. 8, File No. 34803 and Vol. 4 File No. 21448.

224 See FSCDD Vol.23, File No. 153664; *The case between Asha Farah Vs Abdurrahman Tahir et a, Decision delivered on September 29, 2011. Semantically, the language that the court employed is "registration of contract on the registry on which the contract is registered" in its reasoning as opposed to "registration of transfer of title of ownership". The court has not differentiated which stage of registration renders the contract invalid in that decision.*

225 See FSCDD, Vol. 4, File No. 16109 *The case between Kebede Arragaw Vs Commercial Bank of Ethiopia. April 12, 1999.*

this case. The cassation bench, however, reasoned that Article 2878 of the Civil Code requires only the attachment of the deed of contract of sale to the registry of immovable serves the purpose of publicity sought for the protection of third parties without registration of title transfer being affected. Thus, according to the Supreme Court in this case, the protection of third parties commences from this date of attachment of the deed of contract to the registry of immovable without the need to waiting for the title transfer.²²⁶ These decisions of the Supreme Court and Article 2878 of the Civil Code leads to the conclusion that the Ethiopian system of immovable property transfer is consensual, like in France, where ownership is transferred at the moment of conclusion of valid contract and registration in the immovable registry serves only the purpose of publicity.

Therefore, considering the stipulation of Article 2878 and the decisions of the Supreme Court delivered so far buttressing this provision, which stubbornly continued in limiting the application of the registration requirement under Article 2878 only to the protection of third parties, one may conclude that ownership of immovable property, under Ethiopian law, can be passed by concluding only a valid contract of transfer of ownership and registration of documents of contracts without registration of rights acquired (registration of transfer of title) in the immovable registry which is the characteristics of the causal consensual system of French model.

The author of this paper submits, however, that the court is wrong in holding this position. The author strongly argues that the attachment only of the contractual document to the registry of immovable property without registration of title transfer does not constitute registration in its full and practical meaning under Article 2878 of the ECC.²²⁷ In contrast to the above

²²⁶ It can be understood from this that the date of attachment of the contract and the date of registration of title transfer may be different. Sometimes, the contract which must accompany the application for registration of transfer of ownership may be attached to the file of the seller without his title cancelled and replaced with the new buyer.

²²⁷ The court in the above decision cited Articles 1613 and 1614 of the Civil Code to strengthen its position in its reasoning in the cases. The cited legal provisions, however, are related to accompanying documents that an applicant should produce with his application for the registration of transfer of rights. It is to support this that documents of deeds are to be produced. The Registration under article 2878 also includes the attachment of the contract to the registry of immovable.

decisions, it has been made clear, in another decision of the cassation bench, that it is the registration of the right of ownership acquired as a result of the contract of sale, not only of the contractual document, that has to be registered so that it has the legal force of banning the first buyer to raise the contract of sale against the third party who has registered his rights preceding the first buyer in the case between Enani Tesema Vs .Gebramariam Demeqe et al.²²⁸ Though the supreme court's use of terminologies like registration of sale, registration of contractual deed and registration of transfer of title, seemingly confusing, the whole message of the decision in this case is that it is the right acquired as a result of the contract that is to be registered in accordance with Article 2878 of the Civil Code to be raised against third parties as a defense. The author believes that further investigations need to be made to suggest more clarity in the usage of the terminologies such as registration of sale, registration of contractual deed and registration of transfer of title in relation to transactions pertaining to immovable property.

228Federal Supreme Court Cassation Decision Vol. 22, File No. 12371. The case between Enani Tesema Vs G/mariyam Demeqe et al p. 33, September 25, 2010. This case was about contract of sale of a house concluded (on 01/06/2003) between the contracting parties. In this contract, the sellers (spouses) has sold their residential house to the buyer and handed over all documents relating to the house they sold as required by Article 2879(1) of the Civil Code. This first contract, however, is not registered (transfer of title not effective). The sellers resold the same house to another buyer (on 22/10/2003) and transferred the ownership of the house to this new buyer (Ownership transfer is registered). This new buyer precedes the first buyer in making his rights registered in the registry of immovable property. The administrative authority that is in charge of power of registration of transfer of ownership of the property is also sued, in the case, for not taking the necessary precaution in effecting the transfer of ownership of the property in this case. The appellant (the first buyer) took his claim to the court claiming that the second contract of sale of the house should be made invalid and asked for the validity of the first contract of sale of the house. The creditors of the second buyer bought this same house on auction and the transfer in the name of this new buyer is effective, too. The court has reasoned in this decision citing article 2878 that a contract of sale of an immovable property has to be registered in the registry of immovable to be raised as a defense against third parties. Therefore, the first buyer cannot challenge the legal transaction over the same house as far as he didn't make registration of contract of sale of the house which is transferred to another third party. Therefore, the one who bought an immovable property by contract cannot raise the contract of sale against third party who bought the same property and precedes in getting transfer of title over the property.

Therefore, given the above cases, the court's decisions are not consistent and predictable regarding the underlying issue of immovable property ownership transfer. This lack of certainty, consistency and predictability in the decisions of the Supreme Court indisputably creates a problem on lower level courts and practitioner judges in light of taking of judicial notes when they face similar legal cases.

II) Property Law Provisions of the Civil Code and Other Legislations

The effect of registration under the provisions of property law, on the other hand, seems to resemble German model and other Germany influenced civil law countries where registration is the requirement as between the parties themselves so that it has a constitutive effect to transfer ownership of immovable, i.e, registration in the immovable registry serves not only for third party protection, but actually transfer ownership title to the acquirer. In other words, the transfer is not complete up until the right acquired as a result of transaction is entered into the registry of immovable property. In Ethiopia, to effectively transfer immovable, property law provisions of the Civil Code²²⁹ and urban landholding registration laws²³⁰ relating to property rights need further requirement of registration which is traditional system of *titulus et modus acquirendi* (mode of acquisition). According to these provisions of the law, the sale of immovable property is only completed by registration of the transfer of ownership in the registry of immovable property.²³¹ This, practically, means, to transfer title of the property to a new owner, the former title must be cancelled and it is this act that constitutes registration.²³² According to the proclamation and the regulation, therefore, it

229 See ECC, Art. 1185, 1189, 1190, 1613 &1614.

230 FULRP & URLARR, Art.47 of this proclamation, for example, provides deviating from the effect of non registration under the Civil Code, that non registration cannot be set up against any person.

231 ECC, Art. 1185 provides that "An entry in the registers of immovable property shall be required for the purpose of transferring by contract or will the ownership of immovable property." This and urban landholding proclamation provisions require an entry into the registry of immovable property as a requirement of transfer of ownership of immovable property.

232 Accordingly, an applicant for registration of rights that he has acquired has to produce authenticated deeds among other things to be registered. See also Muradu Abdo, Supra note 127.

is the right that is to be registered and the contracts are simply accompanying documents. The registering institutions carry out the task of registration in relation to transfer of ownership title over immovable up on production of authenticated cause of transfer (contracts).²³³ This means, for the property registering institution to register the transfer of title on immovable property, authenticated cause (contract) of transfer is a requirement. Therefore, it can be said that authentic acts are essential requirement for the registration of property rights on immovable in immovable registries in Ethiopia.

Under the Ethiopian legislations, ownership right over immovable property is transferred to the buyer now of registration of rights in the legal cadastres in the name of the buyer upon payment of stamp duty and registration fee unlike the French consensual model where the moment of conclusion of the contract transfers the ownership.

Furthermore, it is provided under the law that, since ownership right can only be represented by the certificate, any transfer or assignment of ownership shall be effective only after registration.²³⁴ Where, in default of registration of an act in the registers of immovable property, the right of a person may not be set up against third parties, no person may acquire from such person a right which may be set up against third parties.²³⁵ The person, who has acquired a right under such conditions, shall before entering in the register, the act by which he holds his right, register the act by which his transferor held his right.²³⁶

233 See also Article 49(4)(a,b,c) of Regulation No. 324/2006. Under these provisions any person may transfer his rights on the registered landholding through inheritance, donation, sale, or other legal means: when the documents enabling the transfer of title such as authenticated contractual agreement or sales agreement if the transfer is made by contract or as a contribution in a share company; authenticated document of transfer if it is made by donation; authenticated contract of assignment, if the transfer is made by assigning one's right; among other documents that must accompany the application for the transfer of title. See also oromia urban land administration service directive number 06/2008. Which provides that the property registering institution can only effect the title transfer on urban landholding if the applicant produce an authenticated contract of sale and contract of donation if the transfer is on the basis of sale and donation contracts under Article 18.3(1) . It also adds that if the transfer is on the basis of will, the certificate of heir shall be issued from the court.

234 FULRP, Article 30.

235 ECC, Art. 1645(1).

236 ECC, Art. 1645(2).

It seems, therefore, from the cumulative reading of Article 2878 and 1185 of the Civil Code on the one hand and provisions of urban landholding registration proclamation and regulation on the other hand, that an entry in the immovable registry, is not merely a declaratory act which serves only the purpose of publicity but also mandatory and an essential condition (constitutive) for effectuating a change in a legal position in relation to transfer of immovable property ownership under Ethiopian law though not of validity.²³⁷ This reveals that the Ethiopian system of immovable property transfer, being approached from the vantage point of the above court cases and relevant provisions of the law, ambivalently switches and oscillates between the systems of casual consensual and casual tradition systems of immovable property ownership transfer. This in effect means that the Ethiopian system of immovable property transfer resembles the characteristics of both casual systems of property transfer and abstract tradition system of property transfer.

It resembles the characteristics of the casual system of property transfer in that the validity of the underlying contract is very important for the property to be transferred. This means that the ownership transfer is effective as long as there are no defects that can invalidate the effectiveness of the parties' agreement. Consequently, in case the title is void or it becomes ineffective due to enforcement of one of the causes of annulment provided by the Civil Code, the transfer is deemed to have been invalid since the beginning. Any delivery of the goods to the transferee would be ineffective and the return of the property to the transferor would be required (revindication). The main difference from the French model of transfer, however, is that unlike the system in France and French-influenced causal consensual system (Belgium, Italy and Greece) where the moment of transfer is the moment of conclusion of the contract, the moment of transfer of ownership of immovable property in Ethiopia is the moment of entry of rights into the registry of immovable property (not the moment of physical delivery of the thing).

237 The effect of registration under article 2878 of the civil code dealing with Registration requirement may be called opposability principle (with declaratory effect) whereas that of under the proclamation and other property law provisions of the code are requiring a further element of constituting.

It can also be said that the Ethiopian system of immovable property transfer displays the Germanic tradition model of immovable property transfer in only some respects that in both systems, the registration has a constitutive effect, i.e, transfer is complete only upon registration of the transfer in the registry of immovable property. The basic difference, however, is that the Ethiopian system does not differentiate the underlying contract/obligatory act from the real agreement/dispositive agreement. The Ethiopian system does not also recognize the principle of abstraction where the validity of the real agreement is independent of the validity of the underlying contract. The real agreement cannot exist independent of the underlying contract in Ethiopia. In Ethiopia, like systems of immovable property transfer in Germany, Finland, Austria, Dutch, Spain, Serbia and Kosovo, ownership of immovable property cannot be acquired by virtue of contract only if there was no registration in respect of the registered real property. Therefore, it can be concluded that Ethiopia, at least, legislatively adopted a mixed system of property transfer which combines elements and qualities of both systems selectively.

4.CONCLUSIONS

This paper attempted to shed a light on the existing systems of immovable property ownership transfer. In doing so, the paper has shown the readers the existing global systems of property transfer in a comparative way. It has also discussed that the property transfer system differs across jurisdictions and even within the countries of same legal families. While some countries adopted the French model of the casual consensual property transfer system, in which the ownership transfer only by the contract without the need to the registration of title transfer, some others have adopted the Germanic model of abstract tradio property transfer system under which the abstraction and differentiation principles have been recognized. The paper has also shown that there are also still other countries adopting the mixed model of immovable property ownership transfer system under which, both the valid underlying cause for the transfer and registration, as a mode of transfer, are required for the immovable property to be transferred effectively. The paper has also attempted to decipher the main differences under the three models of real property transfer. Under the French and French-influenced system of property transfer, registration has only the declaratory effect and thus serves only the purpose of publicizing the fact of property transfer since only the

consent of the contracting parties transfer ownership of the property. The real agreement does not have a separate existence from the obligatory agreement under this system and thus, the invalidity of the obligatory agreement has a direct effect on the transfer of ownership.

In the Second and Germanic system of property transfer, however, the obligatory/dispositive agreement only does not transfer ownership of property in the absence of real agreement and registration in the land registry. The real agreement has a separate existence so that the invalidity in the obligatory agreement does not affect the real agreement. That is, the property can be transferred successfully, in the absence of valid obligatory agreement if the real agreement is valid.

Under the third and mixed model of immovable property transfer system, it has been shown that both the underlying cause and registration are the requirements for the property to be transferred but falling short of the separate existence of the real agreement. The main difference of this system from the above two systems is that registration under this system, unlike in the consensual system, is the requirement for the property to be transferred. That is, the registration plays not only the role of publicity but also transfers ownership (constitutive element).

Regarding the immovable property transfer system that Ethiopia, as a civil law country, adopted, the paper has tried to discuss the matter considering the contract and property law provisions of the Civil Code and other relevant legislation as well as the decisions of the Federal Supreme Court Cassation Division decisions. Some of our Supreme Court case laws and practices, as well as some provisions of the Civil Code, seem to be inspired by the French consensual model of immovable property transfer system under which the contract itself conveys ownership without further requirement of title registration in the immovable registry offices. Under this system as discussed in the preceding sections, ownership is transferred merely by the consent of the contracting parties as soon as the contract is signed. The paper has revealed that the reading of Article 2878 of the Civil Code of Ethiopia on the one hand and the decisions of Federal Supreme Court Cassation decisions delivered buttressing this provision, on the other hand, seem to suggest that Ethiopia adopted the French model of consensual immovable property transfer.

The author strongly contended, considering other cassation decisions of the Supreme Court and property law provisions of the Civil Code and the urban landholding registration laws, that the Ethiopian system requires both valid title(as a legal ground for transfer) and registration as a *modus acquirendi* (as a mode of acquiring). That means, both valid underlying contract (*ius titulus*) and registration, as a mode of transfer, are requirements under Ethiopia law to transfer ownership of immovable property. This is to mean that registration does not serve the purpose of publicity only as Article 2878 of the Civil Code and some of the decisions of the Federal Supreme Court cassation seem to suggest. The registration requirement under the Ethiopian law, therefore, does have a constitutive effect without which effective transfer of immovable property transfer cannot be completed successfully. It has also been shown in this paper that the Ethiopian law does not recognize the independent existence of the real agreement as in the case of Germanic abstract system of immovable property transfer. As argued in this paper that the practice of the Supreme Court in relation to the requirement of validity of the underlying contract to transfer ownership is not consistent. It has also been discussed that the immovable property registration system that a certain country adopted can be considered as a determinant factor in the determination of the immovable property ownership transfer system of that legal system. Therefore, the paper has argued on this basis that Ethiopia adopted the mixed system of immovable property ownership transfer.

Therefore, considering the acute practical problems with the court practices and that the owners of immovable property are encountering in the enjoyment of their constitutionally guaranteed property rights, the author recommends swift legislative intervention to reconsider and clearly state the rules regulating transfer of ownership of immovable properties by drawing lessons, where relevant, from the systems of countries described in this paper. Taking into account the fact that the decisions of the Federal Supreme Court cassation decisions are laws that have to be complied with by the lower level courts and the judges' obligation to take judicial notice of them, the author suggests Ethiopian courts in general and the Federal Supreme Court Cassation bench, in particular, to make their decisions, predictable, consistent and concordant with the existing rules on the transfer and registration of immovable property.

**REVITALIZING INTELLECTUAL PROPERTY RIGHT
PROTECTION FOR TRADITIONAL KNOWLEDGE AND
CULTURAL EXPRESSION IN ETHIOPIA: A LESSON FROM
KENYA**

Abiyot Mogos *

ABSTRACT

Ethiopia, being a country with multi-ethnic population is endowed with plenty of traditional knowledge (TK) and traditional cultural expressions (TCE). Nevertheless, the arrival of globalization has created fertile ground for commercial exploitation and distortion of the TK and TCE of the country by alien without any economic or moral incentive to their custodians or preservers. Recently, efforts are being made to adopt sui-generis form of intellectual property (IP) law to preserve, protect, and promote TK and TCE at international, regional and national levels yet Ethiopia has no effective IP law on TK and TCE. Hence, inspired by the inadequacy of the existing Ethiopian IP laws in protecting, promoting, and commercializing TK and TCE, this article proposes key forward to revitalize legal protection of TK and TCE in the country. To this end, it utilized doctrinal and comparative research that drawn lesson from a revolutionary experience of Kenya in this regards. The paper advocates for enactment of a sui-generis law that rectify deficiency of the existing IP law and adequately protect, preserve, promote, and commercialize the TK and TCE. In so doing, it is suggested to follow the Kenya's footsteps, ratify the Swakopmund protocol and adopt the sui-generis law from Kenyan TK and TCE Act in line with relevant Model laws.

Keywords: *Traditional Cultural Expression (TCE), Traditional Knowledge (TK), Ethiopia, Kenya, Intellectual Property (IP)*

* LL.B (Wollega University), LL.M (Haramaya University); Lecturer of law at Selale University, and can be reached at abiyot00@gmail.com. The author is deeply indebted to the Editor-in-Chief of the journal and the two anonymous reviewers.

1. INTRODUCTION

It is truism that Ethiopia is homeland of diverse Nations, Nationalities and Peoples that are gifted with diverse IK and TCE. Traditional knowledge and TCE are the integral part of the cultural heritage of a country and thus are an essential means of social identity of each Nations, Nationalities and People in the country. The cultural heritage of the country include but not limited to: traditional literature, arts, music, visual arts, ceremonies, traditional medicines and medical practices, traditional dispute settlement and system of self-governance, agriculture, forest management and conservation and sustainable use of biological diversity.¹ These TK and TCE are a body of knowledge vital to the day to day life of local communities derived through generations of living in close contact with nature. TK and TCE have also contributed significantly to the present body of knowledge possessed by scientists, such as ethno botanists, ethno pharmacologists, and by agriculturists, foresters, and food technologists.² They may also contribute to the welfare, sustainable development and cultural vitality of those communities.

However, with the arrival of globalization, there has been an increase in the commercial exploitation or appropriation of TK and TCE in Ethiopia by entrepreneurs without any benefit and prior informed consent of the communities to which the cultural expression/knowledge belong.³ For instance, it has been reported that “a researcher in Tennessee (US) has obtained a US patent on four medicinal plants (known in Amharic Damascisa, Tena Adam, Kosso and Birbira)⁴ those have been used by Ethiopians for centuries.”⁵ Similarly, the Dutch company obtained EU patent on the Ethiopian teff though later challenged and invalidated by court in

¹OSSREA, Indigenous Knowledge Systems in Ethiopia: Report of Ethiopia National Workshop, available at : <<https://www.africaportal.org/documents/5270/ethiopia-2002.pdf>>

² World Intellectual Property Office 2013, ‘Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions/Folklore: A Guide for Countries in Transition’

³Sable Mulat, Property Rights Approach Towards Traditional Cultural Expressions in Ethiopia: Challenges and Prospects (LL.M Thesis, Addis Ababa University,2015)

⁴ The US Patent 6,811.795 issued on 2 Nov 2004.

⁵Jay Mcgown, Out of Africa: Mysteries of Access and Benefit Sharing, 2006, P7, available at: https://www.google.com/url?q=https://acbio.org.za/wp-content/uploads/2015/02/ACB_Out_of_Africa_Mysteries_of_access_and_benefit_sharing.pdf&sa=U&ved=2ahUKEwjCvIPq1I7uAhXTasAKHQOTDNqQFjAFegQIAxAB&usq=AOvVaw2qYuk2oVqTGMK9tur7aGMW< last accessed January 2, 2021>.

Netherland.⁶What is more, the Oromo's Gadaa⁷ system can also be considered as the origin of democracy⁸yet the ancient Greek is often being celebrated as the first creator of the system. That way, the indigenous communities who were the custodians or preservers of their TK and TCE left without enjoying the economic or moral benefit of their creation or share returns from such unauthorized exploitation by person alien to the community.⁹

Recently, the international attention has turned to IP laws to preserve, protect, promote, and safeguards TK and TCE so as to enable the concerned indigenous community to reap the expected benefit of their TK and TCE, and prevent the distortion of the same.¹⁰ The IP rights confer protection to intangible creation of the human mind, namely, inventions, artistic and literary works, and trademarks among others. The IP laws play an important role to revitalize TK and TCE by providing legal protection for the custodian and preservers. This is because legal protection enables, encourage and protect tradition-based creation and innovation, prevent the misappropriation and misuse/offensive and derogatory use/unauthorized use of TK and TCE, and achieve the fair and equitable sharing of benefits arising from the use of their TK and TCE.¹¹ It also incentivizes the indigenous communities and

⁶ Dagnachew Mellese, Bio-piracy: International Perspective and the Case of Ethiopia (Legal and Institutional Regime, LL.M Thesis, Addis Ababa University, July, 2013). P.59. See also Kluwer Patent blogger, Teff Patent Declared Invalid, Great News for Ethiopia, available at <<http://patentblog.kluweriplaw.com/2019/02/12/teff-patents-declared-invalid-great-news-for-ethiopia/>>

⁷ Gadaa System is traditional democratic system of governance created and used by the Oromo people in Ethiopia and Kenya, and developed from knowledge gained by community experience over generation.

⁸ Zelalem Tesfaye, *Old Wine in New Bottles: Bridging the Peripheral Gadaa Rule to the Mainstream Constitutional Order of the 21st C. Ethiopia*, Oromia Law Journal (2015) , Vol.4, No.1

⁹ Jay Mcgown, *supra* note 5

¹⁰ Anurag Dwivedi and Monika Saroha, *Copyright Law as a Means of Extending Protection to Expression of Folklore*, Journal of Intellectual Property Law (2005), Vol.10, P311.

¹¹ See WIPOThe Protection of Traditional Knowledge: Draft Articles', Rev. 2 (August 31, 2018) (hereinafter the WIPO Draft Articles on Traditional Knowledge), Preamble & Art. 2, and WIPO, 'The Protection of Traditional Cultural Expressions: Draft Articles, Facilitators' Rev. 2 (June 15, 2017) (Hereinafter WIPO Draft article on Traditional Cultural Expression), preamble & Art 1

their members to protect, develop, promote, safeguard, and commercialize their traditional creations.¹²

Against this backdrop, number of African countries have already legislated, or are on the ways of legislating effective IP laws for TK and TCE.¹³ In this regards, Kenya exemplifies a regional leader and introduced the ‘Protection of Traditional Knowledge and Cultural Expressions Act’¹⁴ in 2016. In Ethiopia, there is no separate IP law that protects TK and TCE, and it is also subject of scrutiny as to whether the existing IP regime could extend direct/indirect protection to TK and TCE. The absence of effective in IP law that accommodates and confers IP right to communities has opened doors for theft, misuse and bio-piracy of TK and TCE in the Country.¹⁵

This article appraised adequacy of the existing Ethiopian IP laws in preserving, protecting, promoting, and commercializing TK and TCE and proposed a key forward to revitalize legal protection of TK and TCE in the country. In so doing, it employed a comparative and doctrinal research approach that utilized both primary and secondary sources to draw lesson from the experience of Kenya. Kenya is selected as model for she has taken revolutionary steps in adopting the most celebrated *sui generis* law that learns from existing international and African frameworks, and better accommodates the special needs of TK and TCE, and that other African nations including Ethiopia could learn from this exemplary experience of Kenya. Besides, the selection is justified taking into account the fact that both Ethiopian and Kenyan community share relatively similar traditional view as African and neighboring countries.

The paper is organized as follows. Following this introductory section, section two provides a basic conceptual frameworks and justification for protection of TK and TCE in general. Section three reviews the international

¹²*Ibid.*

¹³Expressions/Traditional Knowledge/Kenyan Reform on Traditional Knowledge and Traditional Cultural Expressions: Two Year on, available at <http://ipkitten.blogspot.com/2019/02/kenyan-reform-on-traditional-knowledge.html?m>

¹⁴The Republic of Kenya, Protection of Traditional Knowledge and Cultural Expressions Act, NO. 33 of 2016 Revised Edition 2018 [2016] (Kenyan Traditional Knowledge and Cultural Expressions Act)

¹⁵Abiy Hailu, Ethiopia: Absence of Special IP System Resulting in Indigenous Knowledge Exploitation(2017); accessed from <https://allafrica.com/stories/201707240816.html>

and regional effort toward the protection of TK and TCE. Section four appraises the adequacy of the existing Ethiopian IP laws in protecting TK and TCE whereas section five proposes holistic *sui generis* law that learns from the experience of Kenya to revitalize legal protection for the TK and TCE in Ethiopia. Lastly, the paper ends with concluding remarks.

2. BASIC CONCEPTUAL FRAMEWORKS AND JUSTIFICATION FOR PROTECTION OF INDIGENOUS KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSION

The term traditional knowledge (TK) refers to ‘knowledge that is created, maintained, and developed by indigenous [peoples], local communities, [other beneficiaries], and that is linked with, or is an integral part of the national or social identity and/or cultural heritage of indigenous [peoples], local communities; that is transmitted between or from generation to generation, whether consecutively or not; which subsists in codified, oral, or other forms; and which may be dynamic and evolving, and may take the form of know-how, skills, innovations, practices, teachings or learnings.’¹⁶ TCE on the other hand refers to ‘any form of artistic and literary expression, tangible and/or intangible, or a combination there of, in which traditional culture and knowledge are embodied or which are indicative of traditional culture and knowledge and pass from generation to generation and between generations including, but not limited to: phonetic or verbal expressions, expressions by action, tangible expressions, adaptations of the expressions referred to in the above categories.’¹⁷

As can be inferred from these definitions, TK and TCE has certain common characteristics. They are collectively held by a community, handed down from generation to generation, either by verbal transmission or by imitation; continuously utilized, circulated, evolved and developed within the community for many years; reflect a community's cultural and social identity; made by ‘author unknown’ or by communities or by individuals within their communities, and often made for noncommercial purpose.¹⁸

¹⁶ See WIPO Draft Articles on Traditional Knowledge, Art.1

¹⁷ WIPO Draft Article on TCE, Art.2

¹⁸WIPO, Consolidated Analysis of The Legal Protection of Traditional Cultural Expressions/ Expressions of Folklore (WIPO Background paper No.1, 2003), P26.

The legal protection of TK and TCE has ample justifications. The main justifications include: recognition of value, empowering communities, supporting customary practice of the community, safeguarding traditional cultures, encouraging community innovation and creativity, contributing to cultural diversity, precluding unauthorized IP rights, enhancing certainty, transparency and mutual confidence etc.¹⁹ Accordingly, the legal IP right protection of IK and TCE is justified by protection and preservation of cultural integrity, prohibition of unjust enrichment, prevention of economic and moral harm to the community. Hence, given her diverse Nations, Nationalities and Peoples that are gifted with enormous TK and TCE, and the government's endeavor to promote, protect preserve, and commercialize this cultural diversity for economic development and technological advancement; it is also rationale to provide efficient IP protection regime for TK and TCE in Ethiopia.

Such legal IP protection sought to incorporate in different legislative framework could be of two types: defensive and positive protection. Defensive protection is a mechanism that prevents the acquisition of IP rights.²⁰ Positive protection on the other hand enforces the rights of indigenous communities over their TK or TCE by granting and recognizing these rights legitimately.²¹ This enables them to control their knowledge and further reap the benefits of their commercial exploitation. In furtherance of this, indigenous groups are seeking protection for their IK and TCE and their responses have affected legislation at national and international levels.

3. SELECTED INTERNATIONAL AND REGIONAL EFFORT TO PROTECT INDIGENOUS KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSION

3.1.INTERNATIONAL EFFORTS

At international level, various legal frameworks relevant for protection of TK and TCE have been adopted under the auspicious of WIPO, UNESCO, WTO and UN system. UNESCO adopted two conventions with respect to

¹⁹ The WIPO Draft Article on TCE, Preamble & Art 1 and The WIPO Draft Article on TK, Preamble & Art 2

²⁰Lillian Makanga, *Biopiracy and Case for Traditional Medicine in Kenya* (L.L.B, Strathmore University, 2017)

²¹*Id*, P20

TCE, namely the Convention for the Safeguarding of the Intangible Cultural Heritage (CICH) and Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CDCE) but none of them addresses IP right over cultural expression.²² There event international legal frameworks adopted under the auspicious of the WIPO include: Berne convention, Paris convention, Rome convention and WIPO Performances and Phonograms Treaty 1996. The WIPO-UNESCO “Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions was also developed by joint effort of UNESCO and WIPO. Under WTO system, trade related intellectual property system (TRIPS) is relevant for protection of TK and TCE. Though mainly of the biodiversity law than being IP law, the convention on biodiversity and its protocol can also be considered relevant for protection of TK associated with biodiversity and genetic resources under the UN system. These instruments provide certain protection for TK and/TCE under copy right, performer’s right, patent right and sui-generis laws.

3.1.1. PROTECTION UNDER COPYRIGHT SYSTEM

Berne Convention²³ and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)²⁴ are relevant international frameworks that accord legal protection to TCE under copyright. Copyright protection is available for “literary and artistic works” as referred to in the Berne Convention for the Protection of Literary and Artistic Works.²⁵ The Convention makes it clear that all productions in the literary, scientific and artistic domains are covered, and no limitation by reason of the mode or form of their expression is permitted. The Convention also provides an illustrative list of the works protected. Accordingly, a numbers of TCE for which protection is desired are productions in the literary, scientific and artistic domain and therefore, in principle, constitute the actual or potential subject matter of copyright protection.

²²WIPO, *supra* note 18,P38

²³Berne Convention for the Protection of Literary and Artistic Works ,1979 (hereinafter Berne convention)

²⁴Agreement on Trade Related Aspects of Intellectual Property (TRIPs), 1994 (hereinafter TRIPS)

²⁵The Berne Convention,Art 2.

Art 2 15(4) of the Berne Convention included works of folklore in the enumeration of ‘literary and artistic works. The provision states that “in the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.”²⁶ Hence, the inclusion of this article in the convention implies the possibility of granting protection for TCE. Furthermore, the provision of Berne convention is also expressly accepted under Art 9 of TRIPs which states that all members shall comply with Arts 1 through 21 of the Berne Convention (1971) and the Appendix thereto.²⁷The issue of TCE was also explicitly included in the agenda of the TRIPS Council at Doha Conference 2001.²⁸ However, the protection of TCE under copyright system has its own limitation as some requirements of copyright protection like originality and fixation are difficult to satisfy for the bulk of the TCE.

3.1.2.INDIRECT PROTECTION UNDER PERFORMER’S RIGHT

The protection of performer’s right is regulated under Rome Convention²⁹, WIPO Performances and Phonograms Treaty (WPPT)³⁰ and TRIPS agreement. Performers’ rights, as recognized in the WPPT protect performances of ‘literary and artistic works or expressions of folklore’.³¹ Article 2 of the WPPT provides that for the purpose of the treaty, ‘performers’ are defined as ‘actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or *expressions of folklore*’³² Thus, it can be submitted that WPPT expressly recognizes the protection of performers of

²⁶ The Berne Convention, Art 15.4(a)

²⁷ The TRIPs Agreement, Art 9

²⁸ WTO website:<https://www.wto.org/english/tratop_e/trips_e/art27_3b_e.htm>

²⁹Rome, Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organization, done at Rome on October 26,1961(hereinafter, Rome Convention)

³⁰WIPO Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms of October 29, 1971

³¹WIPO Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms of October 29, 1971 (WPPT).

³²The WPPT, Art.2.

the folklore which has an indirect³³ relevance to protection of TCE that is performed by certain performer.

Under TRIPs, though no definition is given to the term performer, article 14(1) of the TRIPs agreement which provides protection for performers in respect of their performance on a phonogram, can be construed as wide enough to cover performers of TCE and therefore capable of protecting TCE indirectly. Whereas under Rome Convention, the word ‘performers’ is defined as actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic work.³⁴ Here, it can be argued that the protection for performances of literary and artistic works which is provided by the Rome Convention and the TRIPS Agreement is not limited to works protected by copyright and include TCE. However, the problem with the protection of TCEs through performers’ right benefits only those who perform TCEs and not the indigenous people that created it unless the indigenous people themselves or members thereof perform or seek protection over the works as performers.

3.1.3. THE PROTECTION UNDER PATENT RIGHT

Paris Convention³⁵ and the TRIPS are some of the international instruments that may provide IP protection to TK. The Paris Convention is an international legally binding agreement concerning property rights in patents, utility models, industrial designs, service marks, indications of source or appellations of origin and trademarks. Hence, it is possible for innovations of the community to be protected under trademark, utility models, industrial designs, service marks, and indications of source or appellations of origin provisions of the Paris Convention. This Convention does not, however, contain provisions for granting patents to TK per se, or any other kind of knowledge for that matter, although it recognizes and would protect modern industrial products and services generated from that knowledge. The TRIPS agreement sets minimum standards for countries to follow in protecting

³³The protection accorded to the performed TCE at this juncture is merely indirect as the performance rights are primarily intended to protect the interest of the performer itself than that the owner of the performed TCE.

³⁴The Rome Convention, Art 3(a)

³⁵Paris Convention for the Protection of Industrial Property, 1883(Hereinafter' Paris Convention)

intellectual property. Article 1 of the TRIPS Agreement (on the nature and scope of the obligations) provides some flexibility in the implementation of the provisions of the Agreement. Hence, the parties to the TRIPS Agreement can invoke this provision to enact legislation for protecting traditional knowledge.

Though not IP regime in itself, the Convention on Biological Diversity (CBD),³⁶ also advocates for IP protection of TK on the assumption that recognition of IP right in TK could generate incentives for indigenous peoples to conserve the environment and manage biodiversity. Article 8(j) of the Convention states “ the contracting party shall as far as possible and as appropriate, subject to its national legislation respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity and promote the wider application with the approval and involvement of the holders of such knowledge and encourage the equitable sharing of benefits arising from utilization of such knowledge, innovations and practices”. The CBD also requires member states to facilitate access to genetic resources and associated TK and encourage equitable sharing of the benefit arising out of its utilization.³⁷

To facilitate the implementation of these issues, the ‘Nagoya Protocol³⁸ was adopted in 2011. The protocol calls for the equitable sharing of benefits arising from the utilization of genetic resources and associated TK.³⁹ The overall structure of the Protocol recognizes to communal nature of TK and enshrines the need for fair access regime, prior informed consent, and mutually agreed terms and fair and equitable sharing of benefit arising from access to genetic resources and associated TK. In harmony with CBD, the

³⁶Convention on Biological Diversity, done at Brazil, Reo de Jenero on June 5, 1992 (hereinafter The CBD)

³⁷The CBD, Art.15

³⁸Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, decision X/III of COP- 10,(UN Doc. UNEP/CBD/COP/10/L.43/Rev.1 Annex I (here in after Nagoya Protocol).

³⁹ Nagoya Protocol, Art.4(4).

International Treaty on Plant Genetic Resources for Food and Agriculture⁴⁰ also recognizes the enormous contributions of farmers to the diversity of crop that feeds the world, and entitled them with a right to protection of TK relevant to plant genetic resources for food and agriculture; the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and the right to participate in making decisions, on matters related to conservation and sustainable use of plant genetic resources for food and agriculture.⁴¹ Yet, like CBD this instrument being a biodiversity agreement is more concerned with conservation of biological resources than the IP rights.

3.2. EFFORTS TOWARD *SUI-GENERIS* LAWS

A *sui generis* system is a system specifically designed to address the needs and concerns of a particular issue.⁴² In context of TK and TCE, a *sui generis* approach implies a system that modifies some of the features of existing IP rights so as to accommodate the requirements of the IK and TCE. A number of legislative models exist around the world that has incorporated a *sui generis* model in the form of ‘collective/communal IP rights’ that is intended to specifically govern TK and TCE. This includes WIPO-UNESCO ‘Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions and the two Draft articles prepared by the WIPO Intergovernmental Committee on Intellectual Property Genetic Resources, Traditional Knowledge, and Folklore, i.e, WIPO draft article on protection of TCE⁴³ and WIPO draft article on protection of TK.⁴⁴

UNESCO-WIPO model Provisions protects TCE from illicit exploitation and other prejudicial actions and requires acknowledgement of source when TCE

⁴⁰International Treaty on Plant Genetic Resources for Food and Agriculture, Food and Agriculture Organization of the United Nations, 2009 (hereinafter International Treaty on Plant Genetic Resources for Food and Agriculture).

⁴¹International Treaty on Plant Genetic Resources for Food and Agriculture, Art.9

⁴²Anselm Kamperman Sanders, *Incentives for and Protection of Cultural Expression: Art, Trade and Geographical Indications*, The Journal of World Intellectual Property (2010), Vol. 13, No. 2, P20.

⁴³ WIPO Draft Article on Protection of TCE, *supra* note 11

⁴⁴ WIPO Draft Article on Protection of TK, *supra* note 11

is used.⁴⁵ It provided for rights that are adequate to protect the communities. This influential document recommends a *sui generis* protection of expressions of folklore and, amongst others, provides for: principles of protection; the scope of subject matter; the manner of obtaining authorization; the exceptions to and limitations on authorization; the moral rights attached to copyright; civil and criminal sanctions; the designation of the competent authority to administer copyright; and the protection of expressions of folklore of foreign countries.

The two recent draft articles by WIPO on protection of TK and TCE also aimed to adopt a multilateral convention that affords *sui generis* protection for TK and TCE respectively. Under the preamble and objective provision, both instruments incorporated policy objectives, general guiding principles, specific substantive principles and justification for recognizing TK and TCE as cultural intellectual creative assets of communities.⁴⁶ Both Draft articles provide a detail provisions that relates to definitions for technical terms, subject matter of protection, the beneficiaries of protection, and scope and conditions of protection.⁴⁷ Finally, both draft articles provides for provisions dealing with sanctions, remedies and exercise of rights, application, administration of rights and interests, exceptions and limitations, and terms and formalities of protection, in their respective areas of protection.⁴⁸ In these Draft articles, WIPO has identified highlighted issues such as creation of appropriate system to access TK or TCE, ensuring fair and equitable benefit-sharing, promoting the development of indigenous peoples and local communities; promotion, respect, preservation, wider application and development of TK or TCE, provide a mechanism for the enforcement of rights of TK/TCE holders as key objectives that would guide policy formulation and eventual legislation of a *sui generis* form of IP rights for TK or TCE. The two articles are yet to be adopted as convention but could still serve as a guide for adopting *sui generis* laws on TK and TCE but national level.

⁴⁵ WIPO-UNESCO Model Convention, sections 4-5

⁴⁶See the WIPO Draft Article on TCE , Preamble & Art 1; WIPO Draft Article on TK, Preamble and Article 2

⁴⁷The WIPO Draft Article on TCE, Arts 2 -5; WIPO Draft Article on TK, Arts. 1, 3-5.

⁴⁸ The WIPO Draft Article on TCE, Arts 6 -10; WIPO Draft Article on TK, Arts 6-11.

3.1. AFRICAN REGIONAL FRAMEWORKS

At regional level, Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore⁴⁹ intended to provide a framework to provide *sui generis* protection for TK and expression of folklore Africa. The Protocol is an initiative of member states of the ARIPO adopted on 9 August 2010.⁵⁰ In its preamble, the protocol recognizes the intrinsic value of TK, traditional cultures and folklore, and the urgent need for legal protection tailored to the specific characteristics of TK and expressions of folklore. The primary purpose of the Protocol is to protect TK holders against any infringement of their rights and to prevent misappropriation, misuse and unlawful exploitation beyond their traditional context.⁵¹ The Protocol grants exclusive rights to communities to authorize the exploitation of their TK, and to prevent exploitation without their prior informed consent. The protocol resembles the Draft WIPO articles and contains detailed provisions on criteria of protection, formality for protection, the beneficiaries of protection, right conferred, assignment and licensing of the right, equitable benefit-sharing, recognition of right holders, exceptions and limitations, compulsory license, duration of protection, and administration and enforcement of protection for both traditional knowledge and expression of folklore.⁵² It requires the setting up of a National Competent Authority responsible for implementing it.⁵³ Moreover, “the Contracting States shall ensure that accessible and appropriate enforcement and dispute resolution mechanisms, sanctions and remedies are available where there is a breach of the provisions relating to the protection of traditional knowledge and expressions of folklore”.⁵⁴

Besides, there is African Model Legislation for Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access

⁴⁹Swakopmund Protocol on Protection of Traditional Knowledge and Expressions of Folklore within Framework of African Regional Intellectual Property Organization (ARIPO), adopted on 9 August 2010 (Swakopmund Protocol)

⁵⁰*Ibid.*

⁵¹ The Swakopmund Protocol, Section 1.

⁵² The Swakopmund Protocol, Sections 4-23.

⁵³ The Swakopmund Protocol, Section 3.

⁵⁴The Swakopmund Protocol, Section 23.

to Biological Resources⁵⁵ that is intended to serve as a basis for national legislation on protections of TK associated with biological resources, and plant and animal varieties. The Model Legislation recognizes communities' rights over their biological resources and TK, and the right to collectively benefit from the utilization thereof.⁵⁶ It states that any access to a biological resource, innovation, practice, knowledge or technology shall be subject to the prior informed consent of the concerned community; shares benefits with concerned community and recognition of IP rights of the community.⁵⁷ As regard farmer's right, the model law entitled the farmers to the protection of their TK relevant to plant and animal genetic resources and to obtain an equitable share of benefits arising from the use of plant and animal genetic resources.⁵⁸ Nevertheless, this model law is more of bio-diversity legislation and that do not fully accommodate the IP right over TK.

The Swakopmund Protocol along with aforementioned international and regional *sui-generis* model laws has been used as basis for national policy and legislative initiatives. Accordingly, some African countries like Egypt, Botswana, Ghana, Malawi, Mozambique, Namibia, Uganda and Zambia⁵⁹ adopted legislation with some components of the Swakopmund protocol and the other model laws yet to date; Kenya remains the only country in Africa with a specific policy and laws on TK and TCE adopted from the protocol and these model laws.

⁵⁵African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Genetic Resources adopted by OAU, 2000(here in after Africa Model Law)

⁵⁶The Africa Model Law, Art 16 (1).

⁵⁷ The Africa Model Law, Arts 18, 21, 22.

⁵⁸ The Africa Model Law, Art 26

⁵⁹ Paul K. Sena, Challenges in the African Region to Protecting Traditional Knowledge, Genetic Resources and Folklore, available at <<https://communitylegalresources.files.wordpress.com/2014/04/challenges-in-the-african-region-to-protecting-traditional-knowledge.pdf>>

4. REAPPRAISING THE ADEQUACY OF THE EXISTING ETHIOPIAN INTELLECTUAL PROPERTY LAWS IN PROTECTING TK AND TCE

4.1. PROTECTION UNDER THE COPYRIGHT AND NEIGHBORING RIGHTS

In Ethiopia, Copyright and neighboring right are governed by Copyright and Neighboring Right Proclamation No.410/2004⁶⁰ and copyright and neighboring right proclamation (amendment) proclamation No. 872/2014.⁶¹As can be inferred from its Preamble, the copy right Proclamation is inspired by the assumption that protection of literary, artistic and similar creative works has a major role to the cultural, social, economic, scientific and technological development of a country. Art. 2(8) of the proclamation defined copyright as “an economic right subsisting in a work and in appropriate case moral right to an author”. Art 2(30) of proclamation defined work as ‘production in literary, scientific and artistic fields’ and provides illustrative list of what constitutes literary, artistic or scientific works that are subject of copy right protection. Accordingly, copyright protection is available for production in literary, artistic and scientific work without any distinction as to mode or form of their expression. Hence, as many of TCE are literary, artistic or scientific production, they, in principle, constitutes literary, artistic or scientific work that is potential subject matter of copyright protection. Besides, the amendment proclamation added one lists dealing with ‘applied arts’ under art 2(30) (J). According to the draft notes/explanation of the amendment proclamation, such inclusion of work of applied arts under illustrative list of works protected by copyright was arguably intended to cover TCE as copyrightable work.⁶²

As regard, derivative work, translation, adaptations, arrangements and other, transformations or modifications of works; collection of works such as encyclopedia or anthologies or databases whether in machine readable or

⁶⁰ Copyright and Neighboring Rights Protection, Proclamation No. 410/2004, 10th Year No. 55, Addis Ababa, 19th July, 2004(hereinafter Copy Right and Neighboring Right Proclamation)

⁶¹Copyright and Neighboring Rights Protection (Amendment), Proclamation No. 872/2014, 21st Year No. 20 Addis Ababa, 14th January,, 2015

⁶² Biruk Haile, Lecture on Advanced Intellectual Property Law Course (Unpublished), Haramaya University,2017,taken from the lecture note that I have written down during his lecture class.

other form provided that such collections are original by reason of the selection or arrangement of their contents are protected work⁶³, and hence, if certain TCE has got protection as a work of applied art, sculpture, engravings or other oral works illustrated under Article 2 (30) of the proclamation, its derivatives have also a potential to be protected as derivative works. Furthermore, the provisions of the proclamation governing neighboring right have a potential of indirectly protecting TCE. Accordingly, the performer of TCE is entitled to performance right over his performance, and this will accord indirect protection for TCE but if the performance in itself constitutes independent TCE, the performer's right directly protects the TCE.

4.1.1. Limitation of the Copyright System to Accommodate TCE

As has been discussed above, the existing Ethiopian copyright system attempted to accord certain legal protection to TCE by considering TCE as a literary, artistic or scientific work through the inclusion of the work of applied arts or more generally by taking note of illustrative nature of the list under Art 2(30). But, it is questionable as to whether copyright regimes are adequate to protect TCE because of different reasons. As can be understood from the overall reading of the proclamation, being qualified as artistic, literary or scientific work is not by itself sufficient to attract protection under copyright law and there are other necessary requirements that must be fulfilled for the work to be protected as copy right. Besides, there are also a number of provisions of the proclamation relating to copyright that are not appropriate to the special nature of TCE and Ethiopia's reality with respect to TCE. Below, I will briefly explain the limitation and inadequacy of the current Ethiopian copyright system in protecting TCE.

A) Requirement of Originality

Art 6 of the copyright and neighboring right proclamation imposes the requirement of originality for the work to be protected under copyright. Accordingly, a literary or artistic work which is an object of copyright and which is created by a subject of copyright is not copyrightable if it lacks originality. However, even if requirement of originality for purpose of copy right is relative than being novelty, it is still difficult to satisfy in the bulk of

⁶³The Copyright and Neighboring Right Proclamation, Art.4

TCE. It is known that, most of the TCE are created in ancient time and drawn largely upon pre-existing tradition, custom and belief which have evolved over the passage of time.⁶⁴ As it passed from generation to generation orally and reached the current generation through a gradual and incremental process, it is difficult to know even the time when they are created let alone assessing its originality. In such cases, even the next generations can add new improvements or knowledge during the incremental process, their creativity was limited at least in respect of the pre-existing knowledge and their role mainly imitate and recreation of what has been handed over to them by the preexisting generation. Hence, it can be argued that even if there is possibility that certain TCE to satisfy the originality requirement, it is difficult for most of pre-existing TCE to qualify as original work of subsequent generations as far as there are no improvements and new creations added by the later.

B) Requirement of Fixation

The Ethiopian copyright system imposes the requirement of fixation for the literary, artistic or scientific work to attract legal protection as copyrightable work.⁶⁵ The proclamation defined 'fixation' as the embodiment of works or images or sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device prepared for the purpose.⁶⁶ It means that for the works to enjoy copyright protection, they have to be reduced to a tangible medium or expressed in some external form such as a manuscript, drawing, film, or mechanical recording or it can be expressed in the form of speech. However, this requirement of fixation under the proclamation is very difficult to satisfy for TCE. It is obvious that Ethiopian people have no habit of reducing their cultural expression in written form that their traditional expression is transferred from generation to generation by oral means. As a result, the bulk of traditional expressions of

⁶⁴Kuek Chee Ying, *Protection of Expressions of Folklore/Traditional Cultural Expressions: To What Extent is Copyright Law the Solution?*, Journal of Malaysian and Comparative Law(2005), Vol.2

⁶⁵Art 6 of the proclamation states that the author of work shall, irrespective of the quality of the work and the purpose for which the work may have been created, be entitled to protection, for his work without any formality and upon creation where it is a) Original; and b) Fixed

⁶⁶ The Copyright and Neighboring Right Proclamation, Art.2(11)

indigenous people in Ethiopia were not reduced in writing or other tangible form that they rarely satisfy the requirement of fixation.⁶⁷

C) Identifiable Author's Requirement

Under Ethiopian legal system, the protection of copyright presupposes the existence of identifiable author of the work be it is single or several authors. This could be understood from the provisions of the proclamation that defined copyright as economic right and whenever appropriate the moral right of an author.⁶⁸ The same idea could be understood from article 6 of the proclamation which states irrespective of the quality of the work, the author of the work is entitled to legal protection in his work provided that the work is original and fixed.⁶⁹ The proclamation defined author as a person who intellectually created the work, and recognize the possibility of collective author and joint author.⁷⁰ In general the copy right is all about the right accorded to the author that protection of the work as copyrightable is unimaginable in absence of identifiable creator of the work. However, for the most of TCE in Ethiopia, it is difficult to identify and trace their creators as they are communally created and held and/or because the creators are simply unknown.⁷¹ Therefore, due to this identifiable author requirement⁷² that is difficult to satisfy for bulk of the TCE, the Ethiopian copyright law is not appropriate for TCE.

D) Different Conception of Ownership

The other limitation of Ethiopian copyright system in protecting TCE relates to the conception of ownership which gives emphasis to individual ownership right. The proclamation states that “owner of copyright” is the author where the economic rights are vested in the author, where the economic rights are originally vested in a natural person other than the

⁶⁷In this regard, Art 2.2 of the Berne Convention provides requirement of fixation is optional and thaw there was an opportunity for Ethiopia to exclude fixation as a requirement of copyright protection.

⁶⁸The Copyright and Neighboring Right Proclamation, Art.2(8)

⁶⁹The Copyright and Neighboring Right Proclamation, Art.6

⁷⁰The Copyright and Neighboring Right Proclamation, Art.2(2)

⁷¹ WIPO, *Supra* note.18, p.38

⁷²At this juncture, unidentifiable /unknown author shall be distinguished from anonymous author indicated as indicated under art 20(5) of the proclamation. The author of anonymous author is known and identified but the author preferred it to be published anonymously upon his choice.

author or in a legal entity, that person or entity, where the ownership of the economic rights has been transferred to a natural person or legal entity, that person or entity; and provide the brief rules on ownership.⁷³ However, the proclamation emphasizes the notion of individual ownership, but this form of ownership is incompatible with indigenous customs and traditions that emphasize communal ownership. Hence, the notion of ownership advocated by the proclamation is not suitable for TCE. As has been said, it is difficult to trace individual author of TCE as they are communally created and held, or owned by the past and present generations of that community. But, as the provisions of the proclamation dealing with ownership emphasize on the private ownership be it is individual, collective or joint ownership⁷⁴; it lacks sufficient room to accommodate room for communal ownership by indigenous community.

Furthermore, even in situation where there possibility of communal ownership, there is no detail rules on various issues⁷⁵ like: how to identify owning community? Which community own which creation? How shared knowledge among various communities will be dealt with? What institution will represent that community? How exploitation of such TCE be made? There is also no rules that guides the use of proceed of exploitation, whether it is to be invested for communal interest like research and promotion of community culture or divisible among individual member of the community.⁷⁶In short, the rule of ownership provided under Ethiopian copy right system is not only inappropriate but also inadequate to accommodate the needs of TCE.

⁷³The Copyright and Neighboring Right Proclamation, Arts.2 (16) &21.

⁷⁴Note that the notion of communal ownership on the TCE should be distinguished from the notion of collective ownership and joint ownership that allows two or more persons to be the owner of a given work as envisaged under Art 2(5) and 2(29) of the proclamation . In communal ownership, the owner is the community at large including the past and present generation of that community and that they are not individually identified but in joint or collective ownership, all individual members exist and/or individually identified.

⁷⁵Even if some of these issues are addressed under the Ethiopian Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482/2006; the scope of proclamation is limited to TK associated with genetic resources, and that it has no applicability to the TCE and the independent TK.

⁷⁶The Copyright and Neighboring Right Proclamation, Arts.2(16) &21

E) Limited Duration of Copyright

Under Ethiopian copyright system, duration of copyright is limited to life of the author plus fifty years.⁷⁷ However, the limited duration of copyright will lead to problematic question with regard to TCE. Firstly, the community has perpetual existence that their cultural expression needs the perpetual protection.⁷⁸ As the duration of copyright is limited to certain time to be counted from the death of the author, this will be awkward for TCE as community never dies. On the other hand, if we are referring to ancient generation of the community that have been claimed to create a TCE many centuries ago, it could be claimed that the term of protection would have long expired.⁷⁹ Hence, concept of fixed duration of copyright does not meet the need of the traditional communities who desire perpetual protection for TCE.

F) Idea-Expression Dichotomy

The idea-expression dichotomy is a legal doctrine that limits scope of copyright protection to only expressions of ideas and not ideas.⁸⁰ Ideally, the idea/expression dichotomy ought to regulate the public domain by seeking to ensure that ideas are available for use by potential creators.⁸¹ The Ethiopian Copyright right system protects the expression but not the underlying idea or original thought of the author. This is clearly provided under art 5 of the proclamation as “any idea, procedures, system, method of operation, concept, formula, numerical tables and forms of general use, principle, discovery or mere date, even if expressed, described, explained, illustrated or embodied in a work.”⁸² However, there could be situation certain style and methods of creating TCE may be vulnerable to imitation.⁸³ For instance, person alien to the community in question may imitate such style and methods of creating TCE for creating something for his own benefit.⁸⁴ In

⁷⁷The Copyright and Neighboring Right Proclamation, Art 20

⁷⁸Anurag Dwivedi and Monika, *supra* note 10, P312.

⁷⁹*Ibid.*

⁸⁰Leslie A. Kurtz, *Speaking to the Ghost: Idea and Expression in Copyright*, University of Miami Law Review (1993), Vol.47(5) 1221, P1224

⁸¹*Ibid.*

⁸²The Copyright and Neighboring Right Proclamation, Art .5

⁸³Kuek Chee Ying , *Supra* note 64

⁸⁴*Ibid*

such a situation, copyright protection might not be available since it involves idea that is style or method, but not expression of the idea.

G) Failure to Provide Defensive Protection

In context of TCE, the defensive protection includes all mechanisms by which access to the TCE is restricted, including access which may result in the TCE becoming the IP rights of a third party.⁸⁵ It also encompasses mechanisms that enable the recognition of the interests of the communities that produce the TCE.⁸⁶ The existing Ethiopian copyright not only fails to provide a positive protection to TCE but also to some extent incapacitate the indigenous community from preventing unauthorized exploitation of their TCE in different ways. As bulk of the TCE are traditionally considered a common heritage of mankind that falls into the public domain, copyright system indirectly enables non indigenous people to acquire copyright over new TCE or on those TCE incorporated in derivative works.⁸⁷ There are enormous exceptions/limitations⁸⁸ in which the author cannot prevent exploitation of his work; however, such exceptions in ordinary copyright system may be excessive in respect of TCE as exploitation of TCE under guise of such exceptions may cause intolerable harm to community.

4.1.2. Limitation of the Neighboring Right System to Accommodate TCE

As has been mentioned earlier, TCE could be accorded indirect protection under the performer's rights. It is also claimed that the provisions of Ethiopian copyright and neighboring right proclamation dealing with right of performer could extend indirect protection to TCE. Art 2(14) of the Proclamation that defines neighboring rights as the rights performers, producers of sound recordings, broadcasting organizations have over their works.⁸⁹ However, Ethiopian neighboring right system is inadequate to provide indirect protection to TCE for the following key reasons.

⁸⁵Enyinna S. Nwauche, *The Sui Generis and Intellectual Property Protection of Expressions of Folklore in Africa* (PhD Dissertation, North-West University, 2016), P 53.

⁸⁶*Ibid.*

⁸⁷ WIPO, *Supra* note 18, p.42

⁸⁸ Copyright and Neighbouring Right Proclamation, Arts 9-19.

⁸⁹The Copy Right and Neighboring Right Proclamation, Art.2(14)

A) The Limited Definition of Performer

Under Ethiopian neighboring right system, ‘Performer’ is defined as actor, singer, musician, dancer, and other person who act, sing, deliver, declaim, play in, or otherwise perform literary and artistic works.⁹⁰ As can be inferred from this definition, for a person to be regarded as a performer, he should perform literary, artistic and scientific work that it is not expressly addressed whether TCE is a work that can be performed in furtherance acquiring neighboring right over it. In this regard, art 2(a) of WPPT defined performers” as actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore thereby explicitly recognizing expression of folklore /TCE as a type of work that can be performed by performer.⁹¹ To the contrary, Ethiopian neighboring right system does not expressly included TCE as subject matter of performance, and hence, it frustrates indirect protection of TCE under right of the performer.

B) No Direct Benefit to the Concerned Community

The other limitation of Ethiopian neighboring right system in according indirect protection to TCE is that there is no economic benefit that will be given to the developers and custodian of the TCE upon which performance right is available. It is obvious that the right of performance provided under the copyright and neighboring right proclamation is accorded to the performer himself and not to the community that are original developer and preservers of the underlying TCE performed by the performer. Of course in some situation, the performer of the TCE may belongs to same community that is the holder of that cultural expression, and in such cases, it can be argued that a benefit of protection accorded to the performer who is the member the community in question can be considered as a benefit for that community. However, in situation where the performer is alien to that community that are holder of the performed cultural expression, there is no any benefits that will accrue to the relevant community.

⁹⁰The Copyright and Neighboring Right Proclamation, Art.2(19)

⁹¹The WPPT, Art.2(a)

4.2. THE PROTECTION UNDER PATENT PROCLAMATION

In Ethiopia, patent and related right are regulated by the Proclamation on 'Inventions, Minor Inventions and Industrial Designs'.⁹² Article 2(5) of the proclamation defined patent as the title granted to protect inventions, and invention is defined to mean an. idea of an inventor which permits in practice the solution to specific problem in the filed of technology. Article 3 of the same states an invention is patentable if it is new, involves an inventive step and is industrially applicable. Hence, though there is rare possibility, TK satisfying these requirements could potentially patentable. However, the bulk of the TK as such cannot be patented and effectively protected under the proclamation because of the following main challenges.

A) Identifiable Inventor Requirement

The proclamation requires a single individual to be identified as an inventor.⁹³ However, TK is developed inter-generationally, where in most cases it is difficult to trace the initial time of the first invention and inventors. Hence, it is difficult to identify single individual as inventor of TK, and that one cannot claim patent right over TK. Even more, to claim joint ownership of patent, the law requires one or more persons to jointly involve in the invention and to the same goal.⁹⁴ However, the bulk of TK are created by the past generation and the current generation could only make changes to and develops the previous knowledge to adapt to the new environmental and socio-economic changes, and in such situations, it is difficult to claim for patent right over the TK unless it was claimed in respect of the new improvements only.

B) Novelty

Novelty is assessed with reference to prior art or state of the art. Prior art in the context of the patent proclamation implies the complete body of knowledge which is available to the public before a patent application.⁹⁵ This is because article 3(2) of the proclamation requires absolute novelty of an

⁹²Inventions, Minor Inventions and Industrial Designs Proclamation, Proclamation No. 123/1995 (here in after Patent Proclamation).

⁹³ The Patent Proclamation , Arts 2(3) & 8

⁹⁴ The Patent Proclamation, Art 7(2)

⁹⁵ The Patent Proclamation, Art.3

invention in which every disclosure irrespective of its form and place accounts prior art. Any invention which is made public before application is filed would be considered prior art, and hence this requirement of novelty is difficult to satisfy for bulk of the TK.

C) Inventive Steps

This standard requires that the claimed invention be non-obvious for a person with ordinary skills in a given technical field, and this is known through a comparison of the claimed invention and the prior art.⁹⁶ Though there might be certain TK that may involve some sort of inventive steps as in the case of traditional herbal medicine, the bulk of the TKs are usually crude materials that are processed simply and do not involve sophisticated know-how. Hence, for most of TK, it is widely recognized that the difference between the prior art and the claims at issue is difficult, and hence, rarely satisfy this requirement of inventive step.

D) Limited Duration of Patents

Patents are made public on registration, but grant the owner an exclusive monopoly over the invention for twenty years. In this regards, Art 16 of the patent proclamation states “A patent shall be granted for an initial period of fifteen years commencing from filling date of the application for protection. Upon expiration of the duration, the invention becomes freely available to use. Indigenous people, however, seek to hold rights in their TK in perpetuity unless they are fairly compensated; and this makes the patent registration unsuitable for TK protection.

4.3. PROTECTION UNDER THE BIO-DIVERSITY AND ABS REGIME

In addition to the limited protections accorded to it under patent laws as discussed above, certain categories of TK associated with biodiversity and genetic resources can be protected under biodiversity laws of Ethiopia yet this regimes have no place for TCE. The relevant biodiversity legislations of

⁹⁶ Xuan Li, *Novelty and Inventive Step: Obstacles to Traditional Knowledge Protection under Patent Regimes: A Case Study in China*, European Intellectual Property Review (2007), Vol. 29, No(4) 134, P135.

the country in this regard include Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation⁹⁷ and Plant Breeders' Right Proclamation.⁹⁸ These legislations are primary bio-diversity legislations dedicated to ensure access to and sustainable utilization, protection, conservation and exploitation of biodiversity and genetic resources but they are not IP regime for protection of TK and TCE. Even if certain protections are accorded to TK associated with biodiversity and genetic resources during access to these resources, these legislations have no relevancy for protection of other TK that are independent of biodiversity and genetic resources, and hence, are not full-fledged regime for TK.

As can be understood from its objective provision, the Genetic Resources and Community Knowledge, and Community Rights Proclamation primary aimed at ensuring that the country and its communities obtain fair and equitable share from the benefits arising out of the use of genetic resources so as to promote the conservation and sustainable utilization of the country's biodiversity resources.⁹⁹ However, as has been reflected under the preamble and its substantive provisions, the proclamation also accords legal protection and recognition for TK associated with the genetic resources.¹⁰⁰ Hence, being inline with the CBD and the African model law, the proclamation regulates access to genetic resources and related community knowledge, and ensures protection of community right on the genetic resources and community knowledge¹⁰¹in these courses. Accordingly, the proclamation vested the ownership of community knowledge in the concerned local community.¹⁰²As per Art 6 of the proclamation, local communities are entitled with (1) the right to regulate access to their community knowledge;

⁹⁷Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482/2006, Federal *Negarit Gazeta* 13th Year No. 13 ADDIS ABABA-27th February, 2006 (Hereinafter Access to Genetic Resources and Community Knowledge Proclamation)

⁹⁸ Plant Breeders' Right Proclamation No. 481/2006, 12th Year No. 12 ADDIS ABABA – 27th February, 2006 (Hereinafter The Plant Breeders' Right Proclamation)

⁹⁹ Access to Genetic Resources and Community Knowledge Proclamation, Art.3

¹⁰⁰ Access to Genetic Resources and Community Knowledge Proclamation, Preamble, Para. 5-7

¹⁰¹Community knowledge means knowledge, practices, innovations or technologies created or developed over generations by local communities on the conservation and use of genetic resources. See Art 2(14) of Access to Genetic Resources and Community Knowledge Proclamation

¹⁰² Access to Genetic Resources and Community Knowledge Proclamation, Art.5.

(2) right to use their community knowledge; (3) the right to share from the benefit arising out of the utilization of community knowledge¹⁰³ and norms of the concerned communities. What is more, the proclamation subjected access to TK to the prior informed consent of the concerned local community.¹⁰⁴ Under Article 10(1), it further mentions the protection of community right over their TK as they are enshrined in the customary practices. However, the main limitation of this proclamation to protect TK is that it failed to cover that are not associated with genetic resources. There are enormous TK that have no relation with genetic resources but the scope of TK covered by the proclamation is not wide enough to address all TK in the country. Even for those TK covered under the proclamation, it failed to incorporate moral rights such as right of attribution and paternity that could have been granted via IP regimes.

The plant breeder's proclamation too is not primarily intended to grant the IP right to the farmer but intended to consolidate the plant breeder's rights over the new plant variety created by him/her and put certain privileges given to farmers in relation to the use of the plant variety as an exception to the breeder's rights.¹⁰⁵ In respect of protected variety, farmer is entitled to use protected varieties including material obtained from gene banks or plant genetic resource centers to develop farmers' varieties; and to save, use, multiply, exchange and sell farm-saved seed or propagating material of protected varieties. However, it would constitute infringement if the farmers sell the farm-saved seed or propagating material of a protected variety in the seed industry as a certified seed. Even in respect of the farmer's variety which constitute a community knowledge, farmers are granted a few right limited to use, save, exchange and sell farm-saved seed or propagating material of that farmers' varieties¹⁰⁶ but not a full-fledged communal IP rights

¹⁰³ Access to Genetic Resources and Community Knowledge Proclamation, Art.6.

¹⁰⁴ Access to Genetic Resources and Community Knowledge Proclamation, Art.12 (2).

¹⁰⁵ It is highlighted in the preamble of the proclamation that granting certain privileges in respect of the plant breeder's right will ensure that the farming and pastoral communities of Ethiopia, who have been conserving and continue to do so in the future the agro-biodiversity resource used to develop new plant varieties, continue to their centuries old customary practice of use and exchange of seed.

¹⁰⁶ Farmer's variety means a plant variety having specific attributes and which has been *discovered, breeds, developed or nurtured* by Ethiopian farming communities or a wild relative of variety about which the Ethiopian farming communities have common knowledge. see Art 2(9) of the plant variety proclamation

as that of the plant breeder's rights. Overall, these limited privileges/rights mainly relate with right to use, save and exchange or sell have been reserved for the farmers as a reward for the enormous contributions that they have made and will continue to make in the conservation and sustainable use of plant genetic resources but not as IP right for their creativity.¹⁰⁷ For this reasons, the plant breeder's proclamation is short of providing sufficient IP protection for TK.

5. TOWARD *SUI GENERIS* LAW FOR TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSION IN ETHIOPIA: DRAWING A LESSON FROM KENYA

5.1. A *SUI GENERIS* PROTECTION OF TK AND TCE IN KENYA

Like Ethiopia, Kenya is rich in TK and TCE. A popular example of TK and TCE in Kenya includes the barefoot technology of the Maasai people which spurred a successful shoe brand, the kikoi (woven cloth), the lessa (decorative cloth or sash) and the akala (tyre sandals).¹⁰⁸ Kenya has approximately forty-two communities with unique languages, cultures, experiences and ways of life making it easy to comprehend the rich expressions of folklore and TK in that country.¹⁰⁹ The Maasai community of Kenya in particular has for centuries captivated the world with their distinctive way of life, dances, dress, ornaments, and traditional medicines. However, over the last two decades, there has been widespread exploitation of Maasai culture by non-Maasai, in Kenya and Tanzania and abroad, often without the consent of the Maasai peoples.¹¹⁰ As a result, the Maasai have fought against the exploitation of their culture and the harms that occur through improper cultural exploitation from the tourism sector.¹¹¹ As a response to this pressing need to protect TK and TCE from the Maasai and other community, the government of Kenya issued the National Policy on

¹⁰⁷See Art 27 of the plant breeders proclamation

¹⁰⁸*supra* note 13

¹⁰⁹Enyinna S. Nwauche, *supra* note 85, P88

¹¹⁰Naomi L. Leleto, *Maasai Resistance to Cultural Appropriation in Tourism*, The Indigenous Peoples' Journal of Law, Culture & Resistance (2019), Vol.5 No.1, P22

¹¹¹*Ibid.*

Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions in 2009.¹¹²

The policy intended to provide a national framework for recognition, preservation, protection and promotion of sustainable use of TK, TCE and genetic resources. It also outlines policy statement which requires the government in collaboration with other stakeholders to create awareness on the importance and the value of TK and Folklore, Document for preservation and protection, Promote Research and Development in TK and Folklore, and protect the various rights of holders of TK and Folklore.¹¹³ Moreover, the policy recognizes inadequacy of the existing IP right regimes and the increasing demand for *sui generis* systems to enhance, protect and honor TK and TCE.¹¹⁴ The policy clearly suggests a reform process with a *sui generis* legislation being implemented concurrently with other relevant laws, building institutional capacity, and participation in decision making and its implementation.¹¹⁵ The reform of Kenyan law was motivated by an edict of Kenya's Constitution¹¹⁶, which required the state to promote culture and cultural heritage and to enact legislation in this regard.¹¹⁷ That reform process has been kick-started by issuing of the Draft Bill on Protection of TK and TCE in 2013. The bill was put accessible for the public participation and consultation¹¹⁸ for more than three years to solicit important comments and suggestion and finally adopted as Knowledge and Traditional Cultural Act in 2016, and its revised version is released in 2018.

¹¹² National Policy on Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions, Government of Kenya, July 2009 (The Kenyan Policy)

¹¹³ The Kenyan Policy, Policy 4.4

¹¹⁴ The Kenyan Policy, Policy 4.5

¹¹⁵ The Kenyan Policy, Policy 5

¹¹⁶ The Constitution of Kenya, 2010

¹¹⁷ Article 11 (1) of Kenyan Constitution recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation, and requires the parliament shall enact legislation to (a) ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage; and (b) recognize and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by the communities of Kenya.

¹¹⁸ A meaningful participatory process was followed throughout the lawmaking process of the Kenyan traditional knowledge and cultural expression law in light of Art 196 (1) of the Kenyan Constitution which states that “ a county assembly shall conduct its business in an open manner, and hold its sittings and those of its committees, in public; and (b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

The New Act is intended to provide a frame work for the protection and promotion of TK and TCE and to give effect to Articles 11, 40 and 69(1) (c) of the Kenyan Constitution which generally restates the government's duty to ensure community's property right over their cultural heritage. The structure of the act heavily drawn from and closely follows structure of the Swakopmund protocol¹¹⁹ and the Draft WIPO articles, and organized in 8 parts. Part I provides for preliminary issues such as Interpretation of relevant terms/phrases, guiding principles and responsibility of county and national governments of Kenya towards protection of TK and TCE. Under this part, the act provided interpretive definition for traditional knowledge¹²⁰ and cultural Expression¹²¹, and set out values and principles set out in the Kenyan Constitution as guiding principles. Part II and III of the Act provide separate rules for TK and TCE respectively addressing *inter alia* issues relating to criteria of protection, formality for protection, right of protection, right conferred, and duration of protection. The remaining parts of the Act provide for detailed rules that is commonly applicable for both TCE and TK including the content of right to protection along with its exceptions and limitations, moral right of the community, right of assignment and licensing and additional rights, right to equitable benefit sharing rights, and

¹¹⁹Kenya is original member of ARIPO, and signatory of Swakopmund protocol

¹²⁰ Art 2 of the Act defined "traditional knowledge" as any knowledge (a) originating from an individual, local or traditional community that is the result of intellectual activity and insight in a traditional context, including know-how, skills, innovations, practices and learning, embodied in the traditional lifestyle of a community; or (b) contained in the codified knowledge systems passed on from one generation to another including agricultural, environmental or medical knowledge, knowledge associated with genetic resources or other components of biodiversity, and know-how of traditional architecture, construction technologies, designs, marks and indications

¹²¹The act defined "cultural expressions" as "any forms, whether tangible or intangible, in which traditional culture and knowledge are expressed, appear or are manifested, and comprise of the following forms of expressions or combinations thereof— (a) verbal expressions including stories, epics, legends, poetry, riddles; other narratives; words, signs, names, and symbols; (b) musical expressions including songs and instrumental music; (c) expressions by movement, including dances, plays, rituals or other performances, whether or not reduced to a material form; (d) tangible expressions, including productions of art, drawings, etchings, lithographs, engravings, prints, photographs, designs, paintings, including body-painting, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewelry, basketry, pictorial woven tissues, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments, maps, plans, diagrams architectural buildings, architectural models; and architectural forms"

management of rights, issues of public consultation, authorized user agreements, and sanctions and remedies.

The Act provides the criteria of protection that sufficiently accommodates the unique nature of TK and TCE by setting aside the criteria of protection under the conventional IP system. As regard criteria for protection of TK, art 6 of the act provides;

Protection shall be extended to traditional knowledge as long as it is (a) generated, preserved and transmitted from one generation to another, within a community, for economic, ritual, narrative, decorative or recreational purposes; (b) individually or collectively generated; (c) distinctively associated with or belongs to a community; and (d) integral to the cultural identity of community that is recognized as holding the knowledge through a form of custodianship, guardianship or collective and cultural ownership or responsibility, established formally or informally by customary practices, laws or protocols.

As regard criteria for protection of traditional cultural expression, Art 14 of the act states that;

The protection of cultural expressions under this Act shall relate to cultural expressions, of whatever mode or form, which are- (a) the products of creative and cumulative intellectual activity, including collective creativity or individual creativity where the identity of the individual is unknown; (b) characteristic of a community's cultural identity and cultural heritage and have been maintained, used or developed by such community in accordance with the customary laws and practices of that community; (c) generated, preserved and transmitted from one generation to another, within a community, for economic, ritual, narrative, decorative or recreational purposes; (d) individually or collectively generated; (e) distinctively associated with or belongs to a community; and (f) integral to the cultural identity of community that is recognized as holding the knowledge through a form of custodianship, guardianship or collective and cultural ownership or responsibility, established formally or informally by customary practices, laws or protocols.

As regard, formalities, the Act states Protection of TK and TCE shall not be subject to any formality¹²² as long as the aforementioned criteria for protection are satisfied. What is more, the act extends the duration of protection of both TK and TCE to be perpetual so long as their respective criteria for protection provided in the Act are intact.¹²³

The Act protects communities from exploitation and allows them to control the use of culturally significant and economically valuable knowledge and expression by creating a new form of IP right held by the community itself. It provides the defensive and protective protection necessary for providing a robust legal regime that protects TK and TCEs. The defensive protection prevents people outside a traditional community from acquiring IP rights over TK and TCEs requiring the government to establish a repository for the documentation of such knowledge and maintain registers of TK and TCEs that are collected and registered.¹²⁴ In terms of positive protection, the Act grants the rights that empower communities to promote their TK and TCEs, control their uses and benefit from their commercial exploitation.

Accordingly, the community of TK or TCE owners shall have the right to protection of that knowledge or cultural expression, which may include the exclusive right to authorize exploitation of the TK and TCE, and prevent any person from exploiting it without their prior informed consent, right to recognition as owner of the TK and TCE, right to institute legal proceedings and get remedies against violation of these right.¹²⁵ Art 18 of the Act further states that ‘a person shall not, in any way, misappropriate, misuse, abuse, unfairly, inequitably or unlawfully access and exploit traditional knowledge and cultural expressions, and use the knowledge or expression without the prior and informed consent of the owners, be used for reproduction, publication, broadcasting, translation, derivation work , for sale...’ Art 19 of the Act; however, provides for exceptions and limitations in like normal usage, development, exchange, dissemination and transmission of TK and TCE or use for non-commercial purpose, or other exceptions as may be necessary subject to a prior informed consent of the owner and in manner

¹²² The Kenyan Traditional Knowledge and Cultural Expressions Act , See Arts 7 & 15

¹²³The Kenyan Traditional Knowledge and Cultural Expressions Act , Arts 13 &17

¹²⁴ The Kenyan Traditional Knowledge and Cultural Expressions Act, Art 8

¹²⁵The Kenyan Traditional Knowledge and Cultural Expressions Act, Art 10, 11,

compatible with fair practice, relevant community's customary laws and practices, acknowledging the community as source, and in ways that is not offensive to the community.

Besides, the Act provides for moral rights that the owning community shall have toward their TK and TCE. In this regard, Art 21 of the Act states that 'the owners shall be holders of the moral rights in the traditional knowledge or cultural expressions which include:

- (a) right of attribution of ownership or paternity in relation to their traditional knowledge and cultural expressions; (b) right not to have ownership of traditional knowledge or cultural expressions falsely attributed to them; and (c) right not to have their traditional knowledge and cultural expressions subject to derogatory treatment including any act or omission that results in a material distortion, mutilation or alteration of the traditional knowledge or cultural expressions that is prejudicial to the honor or reputation of the traditional owners, or the integrity of the traditional knowledge or cultural expressions; and (d) right to protection from false and misleading claims to authenticity and origin

It is noted that these moral rights of traditional owners in their TK and TCE shall exist perpetually, and independently of their cultural rights.¹²⁶ Moreover, the Act recognizes additional right such as the cultural rights to maintain, control, protect and develop cultural heritage, TK and TCE as well their manifestations, and these cultural rights shall be in addition to any rights that may subsist under the existing IP laws.¹²⁷ The owners of TK and TCE rights shall have also the right to assign and conclude licensing agreements in relation to their TK or TCE ¹²⁸ and the right to fair and equitable sharing of benefits arising from commercial or industrial use of their knowledge, to be determined by mutual agreement between the parties.¹²⁹

¹²⁶The Kenyan Traditional Knowledge and Cultural Expressions Act, Art 21 (3) & (4).

¹²⁷The Kenyan Traditional Knowledge and Cultural Expressions Act, Art 23.

¹²⁸ The Kenyan Traditional Knowledge and Cultural Expressions Act, Art 22.

¹²⁹The Kenyan Traditional Knowledge and Cultural Expressions Act ,Art 24.

What is more, the Act provides for provisions regarding participatory management of the community right as well as remedies and sanctions for violation of any of the rights. In this regard, Art 25 of the Act states that the owners of TK or TCE may grant authorization for the exploitation and use of their TK or TCE themselves; or after necessary consultations, authorize the national government, county government or any other person to exploit their TK or TCE, on their behalf. The owners of TCE or TK shall, before entering into an authorized user agreement, consult the members of the community on the proposed terms and conditions of the agreement. The authorized user agreement shall provide for, in its terms and conditions on matters of (a) the benefit sharing; compensation, fees, royalties or other payments for the use; whether the use will be exclusive or non-exclusive; duration of the use and rights of renewal; disclosure requirements ; possible sharing by the owners of any IP rights arising from the use of the TCE or TK ; access arrangements; applicable controls on publication; assignment of rights, where appropriate; dispute resolution ; confidentiality and disclosure in relation to secret TK and TCEs; and respect for moral rights of the owners.¹³⁰

Finally, the Act sets up a system to ensure that the rights are effectively protected and criminalize any misuse of TK and TCEs.¹³¹ Communities further have the power to stop misuse of their TK and TCEs by obtaining civil remedies such as court injunctions and forcing companies to pay for royalties for any commercialization of TK and TCEs that has not been agreed to in advance.¹³² Overall, the Kenya's Act represents a bold and forward-thinking effort to improve and protect the TK and TCE in Kenya, and this can be taken as model for other African countries wishing to protect the TK and TCE.

5.2. WHAT KEY MESSAGE FOR ETHIOPIA?

Unlike Kenya, Ethiopia, as of yet, has no an enforceable, effective, and binding protection regime for TK and TCE. The country does not have

¹³⁰The Kenyan Traditional Knowledge and Cultural Expressions Act, Art 34

¹³¹The Kenyan Traditional Knowledge and Cultural Expressions Act, Art 37

¹³² The Kenyan Traditional Knowledge and Cultural Expressions Act , Art 39

effective *sui generis* form¹³³ of IP right system for TK and TCE, and the existing IP laws of the country are also not adequate to protect TK and TCE. As has been revealed under section 4 of this paper, the existing IP laws of the country including the copyrights and neighboring right proclamation, and the patent law are tainted by various limitations and are not adequate to protect, preserve and promote TK and TCE in the country. Moreover, even if the existing bio-diversity and ABS regimes of the country including the have tried to accord certain protection for TK associated with biodiversity and genetic resources during access to these resources; these legislations have no relevancy for protection of TCE and TK that are independent of biodiversity and genetic resources.¹³⁴ Hence, both TCE and TK are not effectively protected under the existing IP and biodiversity laws.

Nevertheless, the existing constitutional frameworks, and place given to relevant international instruments ratified¹³⁵ by the country could potentially be harnessed for an optimal TK and TCE protection. In this regard, Article 39(2) of the FDRE Constitution entitled Every Nation, Nationality and People in Ethiopia a right to express, to develop and to promote its culture; and to preserve its history. Art 41(9) of the same imposes on the state the responsibility to protect and preserve historical and cultural legacies, and to contribute to the promotion of the arts and sports, and this could potentially extend to a duty to protect and promote TK and TCE.¹³⁶ Moreover, the Constitution recognized right to property and private property is defined in Art.40 (2) of the Constitution to include any intangible product having

¹³³Even though there is the ongoing steps by Ethiopian intellectual Property Office to prepare laws of community knowledge, the efforts had not reached the legislative stage at the time of writing this paper

¹³⁴See the discussion under section 4.3 above

¹³⁵ For instance, Ethiopia ratified various human right instruments that recognized right to culture and IP rights over TCE and TK, specific WIPO treaties like the Berne Convention, and the CBD and related instruments. The country is also on the ways of acceding to WTO and assumes the obligations incorporated under the TRIPS agreement.

¹³⁶The same duty is stipulated under Art 91 of the constitution dealing with cultural objective of the country imposes government duty to support the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals, and the provisions of the Constitution, and to support the development of the arts, science and technology.

value¹³⁷, and this could potentially include communal IP rights in the areas of TK and TCE.

From now, given these constitutional frameworks that led foundation for cultural rights of the community and the related duty of the Ethiopian government to ensure fulfillments of the cultural right of the community and promote, preserve and protect cultural heritage of the country, it is overdue to ratify the Swakopmund protocol and legislate effective *sui generis* laws that learns from the experience of Kenya as recapped in the preceding subsection. The *Sui generis* legislation is a unique law complete unto itself and often created when current and existing laws are inadequate. The development of *sui generis* law offers an opportunity for indigenous peoples to participate in developing frameworks that deal with knowledge control, use and sharing, establish a bridge between customary law and national legal systems in order to secure effective recognition and protection of TK and TCE.¹³⁸ As has been stated earlier, Kenya adopted effective *sui generis* law that learns from the relevant international and regional framework, putting Kenya at the forefront of states in the global south protecting national resources and interests of local communities. It is recalled that being determined to implement the constitutional duty that requires the Kenyan government to enact law to ensure promotion, preservation and protection of community's TK and TCE with meaningful participation of the public and concerned stakeholders, the Kenyan parliament adopted new Act that sufficiently accommodate the nature and needs of TK and TCE. Consequently, this will send important message to Ethiopian government already in task to have law on TK and TCE from perspective of three key points; a determination to enact law to protect, preserve, promote, and commercialize TK and TCE in the interest of community, adopt participatory approach in course of making this law, and driving content of the law itself from the Kenyan TK and TCE Act.

Accordingly, the first thing that Ethiopian government should learn from Kenya is determination to protect, promote, and preserve TK and TCE itself. The Kenyan government appreciated the values of the cultural heritage of the

¹³⁷ FDRE Constitution, Art.40 (2)

¹³⁸Wanjohi M. Mukuha, Protection of Folklore in Kenya: The Case of Maasai Handicrafts (LL.M Thesis, University of Nairobi, 2013), P.65.

community and pressing need for legislative intervention, and this was clearly reflected in the Kenyan Constitution, Kenyan Policy on TK, TCE, and Genetic resources, and her subsequent accomplishment in ratifying the Swakopmund protocol as original member and adopting the Kenyan TK and TCE Act in conformity with the protocol on top of many African Countries and the world. To the contrary, the Ethiopian government remained reluctant toward the legal protection of TCE and TK in the interest of traditional community. Even if the Ethiopian Intellectual Property Office has recently revitalized the need for the protection of TK and TCE and is undertaking various measures, including drafting laws, this is not seriously considered; and that it seems it is almost ignored as there is no news about its progress even in the ongoing massive legal reform. Hence, Ethiopia should follow the Kenya's footsteps in this regard, accede to the Swakopmund protocol/African Regional intellectual property office (ARIPO) open for all African Union members, and usher the already triggered initiation to adopt law on protection and promotion of TK and TCE in the country.

In meantime, the other key message to Ethiopia from Kenyan experience is that she should stick to public participation¹³⁹ and consultation with concerned stakeholders¹⁴⁰ in all level law making process and incorporate public comments and suggestion in the would be draft laws on protection and promotion of TK and TCE. This is because public participation in lawmaking process is an important tool for creating fair policies/laws reflective of real needs of the community; ensuring that new legislation is effective in achieving its goals, ensuring legitimacy of proposed regulation and its compliance; increasing partnership, ownership and responsibility in implementation of adopted legislations; strengthening democracy and human rights and increasing confidence in public institutions.¹⁴¹ Thus, every important law should undergo genuine and inclusive consultations with

¹³⁹ Participation means a process of dealing with the citizens, civil society organizations (CSOs) and other interested parties to influence the development of policies and laws which affect them so as to reach at a better and acceptable decision; See National Assembly of Kenya, Public participation in Legislative Process: Factsheet No.27.

¹⁴⁰The Stakeholders are those who will be affected by the draft law under consultation; or will be involved in the implementation of the draft law under consultation; or have a stated interest in the subject matter of the draft law.

¹⁴¹The Institute for Social Accountability (TISA), Public participation Framework in County Assembly, Kenya, April.2015

every potentially affected group before it gets adopted, and such consultations should take place at all key stages in the legislative process and not only when there is already a fully drafted legislative text.¹⁴² Different levels of participation in law making process includes (1) access to information, including access to parliamentary information such as bills and reports (2) consultation and (3) active engagement through dialogue and partnership, and empowerment of the public.¹⁴³

Hence, the full and effective participation of indigenous peoples should be ensured in any developments of policies and laws on TK and TCE rights, and such laws should particularly comply with the prior informed consent of the community¹⁴⁴ Yet unlike in Kenya, the practice of legislative process in Ethiopia does not adequately make public participation and consultation, and the fate of the ongoing process to enact laws for TK and TCE may be similar. In this regard, study has confirmed that the lawmaking process in Ethiopia is initiated, formulated and adopted by the executive thereby blocking not only public participation but also a meaningful participation by Member of Parliament.¹⁴⁵ This is because most of the time members of parliaments are abided by their party discipline whether the issue is concerned with policy or not even if they have significant reservations¹⁴⁶, and hence, they are passive to express the will of the people they represented but the will of executive. Moreover, stakeholder's participation in legislative process is not only weak but also in a diminishing propensity.

Even if the principle of popular sovereignty, and right to access to information and public participation¹⁴⁷ is hinted under the Constitution, the public do not have access to relevant information including to the draft law, and these information are not released on media, website, and kept secret until the law is finally adopted and published on *negaritte gazette* as a law; and this is what we all are witnessing in the course the ongoing massive legal reform. Moreover, unlike in Kenya, there is no procedural guideline that

¹⁴²Public Consultations on Draft Legislation ,Practical Guidelines for Public Officials who are responsible for organizing public consultations in Ukraine, 2016

¹⁴³The Institute for Social Accountability (TISA),*Supra* note 141, P51

¹⁴⁴ Paul K. Sena, *Supra* note 59, P16

¹⁴⁵Atsbeha Aregawi, Practice of Policy Making process in Ethiopia: Case of HPR, (MA Thesis, AAU,2012), Pp.70-71

¹⁴⁶*Ibid.*

¹⁴⁷FDRE Constitution, Art.8.

enables the public to participate in person; consulted and actively engage in all level of law making process in Ethiopia. Whereas in Kenya, as stated earlier, there is procedure to ensure meaningful public participation and access to information in deed as well as in the constitution and other laws, and even more the country has recently prepared the public participation Bill¹⁴⁸ that consolidates the earlier practices and provide guidelines to ensure effective public participation . Thus, Ethiopia should take this good experience from Kenya in the course of enacting laws, particularly laws on TK and TCE, and put in place a system that will ensure grass root participation and consultation of the public and all concerned stakeholders, made relevant information accessible through media, website and all other possible means, solicit public and stakeholder's views at all level, and incorporate such views in the would-be draft laws.

The last and most importantly, Ethiopia is advised to draw lesson from and adapt content of her would-be *sui-generis* law for protection and promotion of TK and TCE from Kenyan TK and TCE Act, of course ,while incorporating different perspectives of Ethiopian community as can be gathered through their meaningful public participation. This because as has been discussed above, Kenyan TK and TCE Act is celebrated as the most effective *sui-generis* law that is drawn from Swakopmund protocol, the WIPO Draft articles and other relevant international framework and model laws. And hence as both Ethiopian and Kenyan community shares relatively similar traditional view as African and neighboring countries, it goes with the assertion that there is no reason for Ethiopia to reinvent what is already invented as long as transplantation fit to the actual needs of TK and TCE in the country and approved by the community.

Accordingly, the would-be TK and TCE proclamation of Ethiopia should *inter alia* provide clear definition of TK¹⁴⁹ and TCE, and criteria for their protection that can accommodate the unique needs of TK and TCE;

¹⁴⁸The Republic of Kenya, Public Participation Bill, 2018, Kenya Gazette Supplement No. 17 (Senate Bills No. 4).

¹⁴⁹ Even if community knowledge is defined under Art 2(14) of the Access to Genetic Resources and Community Knowledge Proclamation, this definition limited scope of TK to those relating to the conservation and use of genetic resources only and hence not broad enough to include all TK.

recognize communal ownership¹⁵⁰; avoid unnecessary formality for protection; put perpetual duration of protection; elaborate content of economic right to protection along with possible exceptions and limitations, moral right, right of assignment and licensing. It should also contain provisions that impose government's duty to establish a repository for documentation and maintenance registers of TK and TCEs ; provide effective means to ensure participatory management of the community right; ensure the prior informed consent and benefit sharing with concerned community for exploitation; punish and repress all acts of misappropriation and derogatory use or unauthorized use of TK and TCE, and incentivizes the indigenous communities to protect, develop, and commercialize their TK and TCE. Finally, the *sui generis* law should have provisions which recognize and respect cultural rights over TK and TCE as recognized under the relevant human right instruments and the FDRE Constitution, and make express link to right protected under the conventional IP laws in this regards.¹⁵¹

6.CONCLUDING REMARKS

Ethiopia is gifted with diverse TK and TCE that would have been potentially exploited for sustainable development of the Ethiopian people yet; arrival of globalization has created fertile ground for unjust exploitation and distortion of the TK and TCE of the country. Recently, international attention have been turned toward a *sui-generis* system to accord adequate protection to TK and TCE, and Kenya stand at forefront of the global south in this regard. In Ethiopia, there is no separate *sui-generis* IP law that protects TK and TCE, and it is also confirmed in this paper that the existing IP regimes of the country are inadequate to provide effective protection for TK and TCE. In particular, it is found that the requirement of fixation and originality, expression-idea dichotomy, limited duration of copyright, and absence of defensive protection, and the provisions of the proclamation dealing with

¹⁵⁰The communal ownership of TK is recognized under Art 5 of the Access to Genetic Resources and Community Knowledge Proclamation, but has been discussed above, the scope of the proclamation is limited to TK associated with genetic resources and that it has nor for communal ownership over TCE and independent TK

¹⁵¹ In this regards, Art 23 of the Kenyan TK and TCE Act recognizes additional right such as the cultural rights to maintain, control, protect and develop TK and TCE as well their manifestations, and states that these cultural rights shall be in addition to any rights that may subsist under the existing IP laws.

authorship and ownership made Ethiopian copyright system unsuitable to TCE. The Ethiopian neighboring right system too is not adequate to protect TCE for its limited definition of performer and obviously for its inability to accord any benefits that accrues to concerned community especially when performer is alien. Moreover, it is found that requirement of identifiable inventor, novelty, inventive steps, and limited duration under the patent law blocked/undermined patentability of TK in the country. Even if certain protections that are short of IP rights are accorded to certain categories of TK associated with genetic resources under the bio-diversity and the ABS regimes of the country, these laws too are not broad enough to protect all TCE and TK.

Therefore, it shall be the agenda of time for Ethiopian government to take cognizance of the pressing need to protect TK and TCE in the country and come up with a *sui-generis* law that rectify deficiency of the existing IP law and adequately protect, preserve, promote, and commercialize the TK and TCE. In so doing, it is suggested to follow the Kenya's footsteps, ratify the Swakopmund protocol and adopt the *sui-generis* law from Kenyan TK and TCE Act in line with relevant model laws. The would-be *sui-generis* law shall be drafted and enacted through meaningful public participation, and *inter alia* provide criteria for protection, duration and ownership that accommodate unique needs of TK and TCE; provide means to ensure prior informed consent of concerned community for exploitation and equitably share benefits arising thereof, punish all acts of misappropriation/offensive use/unauthorized use of TK and TCE, and incentivizes the communities to protect, develop, and commercialize the TK and TCE.

HUNDEEFFAMA MANA MURTII AADAA NAANNOO OROMIYAA**Azzanee Indaalammaa****Abdii Tasfaa*****Askaalee Tarfaa*******ABSTRACT**

Traditional justice systems are normally community-level dispute resolution mechanisms with non-state origins, even if subsequently recognized and regulated by the state. Some states retain a vertical structure, with the traditional system forming the lowest levels of the court system while others have a parallel system, with the traditional forum and the formal court serving alongside one another and providing the parties with a choice of forum. The Federal Democratic Republic of Ethiopia's Constitution under Art.34 (5) stipulates that the House of Peoples' Representatives and State Councils can establish or give official recognition to religious and customary courts. And added under the same provision that religious and customary courts that had state recognition and functioned prior to the adoption of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution. The same provision is enshrined under Art.62 of Oromia Regional National State Constitution. Even though, it is about three decades since these Constitutions come to effect, there is neither any customary court that is established, nor recognized by Oromia State Council. This article is about to address the opportunities and challenges there for establishment of customary court and the possible structure the customary court need to have in case of establishment. Meanwhile, qualitative research method that includes review of literature, about 67 in-depth interviews, about 36 focus group discussions and about 80 open-ended questioners are employed. And it is found that as there is good opportunity, Customary Court at kebele level and customary appellate court at Woreda Level, with its decision to be reviewed at regular court, shall be established through out the region.

Key Words: Customary Law, Customary Court, Customary Appellate Court, Regular Court, Justice.

* Barruun kun qorannoo ILOQHQS0 tin bara 2012 gaggeeffame keessaa gabaabbatee kan dhiyaate dha.

**LL.B (Yunivarsiitii Haaromayaa), LL.M (Yunivarsiitii Haaromayaa); duratti, Abbaa Seeraa Mana Murtii Aanaa, amma Qorataa Seeraa ILOQHQS0

*** LL.B (Yunivarsiitii Baahir Daar), LL.M (Yunivarsiitii Arsii); Duratti, Abbaa Seeraa Mana Murtii Aanaa, amma Qorataa Seeraa ILOQHQS0

**** BA (Yunivarsiitii Wallagaa), MA (Yunivarsiitii Addis Ababaa); Qindeessituu Garee Afaanii BATO

1. SEENSA

Dhaabbilee tajaajila abbaa seerummaa kennan amalaa fi kaayyoo adda addaa qaban kan jran yoo ta'u dhaabbilee kunneen keessaa tokko Mana Murtii Aadaa ti. Manni Murtii Aadaa tajaajila abbaa seerummaa jiraattoota ykn hawaasaaf kennuu keessatti, keessumaa ardii Afrikaa keessatti gahee olaanaa qaba.¹Tajaajjilli abbaa seerummaa mana murtii kanaan kennamu seerota mootummaadhaan tumamanii jiran irratti hundaa'ee otuu hin taane aadaa fi duudhaalee hawaasa keessa jiran bu'uura godhachuunidha.

Tajaajila abbaa seerummaa Mana Murtii Aadaatin kennamu ilaalchisee yaadota wal faalleessan lama gama hayyootaan yoo ka'an ni mul'ata. Inni tokko yeroo sochiin siyaasa diinagdee addunyaa ammayyaa'ee jiru kanatti Manni Murtii Aadaa tajaajila abbaa seerummaa kennuuf ga'umsa hin qabu kan jedhu yoo ta'u, inni biroo ammoo yeroo ammayyaa kana keessatti adeemsi salphaa wal dhabdee hiikuu danda'u kan akka Mana Murtii Aadaatu hawaasa qaromeef mala kan jedhani dha.²

Sababoota garagaraa eeruun Manni Murtii Aadaa biyyoota Afrikaa keessatti jajjabaachuu akka qaban qaamoleen garagaraa ni ibsu. Sababni inni jalqabaa maanguddoota Afrikaa fi hayyoota barnootaatin/ academician/ kan ka'u yoo ta'u, isaanis Manni Murtii Aadaa qabeenya aadaa/ cultural heritage/ Afrikaan qabduu fi Afrikaanoonni harka caalmaan jiran qabatamaan kan itti gargaaraman waan ta'eef jajjabaachuu qaba kan jedhu dha.³ Tajaajjilli abbaa seerummaa Manni Murtii Aadaatin kennamu salphaa, baasii xiqqaa fi dhaqqabamaa (accessibility) ta'uu isaatiin akkasumas sirna haqaa salphaa / simple justice sytem/ ta'uu isaatiin jajjabeeffamuu qaba kan jedhu dha.⁴ Yaadni inni biroo tajaajjilli abbaa seerummaa Mana Murtii Aadaatiin kennamu hanqinaalee kan qabu yoo ta'es, hanqinni kunneen kan sirrachuu hin dandeenye /beyond repair/ waan hin taaneef; akkasumas, xinsammuu qabatamaa hawaasaa fi sanada mirga namoomaa waliin foyyeessuun waan danda'amuuf cimsuu ni danda'ama kan jedhu dha.⁵

¹ South African Law Commission Act, Traditional Courts and the Judicial Function of Traditional Leaders, 1999, F 1, http://www.justice.gov.za/salrc/ipapers/ip12_prj108_1998.pdf gaafa 11/03/2012 kan ilaalame.

² Akkuma lak. 1^{ffaa}

³ Akkuma lak. 2^{ffaa}

⁴ Akkuma lak. 3^{ffaa}

⁵ Akkuma lak. 4^{ffaa}, F2.

Falmii biroo Mana Murtii Aadaatiin wal qabatee ka’u manni murtii aadaa akka Mana Murtii idileetti /courts of law/ ilaalamee kabajanii fi eegumsi seeraa taasifamuufi qaba moo miti kan jedhu dha.⁶ Gareen tokko, kaayyoon Mana Murtii Aadaa wal dhabdee wal falmiitootaa irratti murtii kennuun tajaajila abbaa seerummaa laachuu hanga ta’ettii fi murtiin Mana Murtii Aadaatin kenname oliyyannoodhaan mana murtii idileetti waan ilaalamuuf Manni Murtii Aadaa akka mana murtii seeraa ykn idileetti ilaalamuu qaba jechuudhaan dhiyeessu.⁷

Gareen kaanis, Manni Murtii Aadaa kun mana murtii seeraa ykn mana murtii idilee otuu hin taane jarmiyaa aadaa irratti hundaa’ee wal dhabbi hawaasa keessaatti uumamu bifa al-idilaa’aa ta’een /informal traditional dispute resolution tribunals/ kan hiiku dha. Maanguddootni ykn jaarsoliin biyyaa Mana Murtii Aadaa keessatti murtii kennan hojiin isaanii tajaajila abbaa seerummaa qofa irratti kan daanga’e otuu hin taane hawaasa keessatti seera aadaa kan tumanii fi kan raawwachiisani dha. Hojimaatni kun immoo qajeeltoo heeraa qoodinsa aangoo /separation of power/: seera hiiktuu, seera raawwachiiftuu fi seera tumtuu jedhu waliin kan wal faalleessu dha. Dabalataan, Manni Murtii Aadaa tajaajila abbaa seerummaa kennuuf ragaa kurfeessuun kan qabatu miti. Tajaajilli haqaa kenname /justice is done/ kan jedhamu adeemsi seeraa fi murtiin kenname galmaa’ee kurfaa’ee kan jiruu fi manni murtii oliyyannoo kana dhaga’u ragaa barruu ilaaluun kan dhaga’u yoo ta’e dha. Mana Murtii Aadaadhaan wal qabatee garuu, manni murtii idilee oliyyannoo dhaga’u falmii wal falmitootaa guutummaadhaan irra deebi’ee dhaga’uu baatus ijoo falmii adda baasee hubachuuf falmii Mana Murtii Aadaatti taasifame irra deebiin dhaga’a. Kun mana murtii idilee keessatti kan baratame waan hin taaneef Manni Murtii Aadaa mana murtii idileeti jechuun hin danda’amu jechuun kaasu.⁸Yaadota hayyoota garee lamaan ka’u kana wal simsiisanii deemuun biyyootni Afrikaa baay’een Mana Murtii Aadaatiif Heera isaanii keessatti beekamtii kennuun yoo itti fayyadaman mul’ata.

Heerri Mootummaa Ripaabliika Dimokraatawaa Federaalaa Itiyoophiyaa (*kana booda, Heera Mootummaa RDFI jechuun ibsama*) kew. 34 jalatti dhimmoonni seera dhuunfaa fi seera maatiin /personal and family law/

⁶ Akkuma lak. 5^{ffaa}, F11.

⁷ Akkuma lak. 6^{ffaa}, FF.11-12

⁸ Akkuma lak. 7^{ffaa}, F15

ilaalaman seera aadaatiin furmaata argachuu akka danda'an ni kaa'a. Dabalataanis, heerumti kun kwt. 78 jalatti, Manni Maree Bakka Bu'oota Uummataa Mootummaa Federaalaas ta'e kan Mootummaa Naannoo Mana Murtii Aadaa hundeessuuf ykn hundaa'ee kan jiruuf beekamtii kennuu akka danda'u aangessee jira. Heerri Mootummaa Naannoo Oromiyaas (*kana boodaHeera MNO jedhamuun ibsama*) bifuma Heera RFDIwal fakkaatuun Mana Murtii Aadaatiif beekamtii kennee jira.⁹

2. SEERA AADAA FI SIRNA HAQAA ITIYOOPHIYAA

Itiyoophiyaa keessatti seerotni ammayyaa idileeffamuun duras ta'ee booda, wal dhabdee hawaasa keessatti uumamuuf furmaata kennuun wal qabatee sirna haqaa idilee /formal justice system/ caalatti aadaa fi duudhaa hawaasa keessatti argamu gumaacha olaanaa taasisaa jiraachuu barreessitootni baay'ee ni kaasu.¹⁰ Keessummaa, baadiyyaa keessatti sirni jaarsummaa aadaa sirna jalqabatti wal dhabbii hawaasaa furu ta'uudhaan tajaajila.¹¹ Duudhaan wal dhabbii jaarsummaadhaan furuu kun nagaa fi tasgabpii mirkaneessuuf akkasumas hawaasa gidduu hariiroon kabaja qabu akka jiraatu kan taasisudha.

Itiyoophiyaan biyya uummata aadaa fi afaan tokko dubbatuun kan ijaaramte otuu hin taane biyya mallattoon ishee sab-daneessummaa taatee dha. Sabootni Itiyoophiyaa ijaaran kunneen aadaa fi afaan mataa isaanii saboota biraa irraa adda isaan taasisu kan qabani dha. Kanaaf, Itiyoophiyaa keessatti qorannoo fi qo'annoon seera aadaa irratti taasifamu kamiyyuu waa'ee seera aadaa saboota Itiyoophiyaati jechuu dha. Fkf: Oromoo, Amaara, Tigeree, Guraagee, Silxee fi kkf. Sabootni kun aadaa fi afaan mataa isaanii kan qaban waan ta'eef, waa'een seera aadaa Itiyoophiyaa yoo qoratamu dhimma seera aadaa saboota kanneeniti jechuu dha. Aadaa fi duudhaan hawaasummaa uummatni Oromoo qabu kan uummatni Tigree ykn Guraagee qabu irraa adda ta'uu mala.

⁹ Heera Mootummaa Naannoo Oromiyaa Fooyya'ee Bahe, Labsii Lak. 46/1994, Kwt. 62

¹⁰ Ayalewu Getachaw, Customary Law in Ethiopia: A Need for Better Recognition, Danish Institute for Human Right, 2012, P9 available at https://menneskeret.dk/files/media/dokumenter/udgivelser/ayalew_report_ok.pdf.

¹¹ World Bank: Legal Vice Presidency, Ethiopia Legal and Judicial Assessment, 2004, P16 available at http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/Ethiopia_SA.pdf.

Ijaarsa biyya Itiyoophiyaatin wal qabatee walitti dhufeenyi seera aadaa fi biyya ykn mootummaa Itiyoophiyaa gulantaa sadiitti hiruun ilaaluun ni danda'ama jechuun hayyootni kaa'an ni jiru. Inni jalqabaa, bara ammayyummaa dura /pre modern era/ kan jedhamu yoo ta'u, inni lamaffaa bara ammayyummaa (modern era) ykn bara sirni seeraa amayyaa / formal legal system/ diriirfamuu eegale ta'ee bara mootii Haayilasillaasee fi Dargii kan hammatudha. Inni sadaffaan, bara ammayyummaa booda kan jedhamu yoo ta'u, yeroo sirni federaalizimii sab-daneessaa hojiirra ooluu jalqabeen booda yeroo jiru kan ilaallatu dha.¹²

Bara ammayyummaan dura/ pre-modern era/ sirni mootummaa amantaa giddu galeessa taasifate iddoo muraasa bulchaa yoo tures hawaasni ykn sabni baay'een garuu seera aadaatin jireenya hawaasummaa isaa gaggeessaa kan ture dha.¹³ Yeroon kun yeroo mootiin Haayila Sillaasee Seerota garagaraa ka'uumsa isaanii biyyoota Lixaa taasifatan biyya kanatti beeksiisuu eegaleen dura yeroo jiru kan ilaallatu dha. Bara kanatti, uummatnis aadaa mataa isaatiin kan gaggeeffamu yoo ta'u, mootummaan giddu-galeessaa sirna amantaa bu'ureeffateen hoogganamaa tureera. Dhibbaan sirni mootummaa giddu galeessaas naannoo muraasa qofatti kan daanga'e ta'uu isaatin walddhibdeen hawaasa keessatti uumamu baay'een isaa seeraa fi duudhaa aadaa irratti hundaa'uun hawaasuma keessatti kan xumuramu dha.

Gulantaan inni lamaffaa bara ammayyummaa kan jedhamu yoo ta'u, bara sirni seeraa idilee (formal legal system) sadarkaa guutummaa biyyatiitti mootummaa giddu-galeessaan diriirfamuu jalqabe dha.¹⁴ Itiyoophiyaan sirna seeraa ammayyatti of madaksuu kan eegalte heera biyyattii isa jalqabaa bara 1931 ALA raggaassisuun yoo ta'es, Heerri kunii fi Heera kana fooyyeessuun Heerri bara 1955 ALA bahe waa'ee aadaa sabootaa ilaalchisee callisuu dhaan bira darbeera.¹⁵ Mootiin Haayilasillaasee sirna seeraa ammayyaa biyyattii keessatti diriirsuuf Heera biyyattii isa jalqabaa beeksisuu bira darbuun seerota dhimmota hariiroo hawaasaa, dhimmoota yakkaa fi dhimmoota daldalaa hoogganaan bifa koodiitiin baasuun hojiirra

¹² Muradu Abdo & etals, Customary law : Teaching Material, 2009, F111

¹³ Akkuma lak. 12^{f1aa}

¹⁴ Akkuma lak. 13^{f1aa}, F114

¹⁵ *The Place of Customary and Religious Laws and Practices in Ethiopia: A Critical Review of the Four Modern Constitutions*, Social Sciences Journal (2015), Vol. 4, No. 4, P92

oolcheera.Seeronni bifa koodiitiin yeroo sana bahan adda durummaan amaloota seera biyyoota dhihaa kan giddu galeessa taasifatani dha.

Sirna seeraa ammayyaa'aa diriirsuun wal qabatee seerota walakkeessa jaarraa 20^{ffaa} keessa tumaman keessaa Seerri Hariiroo Hawaasaa isa tokko.Bu'uura seera kanaatin seera aadaa irratti hundaa'uun waldhabbiin akka hiikamuuf iddoon kennameef xiqqaa ture. Yaadni kun jiraachuu isaa immoo Seera Hariiroo Hawaasaa keewwata 3347(1) irraa hubachuun ni danda'ama.

Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed.

Akka tumaa keewwata kanaatti, haala addaatiin seera kana keessatti yoo ibsameen ala seerotni aadaa kanneen barreeffamanii fi hin barreeffamne hojiirra jiran seera hariiroo hawaasaa kanaan akka geeddaraman ykn haqaman (replaced and repealed) ni ibsa.

Tumaan keewwata kanaa seera aadaa dura waldhabbi hiikuuf tajaajilaa turan Seera Hariiroo Hawaasaa waliin kan walfaallessanis ta'e wal siman dhimmichi Seera Hariiroo Hawaasaatiin haguugameera taanaan dhimma ykn wal dhabbi sana ilaalchisee kan hojiirra oolu seera aadaa otuu hin taane Seera Hariiroo Hawaasaa ta'uu kan akeeke dha.

Hariiroo seera aadaa fi mootummaa ilaalchisee gulantaan inni sadaffaa yeroo ammayyummaa booda jedhamuun kan ibsamuufi, diriirfamuu federaalizimii sab-daneessa booda yeroo jiru dha.¹⁶ Gulantaan kun raggaasifamuu Heera Mootummaa RDFI bara 1995 ALA kan jalqabu yoo ta'u, Heerri kunis seera aadaa fi Mana Murtii Aadaatiif beekamtii kennuun kan eegale dha.¹⁷ Beekamtii seera aadaa fi Mana Murtii Aadaatiif gulantaa seenaa biyya kanaa keessatti bu'uura Heera 1995 ALA baheen kenname mata dureewwan armaan gadii keessatti kan ilaallu ta'a.

2.1. SEERA AADAA FI MANA MURTII AADAA: HEERA RDFI FI HEERA NAANNOO OROMIYAA

Heera RDFI keewwata 9(1) jalatti, heerri kun seera olaanaa biyyitti akka ta'e kaa'a. Seerri, barmaatileen aadaa kamiyyuu, hojii yookiin murteen qaama

¹⁶Olitti yaadannoo lak 12^{ffaa}, F116.

¹⁷Akkuma lak. 16^{ffaa}

mootummaa kaminiyyuu kennamu heera kanaan kan walfaallessu taanaan raawwatiinsa akka hin qabne kaa'a.

Heerri RDFI kutaa garagaraa keessatti dhimma seera aadaa fi Mana Murtii Aadaatiif haguuggii kennee jira. Bu'uura keewwata 39/2/ tin sabootni hunduu afaan isaanii dubbachuu, barreessuu fi guddisuuf, akkasumas aadaa isaanii guddisuu fi beeksisuuf mirga akka qaban Heerri kun ifaan ni kaa'a. Heerri kun gaa'ila bu'uura aadaatiif raawwaramaniif keewwata 34 jalatti beekamtii kennuu dabalatee dhimmootni martii seera idileetiin qofaan ilaalamuu akka hin qabnee fi mana murtii aadaa fi mana murtii amantaa akka filannoo birootti kan akeeku dha. Waldhabbiwwan dhuunfaa fi maatii fedhii gareewwanii giddu-galeessa godhachuun mana murtii aadaa yookiin mana murtii amantaatiin ilaalamuu akka danda'an heerri mootummaa keewwata 34(5) jalatti akka filannoo birootti kaa'ee jira.¹⁸

Heera RDFI kw.78/5/ jalatti Manni Maree Bakka Bu'oota Uummataa Federaalaas ta'e, Manni Maree Mootummaa Naannolee Manneen Murtii Amantaa (Religious Court) fi Mana Murtii Aadaa (Customary Court) hundeessuu ykn beekamtii kennuu akka danda'an ni kaa'a. Bu'uura kw.34 (5) tiin waldhabbiwwan dhuunfaa fi maatii bu'uura aadaatiin ykn bu'uura seera amantaatiin ilaalamuu akka danda'an kaa'ee jira.

Heerri Mootummaa Naannoo Oromiyaas yoo ilaalamu, bifuma Heera RDFI tiin wal fakkaatuun seera aadaa fi Mana Murtii Aadaatiif beekamtii kennee jira. Heerri MNO Keewwata 62 jalattis Caffeen Mootummaa Naannoo Oromiyaa Manneen Murtii Aadaa hundeessuu ykn beekamtii kennuufii akka danda'u kaa'eera. Heerri MNO kwt.34 jalatti gaa'ila bu'uura aadaatiin raawwatameef beekamtii kennuu dabalatee dhimmootni seera maatii fi seera dhuunfaadhaan ilaalaman bu'uura seera aadaatiin ilaalamuu akka danda'an ni addeessa. Kunis kan ta'u wal falmitootni dhimma isaanii gama seera aadaatiin xumurachuuf yoo walii galani dha.

2.2. SEERA AADAA FI SEERA HARIIROO HAWAASAA ITOOPHIYAA

Sirna seeraa ammayyaa Itiyoophiyaa keessatti diriirsuun wal qabatee seerota ykn koodii bahan keessaa Seerri Hariiroo Hawaasa Itiyoophiyaa bara 1960 ALA bahe isa tokkoo dha. Hariiroo seerri aadaa fi kuusaan seera hariiroo

¹⁸ Heera Mootummaa RDFI, Kwt. 34(5)

Hawaasaa qabu kallattii lamaan ilaaluun ni danda'ama. Inni jalqabaa kuusaan or koodiin seera hariiroo hawaasaa hangam seerota aadaa kan saboota Itiyooophiyaa of keessatti hammatee bahe kan jedhu yoo ta'u, kallattiin inni biraa kuusaa seera hariiroo hawaasaa raawwatiinsa seera aadaatiif hangam iddoo kenne kan jedhu dha. Qaphxii jalqabaa ilaalchisee mormii wal falleessan lamatu mul'ata. Inni jalqabaa, Kuusaan ykn Koodii Seera Hariiroo Hawaasaa seerota aadaa biyyattii keessa turanii hammachuudhaan kan tumame otuu hin taane, aadaa fi dhuudaalee biyyoota lixaa biyyattii keessatti kan madaksuuf diriirfamee dha kan jedhan dha. Qaamoleen yaada kana kaasan yeroo seerri hariiroo hawaasaa wixineeffamuus ta'e, sana dura seerotni aadaa qoratamanii barraa'anii jiraachuu isaaniitin; akkasumas, kaayyoonumti seera haariiroo hawaasaa qopheessuu seera ammayyaa beeksisuu waan tureef, seerri aadaa bakki kennameefii hin jiru jechuun mormu.¹⁹ Yaadni inni biroo wixineessaa kuusaa Seera Hariiroo Hawaasaa kan ta'an Piroofeesar Reenii Deeviidin kan balbaloomsamu dha. Wixineessaan kun kuusaan Seera Hariiroo Hawaasaa seerota aadaa hawaasa keessa jiran hammachuun /incorporate/ qophaa'e jechuun falmu.²⁰ Malootaa fi adeemsa kan akka: seerota aadaa hammachuu (incorporation) gochuu, dhimmoota muraasa gara aadaatti qajeelchuu /explicit reference to custom/, dhimmoota seeraan hin haguugamne seerri aadaa akka haguuguuf dhiisuu /gap-filling/ fi mala kanneen birootin seera aadaatiif bakki kennamee jira jechuun kaasa.²¹

Kallattiin inni lamaffaa fi qorannoo kanaaf rogummaa qabu kuusaan Seera Hariiroo Hawaasaa raawwatiinsa seera aadaatiif hangam bakka kennee jira kan jedhu dha. Akkuma armaan dura kaafameetti seeraa aadaa ilaalchisee Kuusaan Seera Haariiroo Hawaasaa kew.3347/1/ jalatti dhimmoota kuusaa Seeraa Hariiroo Hawaasaatiin haguuggii argatan ilaalchisee, haala ifa ta'een yoo kaa'ameen alatti, seerri kana dura barreeffamaniis ta'e seerri aadaa dhimma wal fakkaataa bulchaa turan seera kanaan kan bakka bu'amanii fi kan haqamani dha jechuun kaa'eera. Bu'uura tumaa seera kanaatiin dhimmoota kuusaa Seera Hariiroo Hawaasaa keessatti haguuggii argatan ilaalchisee seerri raawwatiinsa qabu seera hariiroo hawaasaa qofa ta'uu isaati. Dhimmoota kunneen ilaalchisee seerri aadaa jiru seera hariiroo

¹⁹ Olitti yaadannoo lak.12^{ffaa}, F122

²⁰ Akkuma lak. 19^{ffaa}, F 123

²¹ Akkuma lak.20^{ffaa}, FF.123-124.

hawaasaa kana waliin wal simuu fi wal falleessuun akka ulaagaatti otuu hin kaa'amiin dhimmoota haguuggiin kennameef ilaalchisee seerri hariiroo hawaasaa guutummaadhaan seera aadaa bakka bu'ee jira. Dhimmoota hariiroo hawaasaatin haguuggii hin arganneen wal qabatee yoo jiraateef ta'e hojiirra oolmaa seera aadaa kuusaa seera hariiroo hawaasaa dhorkee kan hin jirre ta'uu tumaa seeraa kana irraa kan hubatame dha. Haa ta'u malee, tumaa seera kanaa qixa Heera RDFI tin yoo ilaalamu humni dirqisiisummaa isaa haqameera. Heerri RDFI kw.34 jalatti dhimmoota seera dhuunfaa fi seera maatiitin ilaalaman hanga wal falmitootni waliigalanii jiranitti bu'uura seera aadaatin ilaalamuu akka danda'u ni kaa'a. Kanaaf, dhimma seera dhuunfaa fi seera maatiin ilaalamu ilaalchisee tumaa Seera Hariiroo Hawaasaa armaan ol caqasame humna raawwatiinsaa hin qabu.

2.3. SEERA AADAA FI SEERA MAATII

Seera aadaa ilaalchisee tumaawwan Seera Maatii Mootummaa Rippabliika Dimookraatawaa Federaalaa Itiyooophiyaa (*kana booda, Seera Maatii RDFI jedhama*) fi Seera Maatii Mootummaa Naannoo Oromiyaa (*kana booda, Seera Maatii MNO jedhama*) keessatti ibsamani jiru. Tumaawwan kunneenis agarsiiftuuf akka mijataniif armaan gaditti ibsamuuf yaalamee jira.

Akka Seera Maatii RDFItti fuudhaa fi heerumni bu'uura aadaa walfuutotaatiin raawwatamuu akka danda'u ni kaa'a.²² Fuudhaaf heerumni sirna aadaa irratti hundaa'e raawwatame kan jedhamus dhiiraa fi dubartiin tokko akkaataa aadaa naannoo jiraataniitti yookiin akkaataa aadaa lamaan keessa tokkootti sirna fuudhaafi heeruma fudhatama qabu yoo raawwatani dha.²³ Haalli raawwatiinsa gaa'ila sirna aadaatiin raawwatamus kan murtaa'u bu'uura aadaa naannoo sanaatiin ta'a jechuu dha.²⁴

Seerri Maatii MNO haala raawwatiinsa fuudhaaf heerumaaf beekkamtii kenne keessaa tokko fuudhaaf heeruma aadaa walfuutotaa irratti hundaa'ee raawwatamu dha.²⁵ Fuudhaaf heerumni sirna aadaa irratti hundaa'ee raawwatame kan jedhamus dhiiraa fi dubartiin tokko akkaataa aadaa naannoo jiraatanitti yookiin akkaataa aadaa lamaan keessa tokkootti sirna

²²Seera Maatii Rippabilika Dimookiraatawaa Federaalawaa Itiyooophiyaa, Labsii Lak.213/2000, Kwt.1 (2).

²³Seera Maatii RDFI, Labsii Lak.213/200, Kwt.4

²⁴Seera Maatii RDFI, Labsii Lak.213/200, Kwt.27

²⁵ Seera Maatii Mootummaa Naannoo Oromiyaa, Labsii Lak. 69/1995 & 83/1996, Kwt. 19

fuudhaaf heeruma fudhatama qabu yoo raawwatani dha.²⁶Haala raawwatiinsa sirna walkaadhimmachuus ilaalchisee akkaataa baratama iddichaatiin raawwatamuu akka danda’u Seerri Maatii MNO beekkamtii kennee jira.²⁷

Bu’uura Seera RDFI fi Seera Maatii MNO tin adeemsa diiggaan gaa’ilaa gaafatamu keessaa tokko iyyata garee tokkoon ykn wal falmitoota lamaaniin dhiyaatuun yoo ta’u, Manni Murtii hanga danda’ametti wal falmitootni ykn qaamni iyyata diiggaa gaa’ilaa dhiyeesse yaada isaa akka kaasuuuf yaaluu akka qabu tumu.²⁸ Yaaliin gama Mana Murtiitin dhaddacha irratti taasifame yoo hin milkooftne wal fuutootni wal dhabdee isaanii gama jaarsaatiin akka ilaallaniif ni qajeelcha jechuun tumeera.²⁹ Kunis wal dhabbiin maatii keessatti uumame hiikuu keessatti hirmaannaa jaarsolii biyyaa fi sirna aadaa kan akeekudha.

Akka waliigalaatti, tumaawwan kunnenii fi kanneen biroo kan agarsiisan Seerri Maatii Mootummaa RDFI fi Seerri Maatii MNO seera aadaatiif beekkamtii bifa kenneen bocamuu isaaniiti.

3. CAASSEEFFAMA MANA MURTII AADAA FI ITTI FAYYADAMA SEERA AADAA: XIINXALA DAATAA

Manni murtii aadaa mana murtii idilee waliin yoo madaalamu dhaqqabamaa, adeemsa salphaa fi filatamaa kan hordofu, duudhaa fi aadaa hawaasni beekuun tajaajila haqaa kan kennu, wal falmitoota nagaan gara haariiroo isaanii duraatti kan deebisuu fi hawaasa biratti miira abbumaadhaan kan ilaalamu dha. Kanumarraan kan ka’e biyyoota baay’ee keessatti sadarkaa Heeraatti beekamtii kennuun mana murtii idilee cinaatti tajaajila haqaa idilaa’aa kennaa kan jiru dha.

Bu’uura tumaa Heera RDFI fi Heera Mootummaa Naannoo Oromiyaatiin fedhii wal falmitootaa hanga ta’etti falmii seera maatii fi seera dhuunfaan ilaalamuu danda’aan seera aadaatiin xumurachuu danda’u.³⁰ Dabalataanis, Heerronni lamaanuu qaamni seera baastu sadarkaa mootummaa Federaalaattii fi sadarkaa naannootti argaman mana murtii aadaatiif

²⁶ Seera Maatii Mootummaa Naannoo Oromiyaa, Kwt.22

²⁷ Seera Maatii Mootummaa Naannoo Oromiyaa, Kwt.11

²⁸ Seera Maatii Mootummaa Naannoo Oromiyaa, Kew.105(1) fi Seera Maatii Mootummaa Naannoo Oromiyaa, Kwt.82

²⁹ Seera Maatii RDFI, Kew.82 (2) fi Seera Maatii Mootummaa Naannoo Oromiyaa, Kwt.105(2)

³⁰Heera Mootummaa RDFI, Kwt.34(5)fi Heera Mootummaa Naannoo Oromiyaa, Kwt.34(5)

beekamtii kennuu ykn hundeesu akka danda'an ni ibsu.³¹ Kunis kan agarsiisu, wal dhabdee hawaasa keessatti namoota gidduutti uumamuu malu mana murtii idilee fi seera mootummaan tumamu qofaan furuuf itti deemuu irra mana murtii aadaa fi seera aadaa akka filannoo dabalataatti kaa'amuu dha.

Heerronni lameen armaan olitti caqasaman kunneen beekamtii ifa ta'e mana murtii aadaa fi seera aadaatiif kan kennan yoo ta'ees sadarkaa naannoo Oromiyaatti hundeeffama mana murtii aadaa fi itti fayyadama seeraa aadaa dhugoomsuuf hojiin hojjatame hanga ammaatti hin jiru. Kana jechuun garuu wal dhabdee hawaasa keessatti namoota dhuunfaas ta'e garee gidduuttii uumamu marti gama mana murtii idileetiin furmaata argachaa jira jechuu miti. Aadaan jaarsummaa fi sirni Gadaa hawaasa keessatti argamu wal dhabdee namoota gidduu jiru furuun hariiroo namootaa fi gareewwan gidduu jiru tasgabaa'aa gochuu fi tajaajila haqaa kennuu keessatti shoora olaanaa taphataa akka jiru hubachuun ni danda'ama.

3.1. HUNDEEFFAMA MANA MURTII SEERA AADAAF CARRAALEE JIRAN

Hundeeffama mana murtii seera aadaatiin wal qabatee carraawwan jiran adda baasanii beekuun tarkaanfilee itti aanuun fudhatamuuf baay'ee murteessaa dha. Carraawwan hundeeffama mana murtii seera aadaa hundeesuuf jiran hedduu ta'uu qorannoo kanaan adda bahuun yaalamee jira.

Manni murtii aadaa akka hundeeffamuu fi kanneen hundeeffamanii jiraniif beekamtiin kennamuufii akka qabu heera mootummaan ibsamee jiraachuunii fi sirnii fi aadaan waldhabdee hiikuu hawaasa keessa jiraachuun carraa guddaa hundeeffama mana murtii aadaaf haala mijeessu dha. Godinaalee fi aanolee daataan irraa funaaname itti fayyadama isaa garaagarummaa qabaatus iddoon sirna aadaatti tajaajilamuun waldhabdee isaanii itti hin hiikanne hin jiru. Godina Booraa fi Gujii Bahaa guutummaatti, Godina Shawaa Bahaa keessaa Aanaa Fantaallee (uummata Karrayyuu) fi Aanaa Dugdaa, Godina Baalee keessaa Aanaa Sawweenaa fi Raayituu, Shawaa Lixaa keessaa aanaa Tokkee Kuttaayee (sirna moyee bokkuu) keessatti uummatni dhimma isaa sirna aadaatiin xumurataa kan jiru dha.³²

³¹Heera Mootummaa RDFI. Kw.78(5) fi Heera Mootummaa Naannoo Oromiyaa, Kw.62(1)

³²Af-gaaffiiwwan Obbo Wandoosan Doonii, Perezidantii MMO Go/Booranaa, waliin gaafa 02/07/12, Obbo Sisaay Mul'ataa, Qindeessaa KTAS, MMO Go/Gujii, waliin gaafa 17/06/12,

Fakkeenyaaf, dhimmoota Mana Murtii Aanaa Libaniin ilaalaman keessaa kan jiraattoota baadiyyaa 5%-10% qofaa,³³ Mana Murtii Olaanaatti immoo 10% kan hin caallee³⁴ fi dhimmoota Mana Murtii Aanaa Yaabeellootti dhiyaatan 70% - 80% ta'an kan jiraattoota magaalaa akka ta'eetti kaafama.³⁵ Aanaa Fantaallees bifuma wal fakkaatuun manni murtii aanaa dhimmoota jiraattota magaalaa kan ilaaluu fi uummatni baadiyyaa dhimma isaa aadaan xumurachaa jiraachuu hooggansi mana murtii ibsaniiru.³⁶ Godina Baalee aanaa Sawweenaa fi Raayituu,³⁷ fi Godina Shawaa Lixaa aanaa Tokkee Kuttaaye fi Aanaa Amboo keessatti uummanni waldhabbi isaanii sirna aadaatiin xumurachaa akka jirani dha.³⁸ Akka waliigalaatti heera mootummaan beekkamtiin kennamuunii fi sirnii fi hojimaatni waldhabbi aadaan hiikuu hawaasa keessa jiraachuun isaa hundeeffama mana murtii aadaatiif haalawwaan mijatoo jiran keessaa jalqabatti ka'uu danda'u.

Hawaasni mana murtii aadaatiin tajaajilamuuf fedhiin jiraachuu carraa biroo hundeeffama mana murtii aadaatiif haala mijeessu dha. Hawaasni fedhii osoo qabuu qaamni xiyyeeffannoo kennu dhabamuu fi dogongoraan gahee mana murtii aadaa fi mana murtii hawaasummaa akka tokkotti ilaaluu hanga ammaatti manni murtii aadaa hundeeffamuu dhabe kaafama.³⁹ Haa ta'u malee, yeroo ammaa fedhiin gara aadaa ofiitti deebi'uu qabatamaan hawaasa

Obbo Joonii Bantii, Perezidaatii MMO G/Shawaa Bahaa, waliin gaafa 08/07/2012, Obbo Kabbuu Mul'ataa, Pirezidaantii Mana murtii Aanaa Amboo, Obbo Sandaabaa Hordofaa, Ogeessa Waajjira Aadaa fi Turiizimii A/T/Kuttaayee fi Obbo Caalaa Fayisaa, Dursaa Garee A/T/A/T/Kuttaayee, waliin gaafa 20/06/2011 waliin taasifame. Akkasumas, marii garee Obbo Musbahaa Abduwahaab, Du/Garee Misooma Sona Aadaa W/A/T/Go/Baalee, Aadde Abbabachi Wandimmaaganyi (Dursaa garee M/Turizimii, W/A/T/Go/Baalee), Obbo Huseen Sulxaan, Ogeessaa Afaanii W/A/T/Go/Baalee, waliin gaafa 24/06/12 taasifame.

³³ Af gaaffii Obbo Dhadacha Guuyyoo, Peresidantii MMA Liiban, waliin gaafa 17/06/12 taassifame

³⁴ Af gaaffii Obbo Wandoosan Doonii, Pirezidantii MMO Go/Booranaa, waliin gaafa 02/07/12 taassifame

³⁵ Afgaaffii Obbo Tokkummaa Caalaa, Pirezidantii Mana Murtii Aanaa Yaabelloo, waliin gaafa 02/07/12 taassifame

³⁶ Af gaaffii Obbo Mohaammad Sayiid, Pirezidantii MMA Fantaallee, waliin gaafa 09/07/12 taassifame

³⁷ Marii Obbo Jeeylaan Kadir, Pirezidantii M/M/Aanaa Sinaanaa, fi Obbo Getaahuun Baqqala, Gaggeessaa KTAS Mana Murtii A/Sinaanaa, waliin gaafa 24/06/12 taassifame

³⁸ Af-gaaffiiwwan Obbo Geetuu Tolasaa, Itti Aanaa Dura-taa'aa Abbootii Gadaa Magaalaa Amboo, waliin gaafa 20/06/2012; Injiguu Guutaa Abbaa Gadaa fi Abbaa Murtii Bokkuu Cittuu Aanaa Tokkee Kuttaayee waliin gaafa 01/07/2012 taasifame

³⁹ Af-gaaffii Obbo Isaa Boruu, Walitti Qabaa Koree Dhaabbii Bulchiinsaa fi Seeraa Caffee Oromiyaa, waliin gaafa 16/08/12 taasifame

keessa waan jiruuf manni murtii aadaa hundeeffamuu qaba jedhaniiru.⁴⁰ Keessumaa, godinaalee Gujii fi Booranaatti uummatni jireenya hawaasummaa isaa lolaa fi tola hundumaa aadaan xumurataa jiraachuu kaasuun yeroo ammaatti uummatni seera idilee irra kan aadaa akka fedhu kaasaniiru.⁴¹ Abbootiin gadaa fi jaarsoliin biyyaa qorannoo kanaan dubbifamanis yaada kaasiin ilaalchi ‘otuu aadaatti deebinee waaqatu nutti deebi’a’ jedhu uummata keessa jiraachuu ibsuun hundeeffamni mana murtii aadaa fedhii fi gaaffii keenya jedhaniiru.⁴² Keessumaa, diiggaa gaa’ilaan wal qabatee rakkoo hawaasa keessatti uumamaa jiruuf seerrii fi sirni aadaa kufuu isaati jechuun diriirfamuu sirnaa fi seeraa aadaatiif uummata bira fedhii gaabbii irraa maddeetu jira jedhu.⁴³

Jaarsoliin waldhabdee hiikan dandeettii fi fudhatamummaa qaban hawaasa keessa jiraachuun carraa biroo hundeeffama mana murtii aadaaf haala mijatoo uumani dha. Daataan funaaname akka agarsiisutti jaarsoliin biyyaa fi abbootiin gadaa akkasumas, ragoonnis jecha ragaa kennuuf dhaddachatti dhiyaatan kaka’uumsa mataa isaaniitiin abbootii dhimmaa yeroo walitti

⁴⁰ Afgaaffii Obbo Sandaaba Hordofaa, Ogeessa Waajjira Aadaa fi Turizimii A/T/Kuttaayee fi Obbo Caalaa Fayisaa, Dursaa Garee A/T/A/T/Kuttaayee, waliin gaafa 20/06/2011; Marii garee, Dambii Turcee, Dursaa Garee So/Aadaa Go/Gujii, Baay’isaa Bayyana, Ogeessa Afaanii W/A/T/Go/Gujii, Samarroo Waaree, Qorataa fi Qindeessaa Sirna Gadaa Go/Gujii, Barrisoo Olaanaa, Dursaa Garee Aadaa fi Aartii Wa/A/T/Go/Gujii, Af gaaffii Obbo Dirriibaa Tarrafaa, Daayireektara Giddu Gala Aadaa Oromoo, Waliin gaafa 5/08/2012 taassifame, Afgaaffii Obbo Alamaayyoo Haayilee, Qorataa Aadaa fi Seenaa G/Gala Aadaa Oromoo waliin gaafa 5/08/2012 taassifame

⁴¹ Marii garee, Dambii Turcee, Dursaa Garee So/Aadaa Go/Gujii, Baay’isaa Bayyana, Ogeessa Afaanii W/A/T/Go/Gujii, Samarroo Waaree, Qorataa fi Qindeessaa Sirna Gadaa Go/Gujii, Barrisoo Olaanaa, Dursaa Garee Aadaa fi Aartii Wa/A/T/Go/Gujii, Mag/Nageellee Booranaatti, waliin gaafa 18/08/12 taassifame. Akkasumas, marii garee Obbo Atilaabaachawu Aabbaabuu, Pirezidantii MMA O/Shaakisoo fi Obbo Diiqqaa Abdii, Gageessaa KTAS MMA O/Shaakisoo waliin gaafa 19/06/12 taassifame

⁴² Marii garee Abbaa Gadaa Goobana Hoolaa, Walitti Qabaa Abbootii Gadaa Oromiyaa, Abbaa Gadaa Warqinaa Tarreessaa, Abbaa Gadaa Maccaa fi miseensa Gumii Abbootii Gadaa Oromiyaa fi jaarsa biyyaa Obbo Kadir Abdii Nuur, waliin magaalaa Finfinneetti gaafa 16/08/12 taassifame. Marii: Obbo Jaarsoo Boonaa, Abbaa Gadaa Gujii duraanii fi yeroo ammaatti Yuuba, fi Obbo Ejarsa Bulgee, Jaarsa biyyaa Aanaa Gooroo Doollaa, waliin gaafa 18/06/12 taassifame. Akkasumas, marii garee Obbo Aloo Baalshoo, Miseensa Gumii Odaa Roobaa fi Walitti Qabaa A/Gadaa fi Jaarsa biyyaa Aanaa Sinaanaa fi Addee Shukurii Kadir, Haadha Siinqee, Aanaa Sinaanaa Magaalaa Roobee waliin gaafa 28/06/12 taassifame.

⁴³ Mariiwwan garee Obbo Jaarsoo Boonaa, Abbaa Gadaa Gujii duraanii fi yeroo ammaatti Yuuba, fi Obbo Ejarsa Bulgee, Jaarsa biyyaa Aanaa Gooroo Doollaa, waliin gaafa 18/06/12 taassifame. Akkasumas, marii garee Obbo Aloo Baalshoo, Miseensa Gumii Odaa Roobaa fi Walitti Qabaa A/Gadaa fi Jaarsa biyyaa Aanaa Sinaanaa fi Addee Shukurii Kadir, Haadha Siinqee, Aanaa Sinaanaa Magaalaa Roobee, waliin gaafa 28/06/12 taassifame.

araarsan jiraachuu eeraniiru.⁴⁴ Hooggansi mana murtii Godinaalee fi aanaalee garagaraa yaada kennaniin abbootiin gadaa fi jaarsoliin biyyaa wal dhabdee namoota gidduutti uumamu furuuf dandeettii fi miira tajaajiltummaa akka qaban kaasuudhaan sirna haqaa keessatti otuu hammatamanii hojiitti galan gaarii akka ta'etti kaasu.⁴⁵ Abbootiin Gadaa fi jaarsoliin biyyaa dubbifamanis wal dhabdee hawaasa keessatti dhalatu hiikuun wal qabatee ilaalchaa fi amantaa isaanii dubbii namaa jaarsummaadhaan ilaaluun daandii waaqaati jechuun kaasuun akka dirqama rabbi irraa itti kennameetti ilaalu.⁴⁶

Sirni fi seerri aadaa waldhabdee hiiku hawaasa keessa jiraachuun akka manni murtii aadaa hundeeffamuuf caarraa bal'aa kan uumu dha. Marii Abbootii Gadaa fi jaarsolii biyyaa godina garagaraatti argaman waliin taassifame irratti wal dhabdee jireenya hawaasummaa keessatti uumamuu danda'u furuuf seerrii fi sirni aadaa gahaa tahe jiraachuu kaasu. Waan maraaf: mukaaf, bineensaaf, margaaf, waaqaafii kkf hundaaf seerri waldhabdee hiiku akka jiru eeru.⁴⁷ Ogeessotni fi qorattootni aadaa Biiroo Aadaa fi Turiziimii Oromiyaa sadarkaa Aanaa hanga Naannoo jiranis yaaduma Abbootii Gadaa fi jaarsolii biyyaatiin kenname haala cimsuu danda'uun seerri aadaa gahaa fi gabbataa tahe wal dhabdee gosa kamiyyuu hiikuu danda'u hawaasa keessa kan jiru tahuu ibsaniiru.⁴⁸

⁴⁴Af gaaffiiwwan Obbo Sisaay Mul'ataa, Qindeessaa KTAS, MMO Go/Gujii waliin gaafa 17/06/12, Obbo Abdurroo Aloo, Pirezidaantii MMA Diinshoo waliin gaafa 26/06/12 taasifame

⁴⁵Afgaaffiiwwan Obbo Badriitamaan Umar, Pirezidantii MMO Go/Gujii waliin gaafa 17/06/12; Obbo Maammoo Tusii, Piredaantii MMO G/Baalee waliin gaafa 28/06/12; Obbo Wandoosan Doonii, Pirezidantii MMO Go/Booranaa waliin gaafa 02/07/12; Obbo Maatiyoos Yiggazuu, KTAS Mana Murtii Olaanaa G/L/Shawaa waliin gaafa 19/06/2012 taasifame

⁴⁶Marii garee Obbo Jaarsoo Boonaa, Abbaa Gadaa Gujii duraanii fi yeroo ammaatti Yuuba, fi Obbo Ejarsa Bulgee, Jaarsa biyyaa Aanaa Gooroo Doollaa waliin gaafa 18/06/12 taasifame; Af gaaffii obbo Aagaa Xiinxanoo, Abbaa Gadaa duraanii fi yeroo ammatti Yuuba Magaalaa Shaakkisoo waliin gaafa 19/06/12 taasifame.

⁴⁷Af gaaffii Obbo Aagaa Xiinxanoo, Abbaa Gadaa duraanii fi yeroo ammatti Yuuba Mag/Shaakkisoo, waliin gaafa 19/06/12; Marii garee Obbo Moonaa Godaanaa, Abbaa Gadaa Gujii duraanii fi yeroo ammaatti Yuuba fi Obbo Saafee Dullachaa, Jaarsa biyyaa Aanaa Wadarraa waliin gaafa 18/06/12; Marii garee Obbo Jaarsoo Boonaa, Abbaa Gadaa Gujii duraanii fi yeroo ammaatti Yuuba, fi Obbo Ejarsa Bulgee, Jaarsa biyyaa Aanaa Gooroo Doollaa waliin gaafa 18/06/12 taasifame.

⁴⁸Marii garee Dambii Turcee, Dursaa Garee So/Aadaa Go/Gujii;Baay'isaa Bayyana, Ogeessa Afaanii W/A/T/Go/Gujii; Samarroo Waaree, Qorataa fi Qindeessaa Sirna Gadaa Go/Gujii;Barisoo Olaanaa, Dursaa Garee Aadaa fi Aartii Wa/A/T/Go/Gujii waliin gaafa 18/08/12 taasifame. Af-gaaffiiwwan Obbo Abrahaam A/Macaa, Aadde Maari'am Abdo,

Jijjiirrama hawaasummaa, diinagdee fi siyaasaa muudatu waliin deemuuf seerotni mootummaan fooyya'uu ykn haqamuu danda'u. Seerrii fi sirni aadaa amala isaatiin qaama tokkoon tumameen kan labsamu otuu hin taanee turtii yeroo dheeraan hawaasa keessatti lafa qabataa kan dhufu dha. Kanaaf, seerri aadaa haala salphaa taheen amala jijjiramuu qabaaachuu dhiisuu mala. Dhimma kana ilaalchisee Abbootiin Gadaa fi Yubootni yaada kennaniin sirna Gadaa keessatti seera boodatti hafaa ta'e Gumii Gaayyootti ykn Me'ee Bokkuu irratti fooyyeessuu ykn haquudhaan seera haaraatiin bakka buusuun akka danda'amu ibsaniiru.⁴⁹ Abbaa Gadaa Gujii fi walitti qabaa Abbootii Gadaa Oromiyaa kan turan Abbaa Gadaa Aagaa Xiinxanoo yaada kennaniin bara aangoo isaanii seera digdamaa ol Yubaa fi haayyuu walitti qabuun akka fooyyessan kaasaniiru.⁵⁰ Duudhaa ykn aadaa haala qabatamaa hawaasa keessa jiru waliin kan hin adeemne akkaataa haala yeroo waliin deemuu danda'uun ni fooyya'a jedhaniiru.⁵¹ Kunis, hundeeffamaa Mana Murtii Aadaa fi itti fayyadama seera aadaatiif akka carraa ykn haala mijaawaatti ka'uu mala.

Murtiin mana murtii idileetiin kennamu kan raawwatamu waliigaltee araaraatiin yookiin manni murtii dirqisiisuun akka ta'e beekamaa dha. Murtiin jaarsoleen ykn Abbootii Gadaatiin kennamu garuu, kanaan adda dha. Abbootiin Gadaa ykn jaarsoliin biyyaa murtii bu'uura seeraa fi sirna aadaatin kennan raawwachiisuuf dandeettii fi sirni kan jiruu fi abbootiin

Ogeessa Induustirii Aadaa fi Aadde Ikiraam Ahmad Ogeeyyii Afaanii W/A/T/G/Jimmaa waliin gaafa 26/06/2012; Aadde Nagaasee Shifarraa Ogeessa Misooma Sona Aadaa fi Obbo Zarihun Baqqalaa Qindeessaa Garee Hojii Misoomaa A/T/G/W/Bahaa waliin gaafa 27/06/2012 taasifame

⁴⁹Af gaaffii Dr. Borbor Bulee, haayyuu seenaa fi sirna gadaa Booranaa, Magaalaa Dubulluq, walii gaafa 02/07/12 fi marii garee Jaarsoo Boonaa, Abbaa Gadaa Gujii duraanii fi yeroo ammaa Yuuba, fi Obbo Ejarsa Bulgee, Jaarsa biyyaa Aanaa Gooroo Doollaa waliin gaafa 18/06/12 taasifame.

⁵⁰ Marii garee Wuddee Indashawuu, Dursituu Garee Sona Aadaa, Daani'eel Isheetuu, Dursaa Garee Induustirii Aadaa fi Aartii, Zawuddinash Baqqala, Ogeessaa Aadaa Wa/Aad/Tu/Go/Sh/Bahaa, waliin gaafa 16/08/12 taasifame. Af-gaaffiiwwan Obbo Abrahaam A/Macaa, Aadde Maari'am Abdo, Ogeessa Induustirii Aadaa fi Aadde Ikiraam Ahmad Ogeessa Afaanii W/A/T/G/Jimmaa waliin gaafa 26/06/2012, Aadde Nagaasee Shifarraa Ogeessa Misooma Sona Aadaa, Obbo Amsaaluu Tolasaa Qorataa seenaa fi sirna Gadaa, Obbo Zarihun Baqqalaa Qindeessaa Garee Hojii Misoomaa A/T/G/W/Bahaa waliin gaafa 27/06/2012 taasifame.

⁵¹Marii garee Obbo Aloo Baalshoo, Miseensa Gumii Odaa Roobaa fi Walitti Qabaa A/Gadaa fi jaarsa biyyaa Aanaa Sinaanaa fi Aadde Shukurii Kadir, Haadha Siinqee Aanaa Sinaanaa waliin gaafa 28/06/12 taasifame.

dhimmaas fedhii isaaniitiin murtii raawwachaa kan jirani dha. Abbootiin Gadaa Godina Gujii fi Booranaa yaada kennaniin namni biyyaan, namaa fi uummataan bula yaada jedhu kaasuudhaan dhalataan Gujii fi Booranaa murtii Abbaa Gadaa fi jaarsa Gujii ykn Booranaa fudhachuu fi raawwachuudu didu hin jiru jedhu.⁵² Duudhaa hawaasa bira jiruun nama murtii Abbaa Gadaa dide qoqqobbiin waan irra kaa'amuuf Abbaa Gadaa kabaja guddaa qabdi jedhu.⁵³ Marii jaarsolii biyyaa Godina Jimmaa, Baalee fi Wallagga Bahaa waliin taassifameenis hawaasni duudhaa fi aadaa isaatiif kabaja guddaa qabaachuu isaatiin namni dubbii jaarsatti erga kennatee murtiin kenname raawwachuun wal qabatee rakkoon akka hin jirree kaasu.⁵⁴ Haaluma wal fakkaatuun, jaarsolii fi abbootii Gadaa Godina Shawaa Lixaa waliin taasifameen nama murtii jaarsoliin ykn Abbootiin Gadaa kennan raawwachuudu dide isaan quunnamee akka hin jirre ibsu.⁵⁵ Ogeessotnii fi qorattootni aadaas yaada kennaniin duudhaan hawaasa keessa jiru waliin jireenya irratti kan hundaa'e ta'uu isaatiin kabajni Abbootiin Gadaa fi jaarsolii biyyaatiif kennamu olaanaa waan ta'eef, murtiileen kennaman raawwachuutu qabatamaan hawaasa keessa jira jedhu.⁵⁶ Murtii Abbootii Gadaa fi jaarsolii biyyaatin kennamee jiru ofii raawwachiisuu sirni aadaa isaan dandeessisu jiraachuu fi duudhaan murtii Abbootii Gadaa kabajuu hawaasa keessa lafa qabatee jiraachuun isaa hundeeffama mana murtii aadaaf haala mijataa kan uumu dha.

⁵² Mariiwwan garee Obbo Moonaa Godaanaa, Abbaa Gadaa Gujii duraanii fi yeroo ammaa Yuuba fi Obbo Saafee Dullachaa, Jaarsa biyyaa Aanaa Wadarraa, waliin gaafa 18/06/12 Liiban Jaldeessaa, Yuuba Guuyyoo Gobbaa, Doorii Guyyoo Boruu, Doorii Jaarsoo Bokkoo, Jaarsa biyyaa Kottool Gobbaa, Godina Booranaa Magaalaa Areeroo waliin gaafa 03/07/12 taasifame

⁵³ Akkuma 52^{ffaa}.

⁵⁴ Marii Garee Jaarsoolee Magaalaa Jimmaa: Obbo Zaakir Abbaaboor, Obbo Nagaash Nagawoo, waliin gaafa 24/06/2012 taasifame, Marii : Obbo Aloo Baalshoo, Miseensa Gumii Odaa Roobaa fi walitti qabaa A/Gadaa fi jaarsa biyyaa Aanaa Sinaanaa fi Aaddee Shukurii Kadir, Haadha Siinqee Aanaa Sinaanaa, waliin gaafa 28/06/12 taasifame.

⁵⁵ Af-gaaffii Obbo Injiguu Guutaa, Abbaa Gadaa fi Abbaa Murtii Bokkuu Cittuu Aanaa Tokkee Kutaayee waliin gaafa 01/07/2012 , Shuume Tasammaa, Abbaa Gadaa A/Digga, waliin gaafa 30/06/2012 taasifame

⁵⁶ Afgaaffiiwwan Obbo Mallasa Masqalaa, W/A/T/Go/Baaletti Du/Garee Mirkaneessa Dh/Turizimii, Obbo Amaan Nashaa, W/A/T/Go/Baaletti Du/Garee In/Aadaa fi Aartii, Obbo Shibbiruu Abdoo, W/A/T/Go/Baaletti Og/Misooma Turizimii, waliin gaafa 24/06/12 taasifame. Marii garee Dambii Turcee, Dursaa Garee So/Aadaa Go/Gujii, Obbo Baay'isaa Bayyana, Ogeessa Afaanii W/A/T/Go/Gujii, Obbo Samarroo Waaree, Qorataa fi Qindeessaa Sirna Gadaa Go/Gujii, Obbo Barrisoo Olaanaa, Dursaa Garee Aadaa fi Aartii W/A/T/Go/Gujii, waliin gaafa 18/08/12 taasifame.

Manni murtii idilee xiinxala ragaa fi seeraa irratti hundaa’uun murtii kenna. Tumaa seera deemsa falmii fi seera yakkaa keessaa tokko dhugummaa jecha ragaa cimsuudhaaf jecha ragootni dhaddachatti sirna kakuu akka raawwatan taasisuu dha.⁵⁷ Qaamni raga sobaa kennes adabbii akka hordofsiisu seerri keenya ni kaa’a.⁵⁸ Haa ta’u malee, tumaaleen seeraa kunneenii fi kanneen biroo dhibbaa ragaa sobaa ittisuuf sadarkaa garagaraatti bocamanis gabaasa raawwii Mana Murtii Waliigala Oromiyaa fi Mana Hojii Abbaa Alangaa Waliigala Oromiyaa ragaan sobaa rakkoo sirna haqaa tahee kan jiru tahuun ni himama.⁵⁹ Dhimmoonni sirna aadaa giddugaleessa godhachuun kennaman garuu haqa baasuu irratti murtii mana murtii idilee akka caalu ni kaafama. Yaada Abbootiin Gadaa fi jaarsoliin biyyaa kaasaniin aadaan keessatti dhugaan kan abbaa dhugaati, mana murtiitti garuu dhugaan kan abbaa ragaati. Ummatni kakaaw Abbootii Gadaa ykn jaarsolii biyyaatin taasifame baay’ee sodaata jechuun kaasaniiru.⁶⁰ Yaada hooggansi Mana Murtii fi Biroo Aadaa fi Turizimii kaasaniin keessuma dhimma ragaa hin qabne gama Abbootii Gadaa fi jaarsoliitin xumurama akka jiruu ⁶¹ fi murtiin sobaan mana murtii idileetti murtaa’e jaarsoliin deebi’anii nannoo isaaniitti ilaalanii yoo murtii mana murtii idileettiin kenname diiguun dhugaa irratti hundaa’aanii abbaa mana murtii idileetti itti murtaa’eetti yoo murteessan akka jiru kaasaniiru.⁶² Murtii mana murtii aadaatiin haqni argamuun carraa hundeeffama isaatiif kanneen haala mijatoo uumani dha.

⁵⁷ Seera Deemsa Falmii Haariiroo Hawaasaa Itiyoophiyaa, 1956, Kwt. 261

⁵⁸ Seera Yakkaa Rippabilika DIMokiraatawaa Federaalawaa Itoophiyaa Fooyya’ee bahe, 1996, Kwt. 453

⁵⁹ Gabaasawwan Koree Fooyya’iinsa Sirna Haqaa, Gabaasa Mana Hojii Abbaa Alangaa Waliigala Oromiyaa.

⁶⁰ Af gaaffii Obbo Aagaa Xiinxanoo, Abbaa Gadaa duraanii fi yeroo ammaa Yuuba Mag/Shaakkisoo, waliin gaafa 19/06/12; marii garee Obbo Dambii Turcee, Dursaa Garee So/Aadaa Go/Gujii, Obbo Baay’isaa Bayyana, Ogeessa Afaanii W/A/T/Go/Gujii, Obbo Samarroo Waaree, Qorataa fi Qindeessaa Sirna Gadaa Go/Gujii, Obbo Barrisoo Olaanaa, Dursaa Garee Aadaa fi Aartii Wa/A/T/Go/Gujii Mag/Nageellee Booranaa waliin gaafa 18/08/12 taassifame

⁶¹ Marii Garee Obbo Dambii Turcee, Dursaa Garee So/Aadaa Go/Gujii, Obbo Baay’isaa Bayyana, Ogeessa Afaanii W/A/T/Go/Gujii, Obbo Samarroo Waaree, Qorataa fi Qindeessaa Sirna Gadaa Go/Gujii, Obbo Barrisoo Olaanaa, Dursaa Garee Aadaa fi Aartii Wa/A/T/Go/Gujii Mag/Nageellee Booranaa waliin gaafa 18/08/12 taassifame

⁶² Marii garee, Akkuma lak. 61^{ffaa}

3.2. HUNDEEFFAMA MANA MURTII AADAATIIN WAL QABATEE SODAAWWAN JIRAN

Uummatni Oromoo bara durii kaasee sirnaa fi seeraa Gadaatiin bulaa tureera. Mootummaan giddu-galeessaa hanguma humni isaa dabalaa deemu itti fayyadamni sirnaa fi seera aadaa sadarkaa garagaraatti ni hir'ata jedhameeti tilmaamama. Bakka sirni gadaa hawaasa keessatti hanga ammaatti lafa qabatee jirutti wal dhabdee sochii hawaasummaan wal qabatee namoota gidduutti uumamu aadaa fi duudhaa naannoo irratti hundaa'uun haala salphaa taheen furamuu mala. Bakka sirni gadaa qabatamaan hawaasa keessa hin jirreetti wal dhabdeen uumamu bifa idilaa'aa taheen aadaa fi duudhaa irratti hundaa'uun hiikuun carraa bal'aa qabaachuu dhiisuu mala. Hundeeffama mana murtii aadaa ilaalchisee sodaawwan jiran haala armaan gadiitti xiinxalamani jiru.

Hundeeffama mana murtii aadaatiin walqabatee sodaawwan jiran keessaa bakka muraasatti seera aadaatiin tajaajilamuuf fedhiin gad-aanaa ta'uu qorannoo kanan adda baheera. Fedhiin kunis haala sadiin ilaalamuu kan danda'u dha. Innis sochii hawaasummaa magaalaa waliin dhufu, dhiibbaa amantaa fi fedhii dargaggoota sadarkaa barumsaa garagaraa keessa darbanii jechuun kaasuu. Naannoo magaalatti hawaasa aadaa fi duudhaa garagaraa keessaatti dhalatee fi guddateetu jiraata waan taheef wal falmii jiraattoota keessatti dhalatu aadaa irratti hundaa'uudhaan xumuruuf fedhiin jiru gadi aanaa dha.⁶³ Haaluma walfakkaatuun, amantaa fi dargaggoonni sirna barnoota idilee hordofan biratti fedhiin gad-bu'uu akka danda'u sodaa jiru kaasuu. Abbootiin Gadaa, ogeessotnii fi qorattootni aadaa rakkoon sirnaa fi seera aadaatti fayyadamuu kan gadi bu'ee ta'uu kaasuun sirna cimaa hojimaataa fi seera aadaa jajjabeessuu danda'u diriirsuun fedhiin hawaasaa dhimma isaa aadaadhaan xumurachuu yeroo gabaabaatti hubannoo uumuudhaan fooyyeessuun ni danda'ama jedhu.⁶⁴

⁶³Afgaaffiiwwan Obbo Hajiib Abbaa Jabal, B/b Hoogganaa A/T/M/Jimmaa, Aadde Hindiyaa Abbaa Foggee Dursaa Garee Misooma Aadaa waliin gaafa 26/06/2012 taasifame

⁶⁴Af-gaaffii Obbo Aagaa Xiinxanoo, Abbaa Gadaa duraanii fi yeroo amma Yuuba Mag/Shaakkisoo waliin gaafa 19/06/12 taassifame, Marii garee Wuddee Indashawuu Wa/Aad/Tu/Go/Sh/Bahaa, Dursituu Garee Sona Aadaa, Daani'eel Isheetuu Wa/ Aad/ Tu/ Go/ Sh/Bahaa, Dursaa Garee Industirii Aadaa fi aartii, Zawuddinash Baqqala Wa/Aad/Tu/ Go/ Sh/Bahaatti -Ogeessaa Aadaa, Shaambal Kaasuu, Wa/Aad/Tu/ Go/ Sh/ Bahaa, Ogeessa Misooma Afaanii, Soofiyaa Mohaammad , Wa/ Aad/Tu/Go/Sh/Bahaa, Ogeettii Haambaa Socho'anii, waliin taasifame.

Abbootiin Gadaa fi jaarsoliin biyyaa naamusa gaarii qaban akkuma jiran darbee darbee, kanneen gosaan, firoomaan, fayidaan hojjachuun danda'an kan jiran ta'uu ogeessotni aadaa fi hoogansi mana murtii akka sodaatti kaasu.⁶⁵ Hooggantootni biroos yaada kennaniin Abbootii Gadaa olaano biratti rakkoon naamusaa xiqqaa ta'us, jaarsolii biratti garuu bal'inaan ni mul'ata jedhaniiru.⁶⁶ Rakkoon naamusaa kun jiraachuu Abbootiin Gadaa fi jaarsoliin biyyaa illee ni kaasu.⁶⁷ Dur Abbaa Gadaatu uummata sodaata, amma uummatatu Abbaa Gadaa sodaata jechuun rakkoo naamusaa mul'atu ibsu.⁶⁸ Ogeessootni fi qorattootni aadaa sadarkaa Aanaa fi Godinaa irratti argaman yaada kennaniinis dur dubbii gaaddisa jalati fixuutu; amma garuu hoteelatti jaarsummaaf taa'ama.⁶⁹ Iddoo birootti Jaarsoliin waan gaaddisaa jedhanii abbootii dhimmaa irraa waa barbaaduun ni jira.⁷⁰ Baasiin kun yeroo tokko, tokko dhimma isaanii gara mana murtii idileetti otuu fidan kan baasanii ol ta'a jechuun rakkoo naamusaa jiru ibsaniiru.⁷¹ Rakkoon kun akka sodaatti adda bahuu isaatiin irratti hojjatamuu kan malu dha.

⁶⁵Afgaaffiiwwan Obbo Badriitamaan Umar, Pirezidaantii MMO Go/Gujii waliin gaafa 17/06/12; Obbo Sisaay Mul'ataa, Qindeessaa KTAS, MMO Go/Gujii waliin gaafa 17/06/12 Obbo Ismaa'eel Abbaa Boor B/b Prezidaantii MMO G/Jimmaa, waliin gaafa 24/06/2012 taasifame. Marii Garee Waajjira Aadaa fi Turiizimii G/Sh/Lixaa waliin gaafa 19/06/2012 taasifame.

⁶⁶Afgaaffii Obbo Dhadacha Guuyyoo, Piresidaantii MM A Liiban, waliin gaafa 17/06/12 taasifame. Akkasumas, marii garee Obbo Mallasa Masqalaatti W/A/T/Go/Baaleetti Du/Garee Mirkaneessa Dh/Turizimii, Amaan Nashaa, W/A/T/Go/Baaleetti Du/Garee In/AAadaa fi Aartii, Obbo Shibbiruu Abdo W/A/T/Go/Baaleetti Og/Misooma Turizimii waliin gaafa 24/06/12 taasifame.

⁶⁷ Afgaaffii Abbaa Gadaa Naahim Hasan, Walitti Qabaa Abbaa Gadaa Magaalaa Jimmaa, waliin gaafa 26/06/2012 taasifame

⁶⁸Af-gaaffii Jaarsa biyyaa Dok. Kabajaa Borbor Bulee, Magaalaa Dubulliq, waliin gaafa 02/07/12 taasifame

⁶⁹Afgaaffii Obbo Musbahaa Abduwahaab, Du/Garee Misooma Sona Aadaa W/A/T/Go/Baalee, Aadde Abbabachi Wandimmaaganyi, Dursaa Garee M/Turizimii W/A/T/Go/ Baalee, Obbo Huseen Sulxaan, Ogeessaa Afaanii W/A/T/Go/Baalee, waliin gaafa 24/06/12 taasifame, Marii garee Obbo Biraanuu Wayyoo, Qorataa Seenaa W/A/T/A/O/Shaakisoo fi Aadde Faanayee Lammaa, Ogeesa Afaanii W/A/T/A/O/Shaakisoo waliin gaafa 19/06/11 taasifame.

⁷⁰Marii garee Obbo Jeeylaan Kadir, Pirezidaantii MMA Sinaanaa fi Obbo Geetaahun Baqqalaa, Gaggeessaa KTAS MMA Sinaanaa waliin gaafa 24/06/12 taasifame. Marii garee Obbo Aloo Baalshoo, Miseensa Gumii Odaa Roobaa fi Walitti Qabaa A/Gadaa fi jaarsa biyyaa Aanaa Sinaanaa fi Aadde Shukurii Kadir, Haadha Siinqee Aanaa Sinaanaa, waliin gaafa 28/06/12 taasifame.

⁷¹Heera Mootummaa Naannoo Oromiyaa Fooyya'ee Bahe, Labsii Lak. 46/1994, Kwt.62

3.3. MANA MURTII AADAA FI HAWAASA MAGAALAA

Uummata magaalaa ilaalcha, duudhaa fi afaan garaagaraa qaban irraa ijaarame jiru keessaatti hundeeffamni mana murtii aadaa bu'a qabeessa ta'uu danda'a kan jedhu sodaa dha. Bakka hawaasni waliigalaa namoota ilaalcha, duudhaa fi afaan garagaraa qaban irraa ijaaramee jiruutti hundeeffamni mana murtii aadaa haala kamiin tahuu qaba kan jedhu qaphxii qorannoon kanaan xiyyeeffannaan itti kennamee dha. Marii hoggansa mana murtii, Biiroo Aadaa fi Turizimii sadarkaa aanaa hanga naannoo jiran, ogeessota fi qorattoota aadaa akkasumas Abbootii Gadaa fi jaarsolii biyyaa waliin tureen ilaalchi sadii calaqqiseera. Manni murtii aadaa Heera Mootummaa naannootiin beekkamtiin kennamee jira. Heerri kun jiraataa magaalaa fi baadiyyaa jechuun addatti hin qoodne. Jiraataan magaalaa ta'e baadiyyaa Heera kana kabajuuf ykn ittin buluu mirgaa fi dirqama wal fakkaataa qaba. Manni murtii aadaa labsii Caffeen baasuun hundeeffame jiraattootni magaalaa baadiyyaas ittiin buluu fi kabajuu qabu kan jedhu dha. Kanaaf, addatti dhimma jiraattoota magaalaa ilaalamuu hin qabu ijannoo jedhu dha.⁷²

Yaadni biroo Abbootii Gadaa fi jaarsolii biyyaa biratti kan calaqqisu dha. Abbootiin Gadaa fi jaarsoliin, biyyaa keessumaa Godina Gujii fi Booranatti argaman namni kamiyyuu iddoo barbaadee haa dhufu akka dhalataatti mirgaa fi dirqama walqixa ta'e qaba. Jiraattootni magaalaa jiraniis iddoo biraatillee kan dhufan yoo tahe akkuma Booranaatti ykn Gujiitti ofi ilaalanii dhimma isaanii nutti kennatanii ilaalaafii jirra. Kanaaf, manni murtii aadaa haala adda taheen fedhii hawaasa magaalaa haalli itti keessummeessu hin jiraatu jedhu.⁷³

Yaadni inni dhumaa kan calaqqisu hawaasni magaalaa namoota aadaa fi duudhaa akkasumas ilaalcha garagaraa qaban irraa kan ijaarame tahuu ibsuun tajaajila haqaa kennamuuf yaadame seeraa fi sirna aadaa kamiin kennamuu mala gaaffi jedhu kaasuu manni murtii aadaa fedhii jiraattoota magaalaa addatti hin keessummeessu taanaan jiraattootni magaalaa aadaa fi duudhaa kan isaanii hin taaneen tajaajila haqaa akka argatan taassisuu taha. Kun immoo gaaffii mirgaa kaasuu mala jedhu.⁷⁴ Ogeessotni ijannoo kana mormaniis yaada kaasaniin uummatni magaalaa tahe baadiyyaa mana murtii

⁷² Af-gaaffii Obbo Maammoo Tusii, Pirezidaantii MMO G/Baalee waliin gaafa 28/06/12 taasifame

⁷³ Afgaaffii, Obbo Musbahaa Abduwahaab faa, Olitti yaadannoo lak.69^{ffaa}

⁷⁴ Af-gaaffii Obbo Wandoosan Doonii, Olitti yaadannoo lak 34^{ffaa}

idileetti tajaajila haqaa argataa kan jiru seera aadaa fi duudhaa isaa irraa maddeen sababa hin taaneef qofaa hanga ammaatti komii tahee dhiyaatee kan hin jirre tahuu caqasuun mana murtii aadaa sirnaa fi seera aadaa uummata bal'aa keessaa maddeen tajaajila haqaa kennu hundeessuun komii fida jedhamee hin tilmaamamu jedhu.⁷⁵

Abbootiin Gadaa sadarkaa naannootti yeroo ammaa tajaajilaa turanii fi yeroo tajaajila isaanii xumuran yaadota kan waliin madaaluun gaaffii dhiyaateefii yoo yaada kennan aadaan dhugaa qofa irratti hundaa'ee hojjata; aadaa biratti sobni hin jiru. Namni immoo kan sodaatu haqni yoo dabe dha. Fedhiin uummata magaalas fedhii dhugaa fi haqaati. Muuxannoo jiruunis falmii guddaa wal falmitoota saba Oromoo hin taane gidduutti uumamee dhimma isaanii ilaaltee hiikne qabna. Kanaaf, uummatni magaalaa addatti fedhii qaba jedhamee ilaalamuu hin qabu jedhaniiru.⁷⁶Ogeessootni yaada kana cimsaniis jiru.⁷⁷Dabalataanis, ogeessootni biroo yaada kaasaniin magaalaa keessatti manni murtii aadaa bifa abbootiin murtii sabaaf sablamoota biroo hirmaachisaa taheen haala ijaaramu irratti hojjachuu dha malee haala adda taheen ilaaluun hin barbaachisu jedhu.⁷⁸ Akka waliigalaatti, hawaasa magaalaa ilaalchisee uummatni ijaarsaa sab-daneessa ta'e kan qabu tahuun isaa qofti seeraa fi sirna aadaatiin wal dhabdee hiikachuu dhorkee kan hin jirre yoo ta'u, gurmaa'iimsi mana murtii aadaa bifa sabaa fi sablamoota magaalaa keessa jiran hirmaachisee fi haqummaa isaa kan mirkanaa'e yoo ta'e caalatti komii ka'uu malu hambisuun amantaa uummataa kan dabaluu tahuu qorannoo kanaan adda bahuu danda'eera.

⁷⁵Akkuma⁷⁴ffaa.

⁷⁶ Marii garee Abbaa Gadaa Goobana Hoolaa, Walitti Qabaa Abbootii Gadaa Oromiyaa, Abbaa Gadaa Warqinaa Tarreessaa, Abbaa Gadaa Maccaa fi Miseensa Gumii Abbootii Gadaa Oromiyaa fi jaarsa biyyaa Obbo Kadir Abdii Nuur, waliin magaalaa Finfinneetti gaafa 16/08/12 taasifame. Akkasumas, afaa'fiiwwan Nuur A/Fiixaa Abbaa Gadaa fi Qaadii Abbaa Boor, Jaarsa Biyyaa Aanaa Deedoo waliin gaafa 25/06/2012; Abbaa Gadaa Naahim Hasan, Walitti Qabaa Abbaa Gadaa Magaalaa Jimmaa waliin gaafa 26/06/2012; Obbo Xilahun Olaanii, Jaarsa biyyaa A/G/Giddaa waliin gaafa 30/06/2012 taasifame.

⁷⁷Afaa'fiiwwan Obbo Sandaabaa Hordofaa, Ogeessa Waajjira Aadaa fi Turiizimii A/T/Kuttaayee fi Obbo Caalaa Fayisaa Dursaa Garee A/T/A/T/Kuttaayee waliin gaafa 20/06/2011 taasifame; marii garee ogeessota A/T/A/G/Giddaa waliin gaafa 30/06/2012 taasifame.

⁷⁸ Marii garee Obbo Atilaabaachawu Aabbaabuu, Pirezidaantii MMA O/Shaakisoo fi Obbo Diiqqaa Abdii, MMA O/Shaakisoo Gageessaa KTAS waliin gaafa 19/06/12 taasifame.

3.4. MANA MURTII AADAA FI MIRGA DUBARTOOTAA

Seera aadaatiin wal qabatee hanqinni barruuleen tokko tokko kaasaan wal qixxummaa koornayaatti ilaalchisee hanqina qaba kan jedhu dha. Kunis ibsamuu kan danda’u murtii kennamu keessatti dhiiraaf looguu fi kenniinsa murtii keessatti hirmaanna dubartootaa ti. Ogeeyyiin fi qorattootni aadaa yaada kaasaniin dhimma koornayaa aadaa keessa jiru ilaalchaa fi aadaa dhuma sana irratti hundaa’uun safaramuu qaba malee dhimma aadaa qorachaa duudhaa fi hojimaata aadaa keessa jiru qixa aadaa ykn qaroomina biyyoota lixaatin safaramuu hin qabu. Dhimmi koornayaas qixuma kanaan ilaalamuu qaba. Sirna Gadaa keessatti falmii dhiiraa fi dubartii gidduutti taasifamuus dubartiidhaaf yoo looge malee kan dubartii miidhu miti.⁷⁹ Kenniinsa murtii keessattis dhimma hirmaannaa dubartootaa kan kaafnu yoo ta’e kabaja dubartiitiif yaa’ii hin dhaabbatiin jedhamti. Dhiirri haadha siinqee akkuma hin taane dubartiinis abbaa gadaa hin taatu. Kun immoo wal qixxummaa mulquu otuu hin taane safuudhuma aadaa keessa jiruu dha jedhu.⁸⁰ Ogeessootni biroo garuu murtii kennuun hirmaannaan dubartootaa sirna gadaa keessatti argamuu dhiisuu isaa wal qixxummaa dubartootaatti kan hin amanne waan taheef mirga duabrtii miidha jechuun kaasanii jiru.⁸¹

Yaada Abbootiin Gadaa kaasaniin falmiidhaan wal qabatee sirni gadaa dubartiif iddoo addaa kennee akka jiru eeru. Dhimma dubartiin keessa jirtuu hayyuu addaa cimina qabutu filatamee ilaala. Dubartiin yaa’ii dhaabuu dhiisuuf dhimma isaanii dursa ilaalama. Sirna mootummaa irra sirna gadaatu dubartiif caalatti kabaja qaba.⁸² Ragaa yoo taate dubbii dubartii dhugummaa

⁷⁹Marii garee Dambii Turcee, Dursaa Garee So/Aadaa Go/Gujii, Baay’isaa Bayyanaa, Ogeessa Afaanii W/A/T/Go/Gujii, Samarroo Waaree, Qorataa fi Qindeessaa Sirna Gadaa Go/Gujii, Barrisoo Olaanaa, Dursaa Garee Aadaa fi Aartii Wa/A/T/Go/Gujii waliin gaafa 18/08/12 taasifame. Akkasumas, af-gaaffii Obbo Abrahaam A/Macaa, Aadde Maari’am Abdo, Ogeessa Induustirii Aadaa fi Aadde Ikiraam Ahmad Ogeessa Afaanii W/A/T/G/Jimmaa waliin gaafa 26/06/2012 taasifame

⁸⁰Marii garee Dambii Turcee, Dursaa Garee So/Aadaa Go/Gujii, Obbo Baay’isaa Bayyana, Ogeessa Afaanii W/A/T/Go/Gujii, Samarroo Waaree, Qorataa fi Qindeessaa Sirna Gadaa Go/Gujii, Barrisoo Olaanaa, Dursaa Garee Aadaa fi Aartii Wa/A/T/Go/Gujii, waliin gaafa 18/08/12 taassifame. Akkasumas, af-gaaffiiwwan Aadde Nagaasee Shifarraa, Ogeessa Misooma Sona Aadaa, Obbo Amsaaluu Tolasaa, Qorataa Seenaa fi Sirna Gadaa fi Obbo Zarihun Baqqalaa, Qindeessaa Garee Hojii Misoomaa A/T/G/W/Bahaa waliin gaafa 27/06/2012 taasifame

⁸¹Af-gaaffii Dr. Tashoomaa Egeree, Daarikteera Inistiitiyuutii Qorannoo Oromoo Yuniarsiitii Jimmaa waliin gaafa 24/06/2012 taasifame

⁸²Mariiiwwan garee, Olitti yaadannoo lak. 43^{ffaa}

qaba jedhameeti tilmaama. Yoo himattes dhugaa qabdi jedhameeti jalqabuma tilmaamni fudhatama.⁸³ Hirmaannaa dubartootaa ilaalchisee bakka abbaan gadaa yaa'iif yoo ta'e haati manaa biraa hin haftu. Akka murtiitti hin hirmaanne kan taasifameef garaa lafti kan jedhuuf malee miidhuuf miti jedhu. Dubartii kunuunsuuf malee miidhuuf akka hin taane kaafama.⁸⁴ Haadhooliin siinqee yaada kaasaniin dubartii kan miidhu seeraa fi sirna Gadaa otuu hin taane ilaalcha duubatti hafa Gadaan hin beekne akka ta'etti kaasu.⁸⁵

Gama biraatiin, bu'ura sirna gadaatin seera haaraa tumuun ykn labsuun waan danda'aamuuf dubartiin keenniinsa murtii keessatti akka hirmaattu itti amannaan yaa'ii waliigalaatti bakka hayyuun, luubnii fi Abbaan Gadaa jiruutti labsamee hirmaachisummaa dubartootaa mirkaneessuun akka danda'amu Abbootiin Gadaa ni kaasu.⁸⁶ Kunis kan agarsiisu hirmaannaa fi wal qixxummaa dubartootaa ilaalchisee komii sirnaa fi seera aadaa irratti mul'atu hambisuun akka danda'amu dha.

3.5. CAASEFFAMAA FI GURMAA'IINSA MANA MURTII AADAA: MUUXANNOO BIYYOOTAA AMBAA FI YAADA OGEESSOTAA

Manni murtii aadaa sirnaa fi seera aadaa giddu-galeessa godhatee tajaajila abbaa seerummaa kennuuf gurmaa'iinsaa fi caaseeffama sirnaan deeggarame qabaachuu qaba. Gurmaa'iinsi fi caaseeffami mana murtii aadaa tajaajila kennamu bifa ifaa, salphaa fi dhaqqabamaa taasisuun qindaa'uu qaba. Gurmaa'iinsi fi caaseeffamni kunis duudhaa hawaasa keessaa madduu irratti hundaa'uu qaba. Kanuma giddu-galeessa godhachuudhaan manni murtii aadaa Naannoo Oromiyaatti hundeeffamu gurmaa'iinsaa fi caaseeffama akkamii qabaachuu qaba kan jedhu mata-duree gara garaatti qooduun daataa funaanamee fi muuxannoo biyyoota ambaa waliin akka armaan gadiitti xiinxalameera.

⁸³ Afgaaffiiwwan Abbaa Gadaa Nuur A/Fiixaa fi Qaadii Abbaa Boor, Jaarsa Biyyaa Aanaa Deedoo, waliin gaafa 25/06/2012 taasifame

⁸⁴ Mariiwwan garee, Olitti yaadannoo lak. 52^{ffaa}

⁸⁵ Af-gaaffii Addee Shukurii Kadri, Haadha Siinqee Aanaa Sinaanaa, waliin gaafa 28/06/12; Aaddee Faaxumaa Maammaa Sheekaa, Aanaa Gobbaa, waliin gaafa 27/06/12 taasifame

⁸⁶ Afgaaffiiwwan Dok. Kabajaa Borbor Bulee, Jaarsa biyyaa Magaalaa Dubulliq, gaafa 02/07/12; Obbo Aagaa Xiinxannoo, Abbaa Gadaa duraanii fi yeroo amma Yuuba Mag/Shaakkisoo waliin gaafa 19/06/12 taasifame.

3.5.1. Filaannoo Abbootii Seeraa Mana Murtii Aadaa

Galma gahiinsa kaayyoo hundeeffama mana murtii aadaatiif shoorri abbootiin seeraa aadaa taphatan olaanaa dha.Kanaaf, filannoo isaaniitiif xiyyeeffannaa kennuun barbaachisaa dha.Biyyoonnis garagaraa namoota mana murtii aadaatti abbaa seeraa ta'anii tajaajilan filachuuf haala qabatama naannoo isaanii giddugaleessa godhachuun ulaagaa garagaraa yeroo kaa'atan mul'ata. Biyyi Maalaawwii nama umrii waggaa 35 fi isaa ol, waraqaa ragaa barnootaa kan qabu, beekumsa aadaa bakka manni murtii itti hundaa'ee jiru kan qabuu fi Afaan naannoo sanaa sirnaan beekuu akka ulaagaatti kaa'ataniiru. Manni murtii aadaa kun dhimma hariiroo hawaasaa irratti akka gorsaatti kan isaan gargaaru paanaalii ykn gumii qabu. Miseensoonni paanaalii kanaa ulaagaadhuma filannoo abbootii seeraa mana murtii aadaa ta'ee, sadarkaa barnootaa kan hin barbaachifnee fi umrii waggaa 50 ta'uu qaba kan jedhu akka ulaagaatti teessifamee jira.

Biyya Naayijeeriyaa yoo ilaallu walitti qabaa abbootii seeraa mana murtii aadaa ta'anii filamuuf ogummaa seeraan muuxannoo waggaa shanii kan gaafatuu yoo ta'u, abbootiin seeraa hafan garuu miseensa hawaasaa ta'anii namoota barnoota hin qabne illee ta'uu danda'u. Biyya Zimbaabuwee keessatti immoo namoota aadaa uummataatti sirriitti hidhata qabanii fi hawaasa baadiyaa waliin hariiroo qaban akka ulaagaatti kaa'uun filatu. Muuxannoowwan biyyoota armaan olii irraa hubachuun kan danda'amu ulaagaa dhaabbataan akka hin jirree fi haala qabatama naannoo isaanii giddu-galeessa godhachuun abbootii seera manneen murtii aadaa filachaa akka jirani dha. Garuu kan isaan walfakkeessu abbaa seeraa aadaa ta'ee filatamuuf aadaa fi duudhaa naannoo sanaa beekuu akka qabu dha.

Mana murtii aadaa hundeeffamu keessatti abbootii seeraa tajaajilan filachuuf ulaagaa barbaachisan adda baafachuuf odeeffannoon abbootii gadaa, jaarsoolee biyyaa, qorattootaa fi hooggantoota manneen murtii irraa maloota adda addaatti gargaaramuun funaanamee jira.Bakkeewwan ijaarsi hawaasummaa wal dhabdee hiiku ijaaramee jiru keessatti filannoon abbootii seeraa mana murtii aadaa ijaarsa hawaasummaa fi aadaa dursa lafa qabatee jiru irratti hundaa'uu akka qabu Abbootiin Gadaa fi ogeessootni aadaa Godina Gujii Bahaa, Godina Booranaa fi Aanaa Fantaallee ni kaasu. Jaarsoliin biyyaa, ogeessootni fi qorattootni aadaa, hooggansi manneen murtii baay'inaan yaada kennaniin filannoon abbootii seeraa kallattiin

sadarkaa gandaatti jiraattoota gandaatiin ta'ee namoota aadaa fi safuu uummata Oromoo sirnaan beekan, abbootii amantaa walqixa hirmaachise, hirmaannaa dubartootaa keessattuu haadha siinqee kan qabu⁸⁷, umrii giddu-galeessa kan godhate⁸⁸, namoota hawaasa keessatti fudhatama qaban, jiraataa gandaa, Abbootii Gadaa fi jaarsolee biyyaa keessaa abbootiin seeraa aadaa filatamuu akka qabu kaasu.⁸⁹

Hirmaannaa nama barnoota qabu ilaalchisee barbaachisummaa fi hirmaannaa isaa hooggansi manneen murtii afgaaffiin taasifameef yeroo kaasan ni mul'ata. Yeroo seera aadaan hojjetamu mirgoota namoomaa kanneen heera mootummaa fi seerota idila addunyaatiin beekkamtiin kennamee fi biyyi keenya mallatteessitee jirtu sarbamuu danda'a. Qaamoleen tajaajila gorsa seeraa kennaan maamilli isaanii carraa xiqqaachuu waan jiraatuuf hanqina dandeettii abbootii seeraa aadaa kanatti gargaaramuun kaayyoon isaanii akka hin milkooftne gochuu danda'u.⁹⁰Kanaaf, abbootii seeraa aadaa filataman keessa namni barate jiraachuu akka qabu eeru.Abbaan seeraa barnoota qabu kunis murtii kennamu barreessuuf akka tajaajilu ibsu.⁹¹ Akkasumas, nama aadaa naannoo sanaa beeku ta'ee eegumsa mirga namoomaa heera keessatti taa'an akka kabajamaniif hubannoo barbaachisaa abbootii seeraa hafaniif kan kennu ta'uu akka qabu kaasu.⁹²

⁸⁷Marii garee Obbo Musbahaa Abduwahaab, Du/Garee Misooma Sona Aadaa W/A/T/Go/Baalee, Aadde Abbabachi Wandimmaaganyi, Dursaa Garee M/Turizimii, W/A/T/Go/Baalee, Huseen Sulxaan, Ogeessaa Afaanii W/A/T/Go/Baalee, waliin gaafa 24/06/12 taasifame

⁸⁸Marii garee Obbo Dajanee Kabbadaa, Obbo Alamuu Kumalaa, Aadde Ayyalech Maammoo Ogeessota Waajjira Aadaa fi Turiizimii M/Ambuu waliin gaafa 19/06/2012 taasifame

⁸⁹ Afgaaffiiwwan Obbo Rattaa Immaa, B/b Waajjira A/T/A/Deedoo, Aadde Natsannet Malaakuu, Ogeessa Misooma Aadaa fi Obbo Taaddasee Baatuu, Ogeessa Misooma Turiizimii Aanaa Deedee, Obbo Nuur A/Fiixaa, Abbaa Gadaa fi Qaadii Abbaa Boor, Jaarsa Biyyaa Aanaa Deedoo,waliin gaafa 25/06/2012 ; Obbo Maatiyoos Yiggazuu, KTAS MMO G/L/Shawaa ; Obbo Dirribaa Olii, Abbaa Seeraa Mana Murtii Olaanaa G/Sh/Lixaa waliin gaafa 19/06/2012 taasifame

⁹⁰Afgaaffii Obbo Guyyoo Waariyoo, I/A/P/MMWO waliin gaafa 16/08/2012 taasifame

⁹¹Afgaaffiiwwan Obbo Badriitamaan Umar, Pirezidantii MMO Go/Gujii, Obbo Dhadacha Guuyyoo, Piresidaantii MMA Liiban waliin gaafa 17/06/12 taasifame.

⁹²Af-gaaffii Obbo Sisaay Mul'ataa, Qindeessaa KTAS MMO Go/Gujii, waliin gaafa 17/06/12 taassifame

3.5.2. Itti Waamama Mana Murtii Aadaa

Manni Murtii Aadaa gahee hojii seeraan isaaniif kennamee qixa sirriin hojjechuu isaanii mirkaneessuuf qaamni yeroo, yeroon madaaluun kallattii kaa’u jiraachuu qaba. Manni murtii aadaa qaama itti waamamuuf qabaachuu qaba jechuu dha. Biyyoonni adda addaa itti waamama manneen murtii aadaaf qaamolee garaa garaatiif kennanii jiru. Biyya Afrikaa Kibbaatti manneen murtii aadaa sadarkaa baadiyaatti hundeesanii kan jiranii fi itti waamamni isaanii immoo hayyu duree gandaa ykn bulchitoota gandaa jedhamaniifi. Biyyoota akka Zaambiyaa fi Naayijeeriyaa keessatti immoo itti waamamni isaanii mana murtii waliigala biyyittiifi.

Akka Naannoo Oromiyaattis, manni murtii aadaa osoo hundaa’ee, itti waamamni isaanii qaama kamiif ta’uu akka qabu adda baafachuuf odeeffannoon ogeessota fi qorattoota aadaa, Abbootii Gadaa fi jaarsolii biyyaa, hooggansa mana murtii irraa funaanamee jira. Qaamoleen daataan irraa funaaname kunis itti waamama manneen murtii aadaatiif yaadota adda addaa kaasaniiru.

Manni Murtii Aadaa yeroo hundeeffamu akkuma sekteroota mootummaa biroo of danda’ee ganda irraa hanga naannootti hundeeffamuu qaba jedhu.⁹³Ogeessonni yaada kana deeggaran akka sababaatti kanneen kaasan uummanni Oromoo durii kaasee osoo dimokraasiin ammayyaa hin hundeeffamiin sirna gadaatiin of bulchaa waan tureef sirnuma kana of dandeessisuun gahaa dha jedhu. Manni Murtii Aadaa bu’uura sirna gadaatiin hundaa’uu akka qabu dha. Kunis dhiibbaa qaamolee adda addaa irraa itti dhiyaatu hambisuuf gargaara. Mana Murtii Aadaatiif beekkamtii kennuun

⁹³Mariwwan garee Obbo Abbabaa Fiixaa, Obbo Faanaa Qajeelaa fi Obbo Darajjee T/Maaram, Ogeessota Waajjira Aadaa fi Turiizimii G/Sh/Lixaa; Obbo Dajanee Kabbadaa, Obbo Alamuu Kumalaa, Aadde Ayyalech Maammoo, Ogeessota Waajjira Aadaa fi Turiizimii M/Ambuu, waliin gaafa 19/06/2012 taasifame. Akkasumas, af-gaaffii Obbo Biraanuu Alamuu, Misooma Sona Aadaa fi Aadde Baalayinesh Cammiruu, Ogeessa Misooma Afaanii Waajjira A/T/A/Diggaa, waliin gaafa 30/06/2012; Obbo Sandaabaa Hordofaa, Ogeessa Waajjira Aadaa fi Turiizimii A/T/Kuttaayee fi Obbo Caalaa Fayisaa, Dursaa Garee A/T/A/T/Kuttaayee waliin gaafa 20/06/2011; Obbo Hajiib Abbaa Jabal, B/b Hoogganaa A/T/M/Jimmaa, Aadde Hindiyaa Abbaa Foggee, Dursaa Garee Misooma Aadaa, waliin gaafa 26/06/2012; Shuume Tasammaa, Abbaa Gadaa A/Diggaa, waliin gaafa 30/06/2012; Af-gaaffii Obbo Injiguu Guutaa, Abbaa Gadaa fi Abbaa Murtii Bokkuu Cittii Aanaa Tokkee kutaayee waliin gaafa 01/07/2012; Obbo Nuur A/Fiixaa, Abbaa Gadaa fi Qaadii Abbaa Boor, Jaarsa Biyyaa Aanaa Deedoo, waliin gaafa 25/06/2012; Obbo Sisaay Mul’ataa, Qindeessaa KTAS MMO Go/Gujii waliin gaafa 17/06/12; Obbo Tokkummaa Caalaa, Pirezidantii Mana Murtii Aanaa Yaabelloo waliin gaafa 02/07/12 taassifame.

aadaa uummata Oromootiif beekkamtii kennuu akka ta'etti kaasu. Mana Murtii idilee jala galchuun kaayyoo kana akka galmaan hin geenye isa taasisa jedhu.Kanaaf, Manni Murtii Aadaa caasaa Sirna Gadaa jalatti hundaa'uu akka qabuu fi itti waamamni isaa immoo Gumii Abbootii Gadaatiif ta'uu qaba jedhu.Manni murtii aadaa mana murtii idilee irraa amala addaa waan qabuuf itti waamamni isaas mana murtii idilee jalatti ta'uu akka hin qabne eeru. Ejjennoon kunis irra caalaa Abbootii Gadaa, jaarsoolee biyyaa, Ogeessota Aadaa fi Turiizimii fi Qorattoota seenaa fi aadaa biratti kan calaqqisu dha.

Mana murtii aadaa of dandeessisuun bu'uura Sirna Gadaatiin hundeessuun itti waamamni isaa immoo Gumii Abbootii Gadaatiif taasisuuf haala qabatama amma jiruun rakkoolee adda addaas qaba. Naannoo Oromiyaa hunda keessatti haala walfakkaataa ta'een waldhabbiin Sirna Gadaatiin hiikamaa akka hin jirre dha. Fakkeenyaaf, Godina Jimmaa keessatti Sirni Gadaatiin waldhabbi hiikuun baay'ee baratamaa miti.Dhimmoonni jaarsummaa fi sirna amantaatiin kakuu raawwachuun furmaata argachaa akka jiran eeru.⁹⁴ Akkasumas, Godina Baalee, Godina Wallaga Bahaa fi G/Shawaa Lixaa Aanolee hedduu fudhachuun ni danda'ama. Kanaaf, bu'uura Sirna Gadaatiin of dandeessisuun ammatti baay'ee bu'a qabeessa akka hin taane kaasu.

Qaamoleen biroo yaada kaasaniin, Manni Murtii Aadaa hundeeffamu itti waamamni isaa mana murtii idilee jalatti ta'uu akka qabu kaasu.⁹⁵ Kanaafis akka sababaatti kan eeran Sirni Gadaa caaseffama ammayyaa Ganda, Aanaa, Godinaa fi Naannoo kan hin qabne dha. Akkasumas, qabatama amma jiruun Sirni Gadaa haala walfakkaataa ta'een naannoo Oromiyaa hunda keessatti lafa qabatee waan hin jirreef of dandeessisanii hundeessuun itti waamama

⁹⁴Marii garee Obbo Getaachoo Gurmuu, Dursaa Garee W/A/T, Birhaanuu Ayyalaa, Qorataa Seenaa fi Afaanii, Obbo Gammachuu Warquu, Dursaa Garee Misooma Aadaa,W/A/T/Aanaa Guutoo Giddaa, Obboo Xilahuun Olaanii, Jaarsa biyyaa aanaa G/Giddaa waliin gaafa 30/06/12 taasifame.

⁹⁵Marii garee Aade Wuddee Indaashawu, Aade Soofiyaa Mohaammad, Obbo Daani'eel Isheetuu, Ogeessota W/A/T/G/Shawaa Bahaa, waliin gaafa 08/07/2012 taasifame. Akkasumas, afaaffiiwwan Abbaa GadaaNaahim Hasan, Walitti Qabaa Abbaa Gadaa Magaalaa Jimmaa, waliin gaafa 26/06/2012; Obbo Dirribaa Olee, Abbaa Seeraa Mana Murtii Olaanaa G/Sh/Lixaa, waliin gaafa 19/06/2012; Obbo Taarikuu Abbabaa, Pirezidaantii Mana Murtii A/T/Kuttaayee fi Obbo Tsasfaayee Guddisaa, Abbaa A/Dh/Yakkaa Mana Murtii Aanaa T/Kuttaayee, waliin gaafa 20/06/2012 fi Obbo Kennaa Daammanaa, A/S MMA Deedoo fi Obbo Yohaannis Yifiruu, A/S MMA Deedoo waliin gaafa 26/06/2012 taasifame.

isaanii Gumii Abbootii Gadaatiif kennuun bu'a qabeessa akka hin taasifne, to'annoo fi hordoffii isaanii irratti illee rakkoo mataa isaa qabaachuu akka qabu kaasu. Kaayyoon Mana Murtii idilee fi mana murtii aadaa walduhabbiu uumamee jiruuf furmaata kennuun haqa argamsiisuu dha. Dhimmoonni sirnaan mana murtii aadaatti keessummeeffamuun murtii haqa qabeessi kennameera taanaan dhimmoonni mana murtii idileetti dhiyaatan ni xiqqaatu. Hanga kaayyoo fi galmi isaanii tokko ta'ee jirutti mana murtii aadaa hundeeffamu itti waamamni isaa mana murtii idileef ta'uu akka qabu kaasu.

Itti waamama Mana Murtii Aadaa ilaalchisee yaadotni adda addaa eeramanii kanaa fi muuxannoo biyyoota Mana Murtii Aadaatiin bu'a qabeessa ta'anii walfaana ilaaluun barbaachisaa dha. Itti waamama Mana Murtii Aadaa ilaalchisee muuxannoo biyya Naayijeeriyaa ilaaluun gaarii dha. Biyyi kun mana murtii aadaa sadarkaa gadjallaatti kutaalee biyyittii hunda keessatti maqaa adda addaa kennuun kan hundeesitee jirtu dha. Dabalataanis, Mana Murtii Aadaa hundeesuun biyya bu'a qabeessa taatee jirtu dha. Itti waamamni Mana Murtii Aadaa isaaniis seeraan Mana Murtii Waliigala biyyittiif taasisuunii jiru. Kun immoo hordoffii fi deeggarsa adda addaa kennuuf haala mijataa kan uume dha. Haala qabatama ammaa naannoo keenyaas yoo ilaalle Manni Murtii Aadaa sirna Gadaatiin of danda'ee hundaa'ee itti waamamni isaa Gumii Abbootii Gadaatiif taasisuun ammatti bu'a qabeessa ta'uu dhiisuu danda'a. Kanaaf, itti waamama Mana Murtii Aadaa Gumii Abbootii Gadaatiif kennuun sirna cimaa ijaaruu fi itti gaafatamummaa mirkaneessuu irratti hanqinni ga'uumsaa mul'achuu danda'a waan ta'eef Mana Murtii Aanaatiif osoo ta'ee irra caalaa bu'a qabeessa ta'a.

3.5.3. Faayidaa Abbootii Seeraa Mana Murtii Aadaa

Abbootii seeraa mana murtii aadaa yeroo fi humna isaanii aarsaa gochuun tajaajila ummataaf kennan faayidaa isaanii eeguun barbaachisaa dha. Muuxannoon biyya Zimbaabuwee fi Zaambiyaas kanuma agarsiisa. Kaffaltiiwwan adda addaa kanneen abbootii seeraa mana murtii aadaatiif kennamu akka qabu heerri biyya Zimbaabuwee ni dirqisiisa. Biyya Zaambiyaa keessattis abbootiin seeraa kun miindeeffamaa dhaabbataa yoo ta'u, baatanuu hanga hojjetaniin kaffalamuufii akka qabu seerri isaanii ni ibsa.

Akka Naannoo Oromiyaattis, abbootii seeraa Mana Murtii Aadaa ciccimoo horachuuf, miira tajaajiltummaa uumuu fi itti gaafatamummaa mirkaneessuuf Abbootii Seeraa Aadaatiif jajjabeessituun osoo kennameefii caalaa bu'a qabeessa ta'uu danda'a.

3.5.4. Bara Hojii Abbootii Seeraa Mana Murtii Aadaa

Bara hojii abbootii seeraa Mana Murtii aadaa haalota adda addaa irratti hundaa'uun yeroo daangessan mul'ata. Biyya Naayijeeriyaa keessatti yeroon turtii waggaa shaniif yoo ta'u, sana booda illee irra deebiin muudamuu ni danda'u. Biyyi Zimbaabuwees bara tajaajila abbootii seeraa Mana Murtii Aadaa seera isaaniitiin daangessanii jiru. Akka naannoo keenyaattis, barri hojii abbootii seeraa mana murtii aadaa daangeffamuu akka qabu hooggantootni manneen murtii fi ogeessonni Waajjira Aadaa fi Turiizimii afgaaffiin taasifameef ni kaasuu. Daanga'uun bara hojii isaanii abbootiin seeraa hojii isaanii sirnaan akka raawwatanii fi bara hojii isaanii boodatti maqaa badaa akka hin horanneef of eeggannoo akka taasisaniif isaan akka gargaaru eeru.⁹⁶

Haa ta'u malee, namoota hawaasa biratti fudhatamummaa olaanaa qabanii fi tajaajila kennuuf fedhii qaban marsaa tokkoo ol haala tajaajiluu danda'aniis kaa'amu akka qabu dha.⁹⁷ Barri tajaajila isaanii kunis haala ifaa ta'ee seeraan kaa'amu akka qabu namoonni af-gaaffiin taasifameef tokko, tokko ni kaasuu.⁹⁸ Haala addaatiin garuu, abbootiin seeraa miira tajaajiltummaa qaban, naamusa gaarii agarsiisan, umriin isaanii hojii sirnaan akka hojjatan isaan taasisu fi kanneen biroo tajaajila abbaa seerummaa kennisiisu danda'an guutan marsaa biroo illee irra deebiin filatamuu danda'u.

⁹⁶ Marii garee Obbo Musbahaa Abduwahaab, Du/Garee Misooma Sona Aadaa W/A/T/Go/Baalee, Aadde Abbabachi Wandimmaaganyi, Dursaa Garee M/Turizimii W/A/T/Go/Baalee, Obbo Huseen Sulxaan, Ogeessaa Afaanii W/A/T/Go/Baalee, waliin gaafa 24/06/12 taasifame. Akkasumas, af-gaaffiiwwan Obbo Kabbuu Mul'ataa, Pirezidaantii MMA Amboo waliin gaafa 19/06/2012; Obboo Badriitamaan Umar, Pirezidaantii MMO Go/Gujii, waliin gaafa 17/06/12; Obbo Dirriibaa Olii, Abbaa Seeraa MMO G/Sh/Lixaa waliin gaafa 19/06/2012 taasifame.

⁹⁷ Marii garee Aadde Maakiddaa Waaqoo, Dursituu Garee Aadaa, Wasanee Bajigaa, Ogeettii Misooma Aadaa, Haabtaamuu Asfawuu fi Massalachi Tafarraa, Ogeessota Aadaa Aanaa Gobbaa waliin gaafa 27/06/12 taasifame. Akkasumas, af-gaaffii Obbo Awwal Amaan, Ogeessa Aadaa Aanaa Diinshoo waliin gaafa 28/06/12 taassifame

⁹⁸ Afgaaffii Obbo Rattaa Immaa, B/b Waajjira A/T/A/Deedoo, Aadde Natsannet Malaakuu, Ogeessa Misooma Aadaa fi Obbo Taaddasee Baatuu, Ogeessa Misooma Turiizimii Aanaa Deedoo waliin gaafa 25/06/2012 taasifame

3.5.5. Bilisummaa fi Itti gaafatamummaa Abbootii Seeraa Mana Murtii Aadaa

Biyyoonni garaa, garaa abbootiin seeraa Mana Murtii Aadaa aangoo seeraan isaaniif kennamee jiru qixa sirriin hojiirra yoo hin oolchine itti gaafatamummaa akka hordofsiisuu danda’u seera isaanii keessatti ibsanii jiru. Biyya Naayijeeriyaa keessatti abbootiin seeraa aadaa hojiirraa kan gaggeeffaman tajaajila abbaa seerummaa kennuuf sammuudhaan yoo dadhaban, dandeettii yoo dhaban, yakkaan balleessaa yoo jedhamanii fi badii naamusaa yoo agarsiisani dha.

Biyya Zimbaabuwee keessatti immoo abbaan seeraa, seera aadaa giddu-galeessa godhachuun dhimmoota akka ilaalu dirqamni itti kennamee jiru yoo bahachuu baate hojiirraa gaggeeffama. Adeemsa itti hojii irraa gaggeeffamuu qaban heeraa fi seera isaanii keessatti kanneen tarreeffamanii jiran qofaan raawwatama. Yeroo hojii isaanii raawwatan garee hundumaa walqixaa fi haala sirnaawaa ta’een ilaaluu akka qaban seerri dirqama kaa’ee jira. Abbootiin seeraa kun miseensa dhaaba siyaasaa kamuu ta’uu akka hin qabne seerri ibseera. Yeroo dhimma isaanitti dhiyaate ilaalan wantoota akka sanyii, bakka dhufaatii, gosaa, saala, ilaalcha yookiin siyaasa giddu galeessa godhachuun garee addaan baasuu hin qaban. Kan heerrii fi seerri jedheen ala bahuun looganii yoo argaman hojiirraa kan gaggeeffaman ta’u.

Naannoo keenya keessattis bilisummaa fi itti gaafatamummaan abbootii seeraa mana murtii aadaa maal ta’uu akka qabu adda baafachuuf daataan funaanamee jira. Dhimmi muudama irraa gaggeessuu sirna aadaa keessaa madduu akka qabu hooggantootni manneen murtii afaaffiin taasifameef ni kaasu. Gochaawwan akka aadaa naannoo sanaatti safuu hawaasaa tuqu dalagee argameera taanaan hojiirra gaggeeffamuu akka qabu kaasu.⁹⁹ Muudama isaanii irraa gaggeessuun seeraan adda bahee kaa’amuu akka qabus ogeessonni Waajjira Aadaa fi Turiizimii afaaffiin taasifameef ni kaasu.¹⁰⁰ Haaluma kanaan, gochaawwan abbootii seeraa aadaa muudama

⁹⁹Af-gaaffiiwwan Obbo Sisaay Mul’ataa, Qindeessaa KTAS MMO Go/Gujii waliin gaafa 17 /06/12 taasifame. Akkasumas, marii gare Obbo Atilaabaachawu Aabbaabbu, Pirezidaantii MMA O/Shaakisoo fi Obbo Diiqqaa Abdii, KTAS MMA O/Shaakisoo waliin gaafa 19/06/12 taasifame.

¹⁰⁰Afgaaffiiwwan Obbo Rattaa Immaa, B/b Waajjira A/T/A/Deedoo, Aadde Natsannet Malaakuu, Ogeessa Misooma Aadaa fi Obbo Taaddasee Baatuu, Ogeessa Misooma Turiizimii Aanaa Deedoo, waliin gaafa 25/06/2012 taasifame.

irraa kaasan bu'uura aadaatiin iddoo, iddootti garaagarummaa yoo qabaateyyuu wantootni akka yakka raawwachuu, amanamummaa dhabuu, fedhii hojii dhabuu, ganda gadhiisee bahuu, sababa dhibeetiin dirqama bahuu dadhabuu fi kanneen biroo seeraan ifatti kaa'amaniin osoo bara hojii isaanii hin xumuriin hojii isaanii irraa gaggeeffamuu qabu.

3.5.6. Caaseffama Sirna Oliyannoo Mana Murtii Aadaa

Manni Murtii Aadaa akka naannoo keenyaatti hundeeffamu mana murtii aadaa oliyannoo dhagahu qabaachuu fi dhiisuu isaa irratti odeeffannoo Abbootii Gadaa, jaarsoolee biyyaa, ogeessota, qorattootaa fi hooggantoota mana murtii idilee irraa funaanamee jiru haala armaan gadiitiin muuxannoo biyya hambaa waliin xiinxalamuu yaalameera. Kanaafis, yaadotni adda addaa akka jiru kaasaniiru.

Qorattoota seenaa, ogeessota aadaa fi turiizimii akkasumas abbootii gadaatiif afgaaffiin taasifameen manni murtii aadaa akka naannoo keenyaatti hundeeffamuuf jiru caasaa oliyannoo sadarkaa aanaa irratti qabaachuu akka qabu eeru.¹⁰¹ Qaamni oliyyata dhaga'u of danda'ee mana murtii idilee irraa adda kan ta'e hundaa'uu akka qabu kaasu.¹⁰² Manni murtii idilee oliyyataan dhimmicha ilaala taanaan aadummaan isaa hafuu akka danda'u soda qaban kaasu.

Qabatamaanis, Godinoota tokko tokko keessatti murtiiwwan aadaan kennaman oliyyata mata isaanii qabachuun yeroo ilaalaman mul'ata. Fakkeenyaaf, Godina Baalee keessatti dhimmoonni bifa jaarsummaan kan xumuramanii fi namni murtii jaarsoolee irraa komii qabuuf caasaan oliyannoo akka jiru kaasu. Dhimmoonni jalqaba irratti gara warraatti dhiyaatu. Dhimmoota warraan furmaata argachuu hin dandeenye gara gosaatti geffamu. Murtii gosaa fudhachuu kan dide irratti qoqqobbiin

¹⁰¹ Afgaaffiiwwan Jaarsa biyyaa Dok. Kabajaa Borbor Bulee, Magaalaa Dubulliqiitti gaafa 02/07/12; Aadde Nagaasee Shifarraa, Ogeessa Misooma Sona Aadaa, Obbo Amsaaluu Tolasaa, Qorataa Seenaa fi Sirna Gadaa, Obbo Zarihun Baqqalaa, Qindeessaa Garee Hojii Misoomaa A/T/G/W/Bahaa, waliin gaafa 27/06/2012; Obboo Badriitamaan Umar, Pirezidantii MMO Go/Gujii waliin gaafa 17/06/12; Obbo Sisaay Mul'ataa, Qindeessaa KTAS MMO Go/Gujii, waliin gaafa 17/06/12 taassifame.

¹⁰² Af-gaaffiiwwan Aadde Nagaasee Shifarraa, Ogeessa Misooma Sona Aadaa, Obbo Amsaaluu Tolasaa, Qorataa Seenaa fi Sirna Gadaa, Obbo Zarihun Baqqalaa, Qindeessaa Garee Hojii Misoomaa A/T/G/W/Bahaa waliin gaafa 27/06/2012; Obboo Badriitamaan Umar, Pirezidantii MMO Go/Gujii; Obbo Sisaay Mul'ataa, Qindeessaa KTAS MMO Go/Gujii waliin gaafa 17/06/12 taassifame

hawaasummaa irratti akka dabarfamu kaasu.¹⁰³ Dhimmi isaa gosatti kan ulfaatu yoo ta'e immoo gara waayyuutti dabarfama. Dhimmoonni sadarkaa kanatti furmaata hin arganne gara Abbaa Gadaatti dabarfamaa akka jiran eeru.¹⁰⁴

Boorana keessattis jalqaba irratti dhimmi jaarsa ollaatiin ilaalama. Kan jaarsa olla irra darbe hayyuun ilaalama. Dhimmoonni hayyuudhaan furmaata hin arganne gara Abbaa Gadaatti dabarfamu. Hayyuun dhimmicha ilaalee murtii osoo hin kenniin garuu oliyyachuun hin danda'amu. Hayyuun yakka ciccimoo kanneen akka ajjeechaa yoo Abbaan Gadaa qajeelche malee ofii isaa hin ilaalu. Kallattiidhaan Abbaa Gadaatu ilaala.¹⁰⁵ Abbaa Gadaa irraa gara Gumii Gaayyooti oliyyanni fudhatama. Murtiin dhumaa kan Gumii Gaayyooti.¹⁰⁶ Gumiin Gaayyoo waggaa saddeetitti kan raawwatu muudama dha. Kanaan ala yaa'ii yeroo garagaraatti waan ta'uuf dubbii ilaalee murtii kennuu danda'a.¹⁰⁷

Karrayyuunis sirna oliyyannoo akka qaban kaasu. Dhimmoonni ciccimoon gosaan kanneen sasalphaa ta'an immoo jaarsaan ilaalamu. Waldhabbiin kamuu aadaan furmaata argachaa jira. Karrayyuun gosa qaba. Gosti immoo bulchaa ykn gaggeessaa qaba. Dhimmoonni sasalphaan jaarsaan araara argata. Dhimmoota sasalphaa ta'anii kanneen jaarsaan furmaata argachuu hin dandeenye gara bulchaatti ergamu. Bulchaan immoo yaa'ii gosaa walitti qabee mariisuu murtii dabarsa. Waldhabbiin namoota gosa adda addaa

¹⁰³Marii garee Obbo Musbahaa Abduwahaab, Du/Garee Misooma Sona Aadaa, W/A/T/Go/Baalee, Aadde Abbabachi Wandimmaaganyi, Dursaa Garee M/Turizimii, W/A/T/Go/Baalee, Obbo Huseen Sulxaan, Ogeessaa Afaanii, W/A/T/Go/Baalee waliin gaafa 24/06/12 taasifame

¹⁰⁴Marii garee Obbo Aloo Baalshoo, Miseensa Gumii Odaa Roobaa fi Walitti Qabaa A/Gadaa fi Jaarsa Biyyaa Aanaa Sinaanaa fi Aadde Shukurii Kadir, Haadha Siinqee Aanaa Sinaanaa, waliin gaafa 28/06/12; Obbo H/Huseenii K/Husee fi Awwal Amaan, Jaarsa biyyaa Magaalaa Diinshoo waliin gaafa 27/06/12 taassifame.

¹⁰⁵Af-gaaffii Injiguu Guutaa, Abbaa Gadaa fi Abbaa Murtii Bokkuu Cittuu Aanaa Tokkee kutaayee waliin gaafa 01/07/2012. Akkasumas, marii garee Jaarsoolee Magaalaa Jimmaa: Obbo Zaakir Abbaa Boor, Obbo Nagaash Nagawoo, Aadde Abbabech Amanee, waliin gaafa 24/06/2012 taasifame.

¹⁰⁶Afgaaffiiwwan Obbo Musbahaa Abduwahaab, Du/Garee Misooma Sona Aadaa W/A/T/Go/Baalee, Aadde Abbabachi Wandimmaaganyi, Dursaa Garee M/Turizimii W/A/T/Go/Baalee, Obbo Huseen Sulxaan, Ogeessaa Afaanii, W/A/T/Go/Baalee, waliin gaafa 24/06/12 taasifame. Akkasumas, marii garee Biraanuu Wayyoo, Qorataa Seenaa W/A/T/A/O/Shaakisoo fi Faanayee Lammaa, Ogeessa Afaanii W/A/T/A/O/Shaakisoo, waliin gaafa 19/06/11 taassifame.

¹⁰⁷Afgaaffiiwwaniifi marii garee, Akkuma 106^{ffaa}.

lama gidduutti yoo ta'e immoo bulchaan gosa isa miidhee yookiin himatamaa walitti qabuun mariisisee dhimmicha ilaalu. Jaarsa gosa sana hin taanes ni waamamu. Gosti dhimma sana ilaalanii waan irra gahan jaarsoleef ibsuun nuti gama keenyaan kana murteessinee isin immoo waan isinitti fakkaate murteessaa jedhama. Badiin jiraannaan badii raawwateera jedhamee itti murtaa'ee qaama waldhabe walitti araarfamaa kan jiru ta'uu isaa nuuf kaasaniiru.¹⁰⁸

Gujiittis haalli dhimmoonni itti ilaalaman sadarkaa kan qabani dha. Dursa jaarsatu ilaala.Namni murtii jaarsoolee irraa komii qabu gara Abbaa Gadaa Hookkuutti dhimma isaa dabarfata.Namni Abbaa Gadaa Hokkuutti hin quufne Abbaa Gadaa maatiitti geeffata. Qaamni murtii Abbaa Gadaa Maatiitti walii hin galle Abbaa Gadaa Uraagaatti geeffata. Murtiin Abbaan Gadaa Uraagaa isaa dhumaati. Namni murtii Abbaa Gadaa kana dide irratti qoqqoobbiin hawaasummaa kan taasifamu dha.¹⁰⁹Gareen yaada kana deeggaran dhugaa hawaasa keessa jiru kana akka fakkeenyaatti kaasuun manni murtii aadaa hundeeffamuuf jiru caasaa oliyyannoo dhaga'u yoo xiqqaate sadarkaa aanaatti qabaachuu akka qabaatu kaasu.

Yaadni biroo manni murtii aadaa caaseffama oliyyannoo qabaachuu akka hin qabne kaasu. Yaadni kun irra caalaa hooggantoota mana murtii fi abbootii seeraatiin kan calaqqisaa jiru dha.¹¹⁰Murtii mana murtii aadaatiin kennamee jiru irraa qaamni komii qabu oliyyataan gara mana murtii idileetti fudhachuu akka qabu kaasu. Gama birootiin immoo Murtiin Mana Murtii aadaatiin kennamee jiru bifa oliyyannoo osoo qabaachuu baatee yaadni jedhus kan jiru dha. Dhimmoonni erga sirna aadaatiin ilaalamanii booda bifa oliyyannootiin mana murtii idileetti dhiyaachuu akka hin qabne dha.Qaamni murtii kennamee jiru irraa komii qabu bifa oliyyannootiin osoo hin taane kallattiidhumaan himannaa isaa mana murtii idileetti dhiyeeffachuu akka

¹⁰⁸Marii garee, Olitti yaadannoo lak. 103^{ffaa}

¹⁰⁹Afgaaffiiwwan Moonaa Godaanaa , Abbaa Gadaa Gujii duraanii fi yeroo ammaatti Yuuba fi Obbo Saafee Dullachaa, Jaarsa biyyaa Aanaa Wadarraa waliin gaafa 18/06/12 taasifame

¹¹⁰Af-gaaffiiwwan Obbo Maatiyoos Yiggazuu, KTAS MMO G/L/Shawaa; Obbo Dirribaa Olee, Abbaa Seeraa MMO G/Sh/Lixaa waliin gaafa 19/06/2012; Obbo Ismaa'eel Abbaa Boor, B/b Prezidaantii MMO G/Jimmaa waliin gaafa 24/06/2012; Obbo Kabbuu Mul'ataa Pirezidaantii MMA Amboo waliin gaafa 19/06/2012; Obbo Taarikuu Abbabaa PMM A/T/Kuttaayee fi Obbo Tasfaayee Guddisaa, Abbaa A/Dh/Yakkaa MMA T/Kuttaayee waliin gaafa 20/06/2012 taasifame.

qabu kaasu.¹¹¹ Sodaan gama kanaan jiru immoo murtii mana murtii aadaa firii dhabsiisuu danda'a kan jedhu dha. Dabalataan gareenis murtii mana murtii aadaatiif iddoo kennuu dhiisuu danda'a.Kun immoo Manni Murtii Aadaa kaayyoo isaa galma akka hin geenye taasisuu danda'a.

Waliigalaatti, Manni Murtii Aadaa caasaa oliyyannoo mataa isaa qabaachuu irratti garaagarummaan yoo jiraateyyuu muuxannoo biyya ambaa fi haala qabatama jiru ilaaluun barbaachisaa dha. Akka fakkeenyaatti, muuxannoo biyya Maalaawwii ilaaluun ni danda'ama. Yaadotni, keessattuu qorattoota seenaa fi aadaa, ogeessota aadaa fi turiizimii fi Abbootii Gadaatiin kennamanis Manni Murtii Aadaa caasaa oliyyannoo qabaachuu akka qabu dha.Kanaaf, Manni Murtii Aadaa akka naannoo keenyaatti hundeeffamuuf deemu caasaa oliyyannoo of danda'e sadarkaa Aanaatti qabaachuu akka qabu dha.

3.6. MIRGA MURTII MANA MURTII AADAATIIN KENNAME GARA MANA MURTII IDILEETTI DHIYEEFFACHUU

Hundeeffama Mana Murtii Aadaa ilaalchisee dhimmoota falmii kaasan keessaa tokko murtii isaanii manni murtii idilee irra deebiin ilaalu danda'amoo hin danda'u kan jedhu dha. Dhimmoota kana ilaalchisees muuxannoowwan biyyootaa kan sakatta'amee fi daataan qamolee adda addaa irraa funaanamee jira. Biyya Zimbaabuwee keessatti murtiin mana murtii aadaatiin kenname irraa qaamni komii qabu gara mana murtii idileetti oliyyata fudhata. Murtiin Mana Murtii Aadaatiin kennamee jirus akka murtii rikoordiitti hin ilaalamu. Kana jechuun, qaamni murtii kana irraa komii qabu oliyyataan gara mana murtii idileetti yeroo fudhatu manni murtii oliyyata ilaalu dhimmichi akka waan dura murtiin kennamee jiruutti hin ilaalu jechuu dha. Dhimmicha akka haaraa mana murtii sanatti banameetti ilaala.

Biyya Maalaawiitti immoo murtii mana murtii aadaatiin kennamee jiru irraa komii kan qabu oliyyata gara mana murtii aadaa oliyyata dhaga'uutti fudhata. Garuu, dhuma irratti murtii manneen murtii aadaa kanaan kennaman mirgi dhala namaa fi haqummaan uumamaa kan mulqan yoo ta'an mana murtii idileen irra deebi'amee akka ilaalamuuf sirna diriifatani jiru. Biyya Zaambiyaa keessatti immoo gareen murtii kennamee jiru irraa komii kan

¹¹¹Afgaaffiiwwan Obbo Jeeylaan Kadiir, Pirezidantii MMA Sinaanaa fi Obbo Geetaahuun Baqqalaa, KTAS MMA Sinaanaa waliin gaafa 24/06/12 taasifame.

qabu oliyyannoo isaa gara mana murtii idileetti fudhachuu ni danda'a. Manni murtii idilee garuu, oliyyannoo kana ijoo seeraa qofaa akka ilaaluu qabu seerri isaanii daangessee jira. Biyya Afrikaa Kibbaattis gareen murtii kenname irraa qaamni komii qabu oliyyannoo gara mana murtii aanaa, mana murtii aanaa gara mana murtii olaanaattii fi dhuma irratti gara mana murtii waliigalaa oliyyannootti yookiin firiin dubbii dhimmicha gaaffii heeraa kan kaasu yoo ta'e, gara mana murtii heeraatti fudhachuu ni danda'a. Muuxannoowwan biyyoota armaan olii kana irraa hubachuun kan danda'amu murtii mana murtii aadaatiin kennaman dhimmoota ofitti fuudhee keessummeessu irratti garaagarummaa yoo qabaateyyuu akka waliigalaatti garuu, carraa manni murtii idilee oliyyannoon ofitti fuudhee ilaalu jiraachuu isaati.

Heera Mootummaa RDFI fi Heera naannoo Oromiyaa keessatti Manni Murtii Aadaa akka hundeeffamu yookiin immoo beekamtiin akka kennamuuf kaa'uun alatti hariiroon inni mana murtii idilee waliin qabaachuu qabu ibsamee hin jiru. Akkasumas, abbootiin dhimma hanga fedhii qabanitti walddhabdee dhimmoota seera maatii fi seera dhuunfaatiin furmaataa argachuu danda'an mana murtii aadaatiin furmaata argachuu akka qaban mana murtii idilee cinaatti filannoo kaa'ee jira. Murtii kana ilaalchisees qaamni komii qabu eessatti oliyyata fudhachuu akka qabu waan ibsame hin jiru. Kana ilaalchisee ogeessonni aadaa fi seenaa, Abbootiin Gadaa fi jaarsolee biyyaa; akkasumas, hooggantootni manneen murtii yaadota adda addaa kennanii jiran haala armaan gadiitti xiinxalameera.

Murtii Mana Murtii Aadaatiin kennamee jiru mana murtii idileetiin oliyyannoon ilaalamuu hin qabu yaada jedhu dha. Kanaafis, akka sababaatti kan eeran kaayyoo hundeeffama mana murtii aadaa keessaa tokko hawaasni naannoodhuma jirutti haqa akka argatan gochuu dabalataan aadaa saba sanaa guddisuu dha. Hundeeffamni isaa ganda irraa ka'ee murtii kana irraa qaamni oliyyata dhaga'us walumaan hundeeffamuu akka qabu kaasu. Qaamni oliyyata dhaga'u of danda'ee mana murtii idilee irraa adda kan ta'e hundaa'uu akka qabu dha.¹¹² Manni murtii idilee oliyyataan dhimmicha ilaala taanaan aadummaan isaa hafuu danda'a jechuun sodaa jiru kaasu.¹¹³

¹¹²Af-gaaffiiwwan Aadde Nagaasee Shifarraa, Ogeessa Misooma Sona Aadaa, Obbo Amsaaluu Tolasaa Qorataa Seenaa fi Sirna Gadaa, Obbo Zarihun Baqqalaa, Qindeessaa Garee Hojii Misoomaa A/T/G/W/Bahaa waliin gaafa 27/06/2012; Obboo Badriitamaan

Qaamoleen biroo yaada kennaniin murtii manneen murtii aadaatiin kenname carraa manni murtii idilee oliyyannoon ilaaluu qabu jiraachuu akka qabu kaasu. Manni murtii idilee yeroo oliyyataan dhimmoota ilaalus akkuma dhimmoota biroo osoo hin taane haala addaan ilaaluu akka qabu dha. Oliyyannoon yeroo gara mana murtii idileetti dhiyaatus dogongora adeemsa kenniinsa murtii keessatti mul'ate qofaa irratti daanga'uu akka qabu eeru.¹¹⁴Kanneen mirga namoomaa heera, seerota idila addunyaan biyyi keenya malletteessitee fi qajeeltoowwan bu'uura haqaa sarban qofaa ilaaluu akka qabu dha. Ulaagaan kunis qajeeltoo haqaa bu'uura kan akka mirgi deebii dhiyeeffachuu, ragaa dhiyeeffachuu fi kkf kan mulqu yoo ta'e qofaa ilaaluu akka qabutti daanga'uu qaba jedhu.¹¹⁵Kallattiin dhimmoota hunda irratti oliyyannoon gara mana murtii idileetti fudhatama taanaan bu'a qabeessummaa aadaa miidhuu danda'a.¹¹⁶Kanaaf, murtii manni murtii aadaa kennee jiru oliyyataan manni murtii idilee ilaaluu akka qabu kaasu.

Akka waliigalaatti, muuxannoowwan biyyootaa armaan ol caqasaman akkuma agarsiisuutti sadarkaan itti mana murtii idileetti dhiyaatu garaa garummaa yoo qabaateyyuu, murtii mana murtii aadaatiin kennamee jiru manni murtii idilee oliyyannoon ilaaluu akka qabu dha. Kanaaf, murtii mana

Umar, Pirezidaantii MMO Go/Gujji fi Obbo Sisaay Mul'ataa, Qindeessaa KTAS MMO Go/Gujji waliin gaafa 17/06/12 waliin gaafa 17/06/12 taasifame.

¹¹³Marii garee Obbo Dajanee Kabbadaa, Obbo Alamuu Kumalaa, Aade Ayyalech Maammoo, Ogeessota Waajjira Aadaa fi Turiizimii M/Amboo, waliin gaafa 19/06/2012; Afgaaffiiwwan Obbo Sandaabaa Hordofaa, Ogeessa Waajjira Aadaa fi Turiizimii A/T/Kuttaayee fi Obbo Caalaa Fayisaa, Dursaa Garee A/T/A/T/Kuttaayee, waliin gaafa 20/06/2011; Dr. Tashoomaa Egeree, Daarikteera Inistiitiyuutii Qorannoo Oromoo Yunivarsiitii Jimmaa, waliin gaafa 24/06/2012; Obbo Hajiib Abbaa Jabal, B/b hoogganaa A/T/M/Jimmaa, Aade Hindiya Abbaa Foggee, Dursaa Garee Misooma Aadaa, waliin gaafa 26/06/2012; Obbo Rattaa Immaa, B/b Waajjira A/T/A/Deedoo, Aade Natsannet Malaakuu, Ogeessa Misooma Aadaa fi Obbo Taaddasee Baatuu, Ogeessa Misooma Turiizimii Aanaa Deedoo waliin gaafa 25/06/2012 taasifame.

¹¹⁴Afgaaffiiwwan Obbo Guyyoo Waariyoo, I/A/P/MMWO waliin gaafa 16/08/2012; Obbo Maatiyoo Yiggazuu, KTAS MMO G/L/Shawaa waliin gaafa 19/06/2012; Obbo Dirribaa Olli, Abbaa Seeraa MMO G/Sh/Lixaa waliin gaafa 19/06/2012; Obbo Ismaa'eel Abbaa Boor, B/b Pirezidaantii MMO G/Jimmaa, waliin gaafa 24/06/2012; Obbo Kabbuu Mul'ataa, Pirezidaantii MMA Amboo waliin gaafa 19/06/2012; Obbo Taarikuu Abbabaa, Pirezidaantii MMA/T/Kuttaayee, fi Obbo Tasfaayee Guddisaa, Abbaa A/Dh/Yakkaa MMA T/Kuttaayee, waliin gaafa 20/06/2012 taasifame.

¹¹⁵Afgaaffiiwwan Obbo Badriitamaan Umar, Pirezidaantii MMO Go/Gujji waliin gaafa 17/06/12; Obbo Dhadacha Guuyyoo, Pirezidaantii MMA Liiban waliin gaafa 17/06/12; Obbo Atilaabaachawu Aabbaabuu, Pirezidaantii MMA O/Shaakisoo fi Obbo Diiqqaa Abdi, Gageessaa KTAS MMA O/Shaakisoo waliin gaafa 19/06/12 taasifame.

¹¹⁶Marii gareefi Afgaaffiiwwan, Olitti yaadannoo lak.97^{ffaa}

murtii aadaatiin kennamee jiru kanneen dogongora adeemsaa qabaniif fi qajeeltoo bu'ura haqaa faalleessan yoo ta'e qofa manni murtii idilee oliyyannoon ofitti fuudhee ilaaluu qaba.

3.7. AANGOO MANA MURTII AADAA

Tumaan Heera RDFI Mana Murtii Aadaatiif ifatti haguuggii kenneefii jiru kew.34 fi 78 dha. Keewwatni 34(5) fi 78(5) kaayyoon isaa daangaa aangoo Mana Murtii Aadaa tarreessuudha moo dhimmoota falmiiwwaan dhimma maatii fi gaa'ilaan wal qabatan hiikuuf sirna deemsa falmii seeraa idileen alatti adeemsa filannoo biraa dhiyeessuu dha kan jedhu xiinxalamee adda bahuun isaa aangoo Mana Murtii Aadaa tarreessuuf ykn akeekuuf murteessaa dha.

Kutaa Heera RDFI kew.34'f mata dureen ykn maqeessi kenname '*Mirga Gaa'ila, Dhuunfaa fi Maatii*' jedha. Tumaa keewwata kanaa yoo ilaallu dhiirrii fi dubartiin umurii gaa'ila seeraan kaa'ame irra gahaan garaagarummaa gosaa, sabaa fi amantaa tokko malee wal fuudhanii maatii hundeessuu akka danda'an,¹¹⁷ gaa'illi fedhii wal fuutotaa qofa irratti hundaa'uun ijaaruu akka qabu, gaa'illi bu'ura hawaasummaa fi uumamaa ta'uu isaatiin gama mootummaa fi hawaasaatiin eegumsi taasifamuufii akka qabu kaa'a.¹¹⁸ Kanaan alatti, gaa'ilatti yeroo galanis ta'e gaa'ila keessatti, akkasumas gaa'ila booddee yoo diiggaan gaa'ila kan jiru ta'e wal fuutootni mirga wal qixa ta'e akka qaban ni kaa'a.¹¹⁹ Dabalataanis, gaa'ila bu'ura amantaa ykn aadaatiin ijaaramaniif seerri beekamtii kennuuf akka tumamu danda'us keewwatni kun ni kaa'a.¹²⁰ Tumaa keewwata kana jalatti gaa'ilaaf akka duudhaa hawaasummaatti, maatiif akka dhaabbata hawaasummaatti, abbaa warraa, haadha warraa fi daa'immaniif immoo akka nama dhuunfaatti mirgii fi eegumsi kennameefii jira. Jecha biraatin, duudhaa fi dhaabbileen haawaasummaa akkasumas namoota dhuunfaa kunneeniin alatti dhaabbileen ykn duudhaan hawaasummaa akkasumas namootni dhuunfaa biroo daangaa xiyyeeffannaa keewwata kanaatiin ala dha.

¹¹⁷Heera Mootummaa RDFI, Kwt.34(1)

¹¹⁸Heera Mootummaa RDFI, Kwt. 34 (1)

¹¹⁹Heera Mootummaa RDFI, Kwt. 34 (1)

¹²⁰ Heera Mootummaa RDFI, Kwt. 34(4)

Tumaan keewwata 34(5) wal dhabdeen sirna haqaa idilee keessatti bu'uura seera dhuunfaa fi seera maatiitiin ilaalaman hanga fedhii wal falmitootaa ta'eetti bu'uura seera amantaatiin ykn seera aadaatiin hiikamuu akka danda'anii fi kanas Heerri kun dhorkee hin jiru jechuun ibsa.¹²¹ Tumaan kew. 34(5) jalatti hammatame ilaalamuu kan qabu qixa kaayyoo waliigalaa keewwata kanaa fi qixa dhaabbataa fi duudhaa hawaasummaa; akkasumas, namoota dhuunfaa keewwata xiqqaa (1)-(4) caqasamaniitiin qofa tahuu qaba. Tokkoon, tokkoo tumaalee keewwata kana keessatti hammataman irraa kan hubatamu kaayyoon jalqabaa keewwata kanaa duudhaa fi dhaabbata hawaasummaa kan ta'an gaa'ila fi maatiif akkasumas namoota dhuunfaa dhaabbata kana keessatti hammataman abbaa warraa, haadha warraa fi daa'immaniif beekamtii kennuu fi eegumsa gochuu dha. Yaadni keewwata kana keessatti hammatame inni biraa dhimma gaa'ila, maatii, wal fuutotaa fi daa'immaniin wal qabatee wal dhabbi uumamu furuuf adeemsa idilee fi seera idileetiin alatti sirna hiikkaa wal diddaa filannoo dhiyeessuu dha. Filannoon kunis amaluma wal dhabdee uumamu irraan kan ka'e seeraa fi sirna seeraa idileen caalatti seera aadaa ykn seera amantaatin yoo ilaalaman bu'a qabeessa taha amantaa jedhu irraa kan madde dha.

Dimshaashatti, tumaa Heera kanaa akka waliigalaattii fi sanada marii tumaa Heera (constitutional minute)¹²² irraa akka hubatamuutti keewwatni dhaabbataa fi duudhaa hawaasummaa akkasumas namoota dhuunfaa dhaabbata kana keessatti hammatamaniif eegumsa malu kaa'uu fi wal dhabdee uumameef hojiirra oolmaa seera aadaa fi seera amataa kaa'uun alatti daangaa raawwatiinsa seera aadaa ykn seera amantaa kaa'uu miti.

Heerri RDFI keewwatni 78 waa'ee bilisummaa fi caasseeffama Manneen Murtii Mootummaa Federaalaa fi Mootummaa Naannoo irratti kan xiyyeefatee dha. Qaamni abbaa seerummaa bilisaawaa ta'e Heera kanaan dhaabbachuu¹²³, aangoon abbaa seerummaa inni olaanaan sadarkaa Mootummaa Federaalaatti Mana Murtii Waliigalaatiif kennamuu¹²⁴, Mootummaan naannoolee Mana Murtii Waliigala, Olaanaa fi kan Sadarkaa Jalqabaa hundeessuu akka qaban akeekuu akkasumas Manni Murtii Addaa

¹²¹ Heera Mootummaa RDFI, Kwt.34(5)

¹²² Sanada Marii Tumaa Heera RDFI jildii 3ffaa, sadaasa 8-13/1987 ALI, fuula 000024-000038

¹²³ Heera Mootummaa RDFI, Kwt.78(1).

¹²⁴ Heera Mootummaa RDFI, Kwt.78(2).

ykn kan Yeroo Manneen Murtii idilee ykn dhaabbilee biroo aangoon abbaa seerummaa seeraan kennameef irraa kan aangoo abbaa seerummaa fudhatu fi adeemsa abbaa seerummaa seeraan tumame hin hordofne hundeeffamuu akka hin dandeenye tumee jira.¹²⁵ Dhuma irrattis, keewwatni kun keewwata xiqqaa (5) jalatti akkaataa tumaa Heera kew. 34(5)'tiin Manni Maree Bakka Bu'oota Uummataa ykn Manni Maree Mootummaa Naannoo Mana Murtii Aadaa ykn Mana Murtii Amantaa hundeesuu ykn dursa hundaa'ee kan jiruuf beekamtii kennuu akka danda'u ibsa. Sanada marii tumaa Heera mootummaa irraa akka hubatamutti yaadni ijoo kew.78(5) jalatti kaa'ame wal dhabdee seera aadaa fi seera amantaatiin akka ilaalamaniif kew. 34(5) akeekaman kunneen gama Mana Murtii kamiin hojiirra ooluu ykn ilaalamuu qabu kan jedhu deebisuuf kan tumamee dha.¹²⁶ Jecha biraatiin, keewwatni kun waa'ee daangaa aangoo Mana Murtii Aadaa kan murteesse otuu hin taane, falmiilee seera dhuunfaa fi seera maatiin ilaalamuu danda'an bu'uura seera aadaatin akka ilaaluuf Mana Murtii Aadaa kan aangeessee fi Manni Murtii kun immoo qaama kamiin hundeeffamuu akka qabu ifatti kan kaa'ee dha.

Waliigalaatti, tumaan Heeraa RDFI kew.34(5) fi 78(5) yaada daangaa aangoo Mana Murtii Aadaa duguugee murteessee kan hin jirree ta'uu xiinxala kanaan hubachuun ni danda'ama. Kanaaf, Manni Murtii Aadaa dhimmoota akkamii irratti aangoo abbaa seerummaa qabaachuu akka danda'u akka armaan gadiitti ibsamuuf yaalameera.

1^{ffaa} falmii kallattiidhaan Mana Murtii Aadaatin akka ilaalamaniif Heera Mootummaa kew.34 (5)tiin eeraman. Falmiiwwan seera dhuunfaa fi maatiin fedhii wal falmitootaa giddugaleessa godhachuun dhiyaatan kanneen akka falmii gaa'ila, qallabaa, guddistummaa, abbummaa fi dhaaltummaa ilaaluuf manni murtii aadaa aangoo kan qabu dha.

2^{ffaa} falmiiwwan Mana Murtii Aadaatiin ilaalamuu danda'an aangoo seera tumuu Mana Maree Bakka Bu'oota Uummataa Mootummaa Naannoo Oromiyaa ykn Caffeeff kenname irraa kan maddu ta'a. Akkuma armaan dura kaafne kaayyoon Kew.34 fi 78 aangoo Mana Murtii Aadaa duguuganii tarreessuu otuu hin taane falmii gaa'ila fi maatii keessatti uumamu sirna

¹²⁵Heera Mootummaa RDFI, Kwt.78(4).

¹²⁶Sanada Marii Tumaa Heera RDFI jildii 5^{ffaa}, Sadaasa 21-24/1987 ALI, Finfinnee, FF 000043-000055

seeraa idileen alatti akka ilaalamuuf deemsa filannoo kaa'uu dha. Jecha biraatiin, Manni Murtii Aadaa falmii dhimma gaa'ila fi maatii waliin wal qabatu qofa ilaaluu danda'a kan jedhu miti. Kanaaf, aangoon Mana Murtii Aadaa gama Heeraatiin duguugamnee kaa'amee hanga hin jirreetti Caffeen aangoo ofii qabu irratti hundaa'uun¹²⁷ fedhii wal falmitootaa eegu otuu hin barbaachifne dhimmoota sadarkaa jalqabaatti ilaaluu danda'an aangessuu danda'a. Muuxannoo biyyootaa irraa hubachuun kan danda'amu manni murtii aadaa dhimmoota gaa'ila ala jiran illee ofitti fuudhee keessummeessaa kan jiru ta'uu isaati. Muuxannoo biyya Zimbaabwee, Afrikaa Kibbaa fi Maalaawwii fudhachuun ni danda'ama. Muuxannoon kun kan agarsiisu, Manni Murtii Aadaa biyyoota kunneenii dhimma gaa'ila fi maatiin alatti dhimmi lafaa, abbummaa qabeenyaa fi kaffaltii beenyaa hanga isaa seeraan daanga'e ilaaluuf aangoo kan qabu ta'uu isaaniiti.

Xiinxala muuxannoo biyyoota hambaa fi bargaaffii irraa ka'uun Caffeen Mootummaa Naannoo Oromiyaa fedhii wal falmitootaa mirkaneessuun otuu hin barbaachifne falmii qabeenya socho'uus ta'e hin sochoone tilmaamni isaa seeraan kaa'ame, falmii hidda fi damee mukaa ollaatti darbuu, falmii dallaa fi mana haaromsuu, qabeenya bade lafa ormaa keessa seenanii ilaaluu, falmii daandii irra deeman argachuu, falmii mirga abbaa qabeenyummaa garmalee fayyadamuu, falmii bishaan bokkaarratti ka'u fi falmii bishaan lagaarratti ka'u akka ilaaluuf Mana Murtii Aadaa aangeessuu kan danda'u ta'uu isaati.

3^{ffaa} yakkaa ilaalchisee Manni Murtii Aadaa aangoo akkamii qabaachuu danda'a kan jedhu qorannoo kanaan sakatta'aameera. Imaammata yakkaa Itoophiyaa kutaa 4.6.2 jalatti raawwii yakkaatiin wal qabatee hojiin itti gaafatamummaa mirkaneessuu adeemsa idilee qofaan otuu hin taane adeemsa al-idileetiinis filannoo dhiyeessee jira. Kunis faayidaa uummataa fi mirga miidhamaa caalatti ni kabachiisa jedhamee yeroo amanameetti kan raawwatamu dha.¹²⁸ Dabalataanis, sababoota himannaan yakkaa akka hin hundeeffamne taasisanii fi gaalee '*faayidaa uummataa*' jedhu hiikuuf akka ulaagaatti kanneen imaammata kanaan tarreeffaman keessaa tokko yakkichi hangam cimaa ta'uus, wal dhabbiin miidhamaa fi himatamaa gidduutti uumame yakkichaaf ka'umsa ta'e gama adeemsa *bulciinsa haqaa idileen*

¹²⁷Heera Mootummaa Naannoo Oromiyaa, Kwt.49

¹²⁸Imaammata Haqa Yakkaa Mootummaa Federaalaa Bara 2003 Bahe, kutaa 4.2.6.6 (2).

*caalatti gama seeraa fi dhaabbilee aadaatiin furmaata waarawaa kan agarsiisu yoo ta'e dha jechuun tumeera.*¹²⁹ Tumaaleen Imaammata yakkaa kun kan agarsiisan bu'uura seera aadaa fi dhaabbilee aadaatiin falmiiwwan yakkaatiif furmaatni kennamuu akka qabu dha.

Seera Deemsa Falmii Yakkaa Itiyoophiyaa bara 1954 ALI tumameen haalawwan jalqabbii deemsa haqa yakkan bakka sadiitti qooduun kaa'a.¹³⁰ Kunis yakka eeruu, iyyannoo dhuunfaa fi yakka harkaaf harkaati. Yakki harkaaf harkaa gosa yakkaa eeruudhaan ykn iyyannoo dhuunfaadhaan dhiyaatan tahuu dandaa'u. Yakkootni iyyannoo dhuunfaadhaan akka dhiyaatan Seera Yakkaa kutaa addaa keessatti yeroo ibsamee jirutti yakkoota kunneen ilaalchisee miidhamaa dhuunfaan ykn bakka bu'aan isaa iyyata komii dhiyeessu malee kan hin himachiifne dha.¹³¹ Tumaa kana irraa kan hubatamu yakkoota kunneen ilaalchisee miidhamaa fi shakkamaan dhimma isaanii araaraan xumuran yeroo ta'eetti Abbaan Alangaa himannaa hundeessuu akka hin dandeenyee dha. Tumaa Seeraa kana irraa ka'uun fedhii wal falmitootaa irratti hundaa'uudhaan Manni Murtii Aadaa yakkoota iyyannoo dhuunfaadhaan dhiyaatan bifa jaarsummaa qofaan akka ilaaluuf aangeessuun kan danda'aamu dha.¹³² Muuxannoon biyyoota akka Zimbaabuwee, Afriikaa Kibbaa fi Maalawwiis kanuma agarsiisa.

¹²⁹Imaammata Haqa Yakkaa Mootummaa Federaalaa Bara 2003 Bahe, kutaa 3.12(c)

¹³⁰ Seera Deemsa Falmii Yakkaa Itoophiyaa, 1956, Kwt.11-21

¹³¹ Seera Yakkaa Mootummaa RDFI, 1996, Kwt.212

¹³²Wixineen Seera Deemsa Falmii Yakkaa Mootummaa RDFI Haaraan yakkoota iyyannoo dhuunfaadhaan dhiyaataniin alatti kanneen eeruudhaan dhiyaatan illee gama dhaabbilee aadaatin xumuramuu akka danda'an ni kaa'a. Wixineen kun ragga'ee jiraachuu dhiisuu isaatiin yeroo ammaatti yakkootuma iyyannoo dhuunfaa dhiyaatan qofa Manni Murtii Aadaa Naannoo Oromiyaa ilaalu qaba.

4. YAADOTA GUDUUNFAA FI FURMAATAA

4.1. YAADOTA GUDUUNFAA

Heera RDFI fi Naannoo Oromiyaatiin Manni Maree Bakka Bu'oota Uummataa ykn Caffeen Mootummaa Naannoo Oromiyaa Mana Murtii Aadaa hundeesuuf ykn beekamtii kennuu akka danda'u ifatti tumameera. Haa ta'u malee, sadarkaa Naannoo Oromiyaatti Manni Murtii Aadaa sababa qaamni ykn seektarri mootummaa barbaachisummaa isaatti amanee akka hundeeffamuuf dhabamuu fi dogongoraan hojii Manni Murtii Hawaasummaa Gandaa fi Manni Murtii Aadaa akka tokkootti fudhachuu dha.

Mana Murtii Aadaa yeroo ammaatti hundeesuuf carraalee fi sodaawwan jiran qorannoo kanaan adda bahaaniiru. Hojimaatni wal dhabdee namoota gidduutti dhalatu bu'uura aadaa naannootiin hiikuun qabatamaan hawaasa keessa jiraachuu, yeroo ammaatti aadaa ofiitti fayyadamuuf fedhii fi kaka'uumsi uummata bira jiraachuu, jaarsoliin ykn Abbootiin Gadaa wal dhabbii hiikuuf dandeettii fi miira tajaajiltummaa qaban jiraachuu, seerrii fi sirni aadaa gahaa tahe hawaasa keessa jiraachuun, seerotaa fi sirna aadaa duubatti hafoo ta'an haquuf ykn fooyyeessuuf sirni aadaa dandeessisu jiraachuu, duudhaan murtii jaarsolii biyyaa ykn abbootii gadaa raawwachuu hawaasa keessa jiraachuunii fi tajaajila haqaa bu'uura aadaatiin kennamu biratti haqni argamuun hundeeffama Mana Murtii Aadaatiif akka carraatti adda baheera. Sadarkaan itti fayyadamnii fi faca'iinsi aadaa wal fakkaataa ta'uu dhabuu, darbee darbee jaarsolii biyyaa fi Abbootii Gadaa biratti rakkoon naamusa jiraachuu fi kutaa hawaasaa tokko tokko biratti itti fayyadama seera aadaatiif fedhiin gadi aanaa tahuun akka sodaatti adda bahee jira.

Gama wal qixxummaa fi hirmaachisummaa dubartootaatiin hojmaataa fi ilaalcha hawaasaa malee Sirna Gadaa keessatti duudhaan dubartii miidhuu fi xiqqeessu kan hin jirre tahuu qorannoon kun agarsiisee jira. Haa ta'u malee, rakkoon kun adeemsaa fi Sirna Gadaatiin fooyyeessuun tajaajila abbaa seerummaa sirna aadaatiin kennamu keessatti wal qixxummaa fi hirmaachisummaa dubartootaa mirkaneessuun kan danda'amu tahuun hubatameera.

Gurmaa'insaa fi caaseeffama Mana Murtii Aadaa ilaalchisee filannoon abbootii seeraa kallattiidhaan jiraattoota gandaatiin ta'uu akka qabu dha. Tuuta abbootii seeraa Mana Murtii Aadaa biratti namni tokko kan barreessuu fi dubbisuu danda'u dabalataan jiraachuu qaba. Gaheen nama kanaas hojiilee teeknikaa kan akka dhaddacha qindeessuu, oolmaa fi murtii dhaddachaa barreessuu fi kanneen biroo qofa irratti daanga'uu qaba. Abbootiin seeraa Mana Murtii Aadaatiif kaffaltiin kan barbaachisuu fi barri hojii isaanii daanga'uun caalatti bu'a-qabeessa kan taasisu ta'a. Daangaan yeroo tajaajilaa kaa'ame xumuramuun dura rakkoo naamusaa, rakkoo fayyaa fi umuriin akkasumas dandeettii fi gahuumsa barbaachisu dhabuun aangoo irraa gaggeeffamuuf akka sababaatti seeraan tumamuu akka qabu muuxannoon biyyoota garagaraa fi fedhiin qaamolee daataan irraa funaanamee ni agarsiisa.

Aangoo Mana Murtii Aadaa haalawwan adda addaa irraa kan maddu ta'a. Fedhii wal falmitootaa irratti hundaa'uun dhimmoota gaa'ila fi maatii, fedhii wal falmitootaa irratti hundaa'uu otuu hin barbaachisiin gama Caffee Mootummaa Naannoo Oromiyaa kallattiidhaan seera bahuu fi dhimma yakkaa iyyannoo dhuunfaan dhiyaatu irratti aangoo sadarkaa jalqabaa kan qabaatu ta'a. Dhimmoota yakkaan ala kanneen biroo irratti manni murtii aadaa murtii dirqisiisoo kan kennu dha.

Sirna oliyyannoo ilaalchisee Manni Murtii Aadaa caasaa oliyyannoo dhagahu kan mataa isaa qabaachuu akka qabuu fi qaamni komii qabu gara mana murtii idileetti oliyyachuu akka qabu muuxannoon biyyoota biroo fi daataan funaaname kan agarsiisuu dha. Gama tokkoon tajaajilli abbaa seerummaa Mana Murtii Aadaatti kennamu aadaa qofa irratti hundaa'uu isaatiin, gama biraatin immoo manni murtii idilee aadaa irratti otuu hin taane seera qaama mootummaatiin tumamee labsame qofa irratti hundaa'uun tajaajila kan kennu ta'uu isaatiin oliyyannoon Mana Murtii Aadaa irraa gara mana murtii idileetti taassifamu sababoota seeraan ifatti kaa'aman qofa irratti hundaa'uu qaba.

4.2. YAADOTA FURMAATAA

1. Carraawwaan hundeeffama Mana Murtii Aadaa jedhamuun adda baafaman cimani akka ittii fufanii fi sodaawwan adda bahaan hir'isuuf Gumiin Abbootii Gadaa sadarkaa mara irratti argamuu fi Biiroo Aadaa fi Turizimii Oromiyaa miidiyaa fi maloota birootti gargaaramuun irratti hojjachuu qabu.
2. Gurmaa'insi Abbootii Seeraa Mana Murtii Aadaa wal qixxummaa fi hirmaachisummaa saalaa fi amantaa bifa mirkaneesseen ulaagaa umrii, naamuusaa fi jiraataa gandaa jedhu haammateen kallattiidhaan jiraattota gandaatiin gaggeeffamuu qaba. Koreen filannoo kana qindeessu miseensonni isaa Hooggansa Mana Murtii Aanaa, Bulchaa Gandaa fi Af-yaa'ii Mana Maree Gandaa kan hammate ta'uu qaba. Manni Murtiis qindeessaa koree kanaa ta'uu qaba.
3. Abbootiin seeraa baay'inaan sadii ta'anii dabalataan qindeessaa dhaddachaa nama barreessuu fi dubbisuu danda'uu fi jiraataa gandaa kan ta'e dabalammu qaba. Namni kun murtii jaarsoliin ykn Abbootiin Gadaa kennan barreessuu, dhaddacha qindeessuu fi hojiilee teeknikaa biroo mijeessuun alatti murtii irratti hirmaachuu hin qabu.
4. Ammatti itti waamamni Mana Murtii Aadaa Mana Murtii Aanaatiif tahee hojiilee gabaasa dhaga'uu, gamaggama raawwii hojii gaggeessuu, rakkoo naamusaa qorachuu fi tarkaanfii fudhachuu gahee Mana Murtii Aanaa tahuun kennamuu qaba. Gostii naamusaa fi tarkaanfiin naamusaa seeraan kan bahu ta'a. Boodarra garuu, Manni Murtii Aadaa of danda'uun itti waamamni isaa Gumii Abbootii Gadaatiif ta'uu qaba.
5. Itti gaafatamummaa abbootii seeraa mirkaneessuuf abbootii seeraa Mana Murtii Aadaa irratti aangoon himannaa ykn iyyata komii dhiyeessuu Bulchaa Gandaa ykn miidhamaa dhuunfaatiif kennamuu qaba. Haallii fi daangaan yeroo komiin itti dhiyaatu seeraan kan tarraa'u ta'a.

6. Dhiibbaa gama diinagdeetiin Abbootii Seeraa Aadaa irra gahu xiqqeessuu, itti gaafatamummaa mirkaneessuu, miira tajaajiltummaa akka horatan gochuu fi namoota ciccimoo horachuuf kaffaltiin Abbootii Seeraa Aadaatiif bifa jajjabeessituutiin kaffalamuu qaba.
7. Barri tajaajila abbootii seeraa waggaa 4'tti daanga'ee abbootiin seeraa miira tajaajiltummaa qaban, naamusa gaarii agarsiisan, umriin isaanii hojii sirnaan akka hojjatan dandeessisu irra deebiin filatamuu danda'u.
8. Abbootii seeraa Mana Murtii Aadaa aadaa duudhaa naannoo irratti hundaa'uun murtii kennaniif akka itti hin gaafatamneef seeraan eegumsi kennuufii qaba.
9. Aangoo Mana Murtii Aadaa bu'uura sadii irratti hundaa'uun kennamuufii mala.
 - i. Inni jalqabaa, fedhii wal falmitootaa irratti hundaa'uun wal dhabdee gaa'ila fi maatii waliin wal qabatan kan akka falmii diiggaa gaa'ila, qooddaa qabeenya gaa'ila keessatti argame, qallabaa, guddistummaa, abbummaa fi falmii dhaalaati.
 - ii. Inni lammataa, fedhii wal falmitootaa irratti hundaa'uu otuu hin barbaachisiin gama Caffee Mootummaa Naannoo Oromiyaa kallattiidhaan kan aangeeffamu. Kunis dhimmoota falmii qabeenya socho'uus ta'e hin sochoone tilmaamni isaa seeraan kaa'ame, falmii hidda fi damee mukaa ollaatti darbuu, falmii dallaa fi mana haaromsuu, qabeenya bade lafa ormaa keessa seenanii ilaaluu, falmii daandii irra deeman argachuu, falmii mirga abbaa qabeenyummaa gar-malee fayyadamuu, falmii bishaan bokkaarratti ka'u fi falmii bishaan lagaarratti ka'u dha.
 - iii. Inni Sadaffaa, falmiiwwan yakkaa iyyannoo dhuunfaan dhiyaatan. Yakka iyyannoo dhuunfaan dhiyaatu ilaalchisee aangoon Mana Murtii Aadaa wal falmitoota walitti araarsuu qofa. Bakka wal falmitoota

walitti araarsuu hin dandeenyeetti dhimmichi kallattiin gama sirna idileetiin kan xumuramu taha. Qabiyyeen murtii araaraa beenyaa dabalachuu danda'a. Murtiin araaraa murtii dhumaa ta'a.

10. Manni Murtii Aadaa akka naannoo keenyaatti hundeeffamuuf deemu caasaa oliyyannoo Mana Murtii Aadaa Oliyyannoo sadarkaa aanaatti qabaachuu qaba. Namni abbaa seeraa Mana Murtii Aadaa oliyyannoo dhaga'uu kan filatamu kallattiidhaan Yaa'ii Abbootii Seeraa Mana Murtii Aadaa sadarkaa gandaa tiin ta'uu qaba. Abbootiin seeraa kunneen yaa'ii kanaan eeranii kaadhimamaan harka caalmaan filatame abbaa seeraa Mana Murtii Aadaa oliyyannoo dhagahuu tahuun ramadama. Raawwiin isaa seeraan kan bahu ta'a.
11. Murtii Mana Murtii Aadaa Oliyyannoo dhagahuun kennamee jiru dogongora adeemsaa qabani fi kanneen qajeeltoo bu'uura haqaa faalleessan yoo ta'e qofa Manni Murtii Olaanaa oliyyannoon ofitti fuudhee ilaalu qaba. Qabiyyeen dogongora adeemsa seeraa fi qajeeltoo bu'uura haqaa seeraan ifatti kan tarraa'ee ibsamu taha.
12. Manni Murtii Aadaa Murtii kenne kan ofii isaatii kan raawwachiisu ta'e kanaan wal qabatee tarkaanfilee fudhatamuu malu seeraan kan bahu ta'a.

List of Articles, Case Analysis and Reflections Published on the First Ten Issues of Oromia Law Journal

No	Article Title	Contribution Type	Volume & Number	Author/s	Publication year
1	Gaa'ilaafi Gaa'ilaan Ala Akka Dhirsaa fi Niitiitti Waliin Jiraachuu Adda Baasuu Keessatti Yeroo Waraqaan Ragaa Gaa'ila Hin Jirre Rakkoollee Qabatamaan Mudatan <i>Corresponding Translation:</i> Distinguishing Marriage from Irregular Union: Some Practical Challenges in Absence of Marriage Certificate	Article	I(1)	Jemal Kumbi	2004/2012
2	The Degree of Court's Control on Arbitration under the Ethiopian Law: Is It to the Right Amount	Article	I(1)	Birhanu Beyene	2004/2012
3	Madaallii Raawwii Hojii Abbootii Seeraa Oromiyaa: Barbaachisummaa fi Sirna Raawwii Isaa <i>Corresponding Translation:</i> Judges' Performance Evaluation in the State of Oromia: The Need and the How	Article	I(1)	Teferi Bekele	2004/2012
4	Mediating Criminal Matters under Ethiopian Criminal Justice System: The Prospect of Restorative Justice	Article	I(1)	Jetu Edosa	2004/2012
5	Sadarkaa Mirkaneessa Ragaa Dhimma Yakkaa:Yaadrimeewwanii fi Xiinxala Dhimmaa <i>Corresponding Translation:</i> Standard of Proof in Criminal Cases: The Concepts and Case Analysis	Case Analysis	I(1)	Milkii Mekuria	2004/2012
6	Oromia Justice Sector Professionals Training and Legal Research Institute: Major Activities and Achievements	Reflection	I(1)	Milkii Mekuria	2004/2012

7	The Place of Environmental Protection in the Growth and Transformation Plan of the Federal Democratic Republic of Ethiopia	Article	2(2)	Dejene Girma (PhD)	2005/2013
8	Derivation of Rights: Affording Protection to Latent Socio-economic Rights in the FDRE Constitution	Article	2(2)	Amsalu Darge	2005/20013
9	Bu'a qabeessummaa Rifoormiiwwan Manneen Murtii Oromiyaa:Kallattii Si'oomina Abbaa Seerummaatiin Yoo Madaalamu <i>Corresponding Translation.</i> Assessing the Effectiveness of Judicial Reforms from the Perspective of Efficiency: The Case of the State of Oromia	Article	2(2)	Teferi Bekele	2005/2013
10	Cassation Review of Arbitral Awards: Does the Law Authorize It?	Article	2(2)	Birhanu Beyene	2005/2013
11	Determination of Personal and Common Property During Dissolution of Marriage under Ethiopian Law: An Overview of the Law and Practice	Article	2(2)	Silashi Bedasie	2005/2013
12	Perspectives on Common Property Regimes in Ethiopia: A Critical Reflection on Communal Land Holding Rights in Borana Oromo Pastoralists Context	Article	2(2)	Jetu Edosa	2005/2013
13	Federalism in Ethiopia and Foreign Relations: Regional State Diplomacy	Article	3(1)	Tesfaye Assefa	2006/2014
14	Dagannoon Nama Ajjeesuu Ilaalchisee Firiwwan Dubbii Seerichaa Irratti Hundaa'uun Hojjechuun Walqabatee Rakkoowwan Qabatamaan Mul'atan <i>Corresponding Translation.</i> Negligent Homicide: Law and Practice	Article	3(1)	Tolosa Dame	2006/2014
15	Bigamous Marriage and the Division of Common Property under the Ethiopian Law: Regulatory Challenges and Options	Article	3(1)	Jetu Edosa	2006/2014
16	The Chance to Improve the System of EIA in Ethiopia: A Look at the New Investment Proclamation	Article	3(1)	Dr. Dejene Girma	2006/2014

17	Reforming Corporate Governance in Ethiopia: Appraisal of Competing Approaches	Article	3(1)	Hussein Ahmed	2006/2014
18	A Human Rights-based Approach to Counteract Trafficking in Women: The Case of Ethiopia	Article	3(1)	Bahar Jibriel	2006/2014
19	Same Sex Marriage: Nigeria at the Middle of Western Politics	Article	3(1)	Dr.O. A Odiase-Alegimenlen & J.O.Garuba	2006/20014
20	Old Wine in New Bottles: Bridging the Peripheral Gadaa Rule to the Mainstream Constitutional Order of the 21St C. Ethiopia	Article	4(1)	Zelalem Tesfaye	2007/2015
21	Qabiyyee Lafaa Faayidaa Uummataatiif Gadi-Lakkisiisuun Wal-qabatanii Rakkoowwan Jiran: Haala Qabatamaa Naannoo Oromiyaa <i>Corresponding translation</i> Expropriation in the State of Oromia: Some Challenges	Article	4(1)	Alemayehu W.	2007/2015
22	The Legal Regime of Corruption in Ethiopia: An Assessment from International Law Perspective	Article	4 (1)	Berihun Adugna	2007/2015
23	Ethiopia's Accession to the World Trade Organisation: Lessons from Acceded Least Developing Countries	Article	4(1)	Hussein Tura	2007/2015
24	The Criminal Responsibility of a Person Who Owns a Vehicle Apprehended Transporting Illegal Coffee	Article	4(1)	Habtamu Bulti	2007/2015
25	Yaadrimee Kasaaraa Al-Kallattii fi Raawwii Isaa: Sirna Seeraa Itoophiyaa Keessatti	Article	4(1)	Gemechis Dug.	2007/2015
26	All about Words on the Procedure of Constitutional Interpretation in Ethiopia: A Comment on Melaku Fanta's Case	Case comment	4(1)	Desalegn Birhanu	2007/2015
27	Criminal Adjudication by State Courts under the FDRE Constitution: The Quest for Compartmentalization of Jurisdiction	Article	5(1)	Abdi Gurmesa	2008/2016
28	Human Rights Protection under the FDRE and the Oromia Constitutions: A Comparative Study	Article	5(1)	Teferi Bekele	2008/2016
29	Hariiroo Hojii fi Sirna Hiikkaa Waldhabbii Falmii Hojii Keessatti Rakkoolee Mul'atan	Article	5(1)	Milkii Mekuria Getachew Feyisa Ayana Tolina	2008/2016

	<i>Corresponding translation</i> Employment Relationship and Labor Disputes in the State of Oromia: The Challenges				
30	The Right to Counsel of Children in Conflict with the Law: Case Study in Adama	Article	5(1)	Milkii Mekuria	2008/2016
31	Reforming the Ethiopian Electoral System: Looking for the Best Alternative	Article	6(1)	G/meskel Hailu	2009/2017
32	Daldala Seeraa Alaa To'achuu: Rakkoowwan Seeraafi Hojimaataa Qaamolee Haqaa Naannoo Oromiyaa Keessatti Mul'atan <i>Corresponding translation</i> Unlawful Trade Practices in the State of Oromia: Law and the Practice	Article	6(1)	Habtamu Bulti Abduselam Abe	2009/2017
33	Voluntary Interest Arbitration in the Ethiopian Labor Proclamation: The Problems in Its Design and the Way to Fix Them	Article	6(1)	Birhanu Beyene	2009/2017
34	Yakkoota Ulfa Irratti Raawwataman: Xiinxala Seeraafi Raawwii Seera Yakkaa RDFI <i>Corresponding Translation</i> Pregnancy Crimes: Analysis of Law and Practice	Article	6(1)	Muluken Kasahun	2009/2017
35	Ethiopian Witness Protection System: Comparative Analysis with UNHCHR and Good Practices of Witness Protection Report	Article	6(1)	Wekgari Dulume	2009/2017
36	Producing in Compliance with Environmental Obligation: Case of Bedele Brewery	Reflection	6(1)	Mohammed I.	2009/2017
37	The Relationship between the Federal and Regional States' Constitutional Review System in Ethiopia: The Case of Oromia Regional State	Article	7(1)	Muluken K.	2010/2018
38	Allocation of Costs and Fees of Civil Litigation in Federal Supreme Court Cassation Division: 'Does One Approach Really Fit All?'	Article	7(1)	Kahsay Gidey	2010/2018
39	Kenninsaafi Barreessa Murtii Manneen Murtii Oromiyaa: Seeraafi Hojimaata <i>Corresponding Translation.</i> Judgment Rendering and Writing in Oromia Courts: Law and Practice	Article	7(1)	Teferi Bekele Angessa Eticha	2010/2018
40	The Share of Women during Succession under State Laws and Sharia Laws: Comparative Study	Article	7(1)	Mohammed Ib.	2010/2018

41	Land Governance in Ethiopia: Towards Evaluating Global Trends	Article	7(1)	Dr. Daniel B. Adisu Kasa	
42	Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaafi Qo'annoo Seeraa Oromiyaa: Hojiiwwan Gurguddoo Hanga Yoonatti Hojjete <i>Corresponding translation:</i> Major Accomplishments of Oromia Justice Sector Professionals Training and Legal Research Institute	Reflection	7(1)		2010/2018
43	Birth-Defects of A Constitution And Its Impacts on Outcome: Reflection on Ethiopian Constitution-Making Experience	Article	8(1)	Dr. Aberra D.	2011/2019
44	The Funding of Political Parties in Ethiopia: A Review of Problems	Article	8(1)	G/meskel Hailu	2011/2019
45	Making Investment Work for Sustainable Development: A Pressing Need to Integrate Sustainable Development into Ethiopian Investment Law	Article	8(1)	Abiyot Moges	2011/2019
46	To'annoo Dambiilee fi Qajeelfamoota Aangoo Bakka Bu'insaan Ba'anii: Haala Qabatamaa Oromiyaa <i>Corresponding Translation</i> Controlling Regulations and Directives Enacted by Delegate Power: The Case of Oromia	Article	8(1)	Teferi Bekele Wekgari Dulume	2011/2019
47	Kenniinsa Koroora fi Dhiifama Sirreefamtoota seeraa Naannoo Oromiyaa: Seeraafi Hojimaata <i>Corresponding translation</i> Parole and Pardon Granting in Oromia Regional State: Law and Practice	Article	8(1)	Getachew Feyisa Abduselam Abe	2011/2019
48	Registration of Vital Events in Ethiopia: Gaps in the Laws on Registration of Marriage and Its Dissolution	Article	9(1)	Serkalem Eshetie	2012/2020
49	The Emergence of Precedent over Precedent and Its Potential Conflict with the Principle of Self-rule in Ethiopian Judicial Federalism: The Case of Oromia Courts	Article	9(1)	Fedesa Mengesha	2012/2020
50	A Critical Assessment on Provisions of the Federal Constitution of Ethiopia with Regard to Federal-Regional Governments Relationship on Land Law	Article	9(1)	Habib Jamal	2012/2020

51	Review of Final Criminal Judgements in Ethiopia and the Quest for Remedies	Article	9(1)	Tesfaye Boresa	2012/2020
52	The Place of Multiparty Commercial Arbitration under Ethiopian Arbitration Law	Article	9(1)	Alemu Balcha	2012/2020
53	Bu'a qabeessummaa Mana Murtii Hawaasummaa Gandaa Mootummaa Naannoo Oromiyaa <i>Corresponding translation</i> The Effectiveness of Kebele Social Courts : The Case of Oromia	Article	9(1)	Azzanee E. & Abdi T.	2012/2020
54	Oath in Oromia Courtrooms: A Critical Discourse Analysis	Article	10(1)	Aduugna B.	2013/2021
55	The Quest for Eternal Clauses in the Ethiopian Constitutional and Democratic Reforms	Article	10(1)	Solomon E	2013/2021
56	Communal Land Tenure System in Ethiopia and Its Congruency with the FDRE Constitution	Article	10(1)	Nigatu B	2013/2011
57	Contractual Acquisition and Transfer of Immovable Property Ownership System under Ethiopian Law	Article	10(1)	Kumala F	2013/2021
58	Revitalizing Intellectual Property Right Protection for Traditional Knowledge and Cultural Expression in Ethiopia: A Lesson from Kenya	Article	10(1)	Abiyot M	2013/2021
59	Hundeeffama Mana Murtii Aadaa Naannoo Oromiyaa <i>Corresponding Translation</i> Establishment of Customary Courts in Oromia	Article	10(1)	Azane E & Abdi T	2013/2021

Ergama, Mul'ataa fi Duudhaalee Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qo'annoo Seeraa Oromiyaa

Ergama

Leenjii hojiin duraa fi hojiirraa mala leenjii hammayawwaa fayyadamuun kennuun qaamolee haqaa ogeessota gahuumsa fi naamusa ogummaa olaanaa qabaniin guutuu, qorannoo fi qo'annoo seeraa rakkoo hiikuu danda'u, mala qorannoo seeraa fi kanneen biroo fayyadamuun gaggeessuun, tajaajila gorsaa seeraa fedhi irratti hunda'ee kennuun itti fufiinsaan fooyya'iinsa sirna haqaa fi seeraa naannichaatiif gumaacha taasisuudha.

Mul'ata

Bara 2022'tti hojii leenjii, qorannoo fi gorsa seeraatiin giddugala gahumsa ogummaa seeraa ta'uudhaan akka biyyatti filatamaa, akka Bahaa Afriikaatti dorgomaa fi sadarkaa ardii Afriikaatti beekamaa ta'uu dha.

Duudhaalee Ijoo

- Gahumsa
- Kalaqummaa
- Ogummaa'uu
- Fedhii maamila giddu-galeessa godhachuu
- Iftoomina
- Dhaqqabamummaa
- Qulqullina

Teessoo:

Tel:+251 22 110 05 15

Fax:+251 22 111 90 03

Website: www.ilqso.gov.et

Email: ilqso@yahoo.com

P.O.Box:1238

f:Oromia Justice Sectors Professionals Training and Legal Research Institute
Adama, Oromia, Ethiopia

Vision, Mission and Core Values of Oromia Justice Sector Professionals Training and Legal Research Institute

Vission

To contribute for continuous justice and legal reform of the region by delivering pre-service and in-service training so as to fill the justice system with competent and ethical professionals; by conducting problem solving doctrinal and non-doctrinal legal research; and by giving need based consultancy service on law.

Mission

To be center of excellence in legal training, legal research and legal consultancy services; and become the best center in Ethiopia, competent in East Africa and famous in African Continent by the year 2032.

Core Values

- Excellence
- Innovativeness
- Professionalism
- Customer centric
- Transparency
- Accessibility
- Quality

Address:

Tel: +251 22 110 05 15

Fax: +251 22 111 90 03

Website: www.ilqso.gov.et

Email: ilqso@yahoo.com

P.O.Box: 1238

f: Oromia Justice Sectors Professionals Training and Legal Research Institute
Adama, Oromia, Ethiopia

Submission Guidelines

Oromia Law Journal (OLJ), a journal hosted by Oromia Justice Sector Professionals Training and Legal Research Institute, is annually published journal. It is indexed on African Journals Online and Heinonline. It is also one of the sixteen journals in Ethiopia having first **National Accreditation** by Ministry of Science and Higher Education in 2020. Its editors are also members to Ethiopian Journal Editors' Forum. It accepts and publishes submissions fulfilling the following criteria upon revisions by the editors and approval by the Preparatory Board.

1. Submissions should be articles (not published elsewhere) related to legal, economic, political and social issues arising in relation to Oromian, Ethiopian, and other related International Laws. Contributions could also be other works such as essays, comments on legislation, book reviews, and court cases (with or without comments).
2. Contributions may be submitted in Afan Oromo, English or Amharic
3. Submissions shall be computer typed, 1.5 space, in 12 font, Times New Roman; foot notes in 10 font, 1.0 space, Times New Roman (for Afan Oromo & English). These considerations also work for Amharic submissions except that the font size for footnote is 9.
4. The length of a contribution shall not exceed 30 pages for articles and essays. Other contributions like book reviews, case comments, etc shall range from five to ten pages.
5. The contribution should be organized into title page, abstract, introduction, body and conclusion.
6. Footnotes should be numbered consecutively with superscript Arabic numerals in the text.

N.B. A contribution may *at any time* be submitted to the Editorial Committee via: oromialawjournal@gmail.com in soft copy.

Gatii: Qar.50.00

Price: 50.00 birr