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PARTICIPATION OF *AMICUS CURIAE* IN THE ETHIOPIAN CONSTITUTIONAL INTERPRETATION PROCESS: EXAMINING ITS CONSTITUTIONAL-LEGAL BASIS AND PRACTICAL RAMIFICATIONS

Negese Gela*

ABSTRACT

The participation of amicus curiae in the Ethiopian constitutional interpretation process is a recent phenomenon. The Council of Constitutional Inquiry (CCI), while it was entertaining the constitutional interpretation case which was referred to it from the House of Peoples' Representatives in relation to the 2020 national election postponement case, admitted amicus briefs from different professionals before offering its recommendations to the House of Federation (HoF). The CCI also conducted a public hearing in which different amici curie presented their opinions on the case. Until now, no full-fledged study is conducted on the constitutional-legal basis, theoretical underpinning and practical repercussions of the participation of amicus curiae in the constitutional interpretation process in Ethiopia. As a result, there is a knowledge gap in the area. This article attempts to fill this gap by undertaking a thorough examination of the constitutional-legal basis, theoretical underpinning and practical ramifications of the participation of amicus curiae in the Ethiopian constitutional interpretation process with particular reference to the election postponement case. The article employed doctrinal legal research method and it is guided by the interpretivist epistemology framework. Primary data sources such as the constitution of the country, subsidiary legislations and relevant rules of international law were used. Besides, secondary data sources such as books and journal articles were considered. The article also examined the issue from the perspective of comparative amicus curiae practice in the constitutional interpretation cases of other carefully selected countries. The article used qualitative data analysis method. It concludes that the participation of amicus curiae in the case at hand has an implied constitutional-legal basis and it has offered both virtuous lessons to be built upon and defective lessons to be rectified. Finally, the article recommends that the CCI and the HoF should come up with rules that, ex ante, regulate amicus procedure to make the utmost use of such practice.

Key words: *Amicus curiae*, Constitutional Interpretation, Election Postponement Case, Human Rights, Federal-Regional-Balance

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1. INTRODUCTION [1]

> *Although amicus participation may occur in any number of disputes, it may be most helpful in less traditional litigation, such as challenges involving fundamental rights and freedoms, economic and social rights, gender discrimination, or election disputes. These cases are multivariable and almost always require information that lies beyond a judge's experience and training. Moreover, reaching the right decision is never more important than in these cases since the impact will be felt throughout many communities and for years to come* (Christopher Kerkering and Christopher Mbazira 2017).

On 8th April 2020, Ethiopia proclaimed a national emergency decree through proclamation no. 3/2020 in order to contain the spread of COVID-19 pandemic. Adding fuel to the fire, the country was trapped in another uneasy situation, that was, the overlap of the sixth national election with the outbreak of COVID-19. Claiming the obstacle posed by the pandemic and the concomitant emergency decree, the National Election Board of Ethiopia (NEBE), the constitutionally mandated election management body in the country, made a report to the House of Peoples' Representatives (HPR) explaining that it would be unable to conduct election within the constitutionally provided timeframe.[2] The HPR accepted and approved the report of the NEBE. Even though the constitution of the country stipulates for

[1]I want to make a clear demarcation in order to avoid confusion and contradictions. The gist of this article is not to examine the constitutionality or practical feasibility of settling the election postponement case through 'constitutional interpretation'. The only aim of this article is to examine the constitutional-legal basis, theoretical underpinning and practical repercussion of admitting *amicus curiae* in the constitutional interpretation process at hand. In case the article makes some comments on the constitutional interpretation issue itself, it is only to indicate the positive or negative impact such interpretation process has on the effectiveness of using *amicus curiae*. As such, narrating the long history of constitutional interpretation case at hand is necessitated not in its own sake, but to show the context that required the participation of *amicus curiae*. So, every road in the article ultimately leads to *amicus curiae*.

[2] HPR is the Ethiopian parliament that is mandated by Art. 55 of the country's constitution with legislative power over the matters that fall under the jurisdiction of the federal government.

a limited government that has to be elected through free, fair and universal suffrage each five year, it does not offer a clear guidance as to the possibility of postponing election in case of national emergency situations that make the conduct of election difficult to undertake. Owing to this constitutional lacuna (which some call "constitutional crisis"), the HPR has requested the House of Federation (hereafter the HoF) through the Council of Constitutional Inquiry (Hereafter the CCI) to interpret Arts. 54 (1), 58(3) and 94 of the Constitution and to decide on the manner of governing the country amid COVID-19 borne national health emergency situation until the sixth national election takes place after the disappearance of the pandemic.[3] With a view to solicit professional assistance on the issue, the CCI has made a public call for the submission of *amicus* briefs and some legal experts have made the submission accordingly. Even more, the CCI has conducted a kind of "public hearing" on which the *amici curiae* presented their oral statements in relation to the constitutional interpretation request presented before it. Given the unprecedented nature of such grand constitutional issue in relation to election in the history of Ethiopian constitutional interpretation, some called the phenomenon a "constitutional moment"[4]. Others saw it as a political opportunism, implicating that the incumbent regime has manipulated the COVID-19 pandemic as a pretext to postpone election under the shield of constitutional interpretation so as to get more time to consolidate its power. The case could be mentioned as a "hard case" (in the sense of Dworkin's theory of adjudication).

[3]The CCI is an organ that is established by the Ethiopian constitution to investigate constitutional dispute and to recommend solution to the HoF as understood from the cumulative reading of Arts.82 and 84 of the constitution of the country. The HoF is the upper house in the Ethiopian federation that is mandated with the power to interpret the constitution as stipulated under Arts. 62(1) cum. 82 (1). The articles of the constitution which were referred for interpretation stipulate the following matters. Art. 54 (1) reads that "members of the House of Peoples' Representatives shall be elected by the People for a term of five years on the basis of universal suffrage and by direct, free and fair elections held by secret ballot. Whereas, Art. 58 (3) provides that "The House of Peoples' Representatives shall be elected for a term of five years. Elections for a new House shall be concluded one month prior to the expiry of the House's term. Art. 94 of the Constitution regulates the issue of state of emergency, but it does not give direct hint as to the path that should be taken if the state of emergency is the one that makes national election impossible to conduct.

[4] In the present sense, the term "constitutional moment" is used to explain the special opportunity or occasion of dealing with constitutional issue of high importance.

Relying on the provisions of the constitution and subsidiary laws of the country and by drawing insights from comparative constitutional interpretation jurisprudence in which *amici curiae* have participated, this article undertakes a two stage evaluation of the participation of *amicus curiae* in the election postponement case at hand. At the first stage, it evaluates the constitutional-legal basis and theoretical underpinning of admitting *amicus curiae* in constitutional interpretation process under the Ethiopian constitutional order. I will call this first stage evaluation a *"constitutional-legal basis and theoretical underpinning"* test.

At the second stage, the article critically evaluates the practical repercussions of the participation of *amicus curiae* in the case at hand by taking two main issues into consideration. The first is whether the participation of *amicus curiae* in the election postponement case at hand has adequately served to safeguard human rights, mainly the electoral rights of citizens and the collective right to self-determination of Nations, Nationalities and Peoples that is characterized as the defining feature of the Ethiopian federation. The second is whether the participation of *amicus curiae* has been undertaken in a way that takes into account the constitutional scale of the federal-regional-balance. I will generally call the second stage evaluation a "*human rights and federal-regional-balance*" test.

The article is confined to the subject of the participation of *amicus curiae* in the case at hand rather than the constitutionality or otherwise of the constitutional interpretation alternative taken by the country in postponing the sixth national election. To accomplish the aforementioned two tiers of evaluation, the article is divided into six sections. The first section generally introduces the overall component and objective of the article followed by the second section which explores the meaning and historical evolution of *amicus curiae*. The third section elaborates on the status of *amicus curiae* under comparative law at the level of the two gigantic legal systems – Civil Law and Common Law. Section four, which is the core of the article, undertakes a two tier evaluation of the admission of *amicus curiae* in the election postponement case at hand. First, it evaluates the constitutional-legal basis and potential utility of admitting *amicus curiae* in constitutional interpretation process under the Ethiopian constitutional order. Second, the article critically evaluates whether the participation of *amicus curiae* in the election

postponement case under consideration has adequately served to safeguard human rights, mainly, the electoral rights of citizens and the right to self-determination of Nations, Nationalities and Peoples that is seen as the hallmark of Ethiopian federation and whether it has properly kept the scale of the federal-regional balance. Section five brings the article to an end by a way of conclusion while section six offers some feasible recommendations.

2. *AMICUS CURIAE:* MEANING AND HISTORICAL EVOLUTION

Amicus curiae (plural *amici curiae*), Latin for friend of court, is a non-litigious party to litigation that assists courts to reach a decision on areas of the law it (the *amicus curiae*) regards as complex and beyond its (courts') expertise.[5] There is no unanimity among scholars as to the exact origin of *amicus curiae*. However, there appears to be relative consensus among the scholars studying the subject that its beginning was in Roman law.[6] Under Roman law, the *amicus,* at the court's discretion, provided information on areas of law beyond the expertise of the court.[7] Such *amicus* was usually court-appointed and offered non-binding opinions on law unfamiliar to the court.[8] For those who

[5]Amanda Spies, 'Amicus Curiae Participation, Gender Equality and the South African Constitutional Court' (PhD Dissertation, University of Witwatersrand, 2014). However, it has to be understood that owing to the flexible nature of *amicus curiae* institution, the definition given here is not universal. Cf. S. Chandra Mohan, *The amicus curiae: Friends no more?* Singapore Journal of Legal Education (2010), Vol.2 <https://ink.library. smu. edu.sg/sol_ research/975> accessed 27 June 2021

[6] Michael K. Lowman, *The Litigating Amicus Curiae: When Does the Party Begin After the Friends Leave?* The American University Law Review (1992), Vol. 41, Pp1243, 1249. See also Katia Fack Gomez, *Rethinking the Role of Amicus curiae in International Investment Arbitration: How to Draw the Line Favorably for the Public Interest,* Fordham International Law Journal (2012), Vol. 35, Pp 513, 516; Allison Lucas, 'Friends of the court? The ethics of amicus Brief Writing in First Amendment Litigation, Fordham Urban Law Journal (1999),Vol.25,No.5, Pp 1605, 1607https://ir.lawnet.fordham.edu/ulj/vol26/iss5/12 accessed 27 June 2021. Cf. Mohan, as cited in S. Chandra Mohan, *supra* note 5. Mohan tries to note the controversial nature of the historical origin of amicus curiae. To put in his exact words, he writes "To many scholars the exact origin of the amicus curiae is unclear and remains controversial. One commonly held view is that it had its origins in the common law despite its presence in civil law jurisdictions. The other view, shared by the writer (Mohan himself) is that it most probably originated during Roman times. This is because the Roman practice of appointing a *consilium* or group of independent advisors to magistrates is in keeping with the appointment and use of the amici in all aspects of Roman life. Occasionally, the amicus curiae's origin is attributed to both the common law and Roman law".

[7]Michael K. Lowman, *Supra* note 6, P.1243

[8]Allison Lucas, *Supra* note 6, P1605

advance such development trajectory of *amicus curiae* practice, it is from the practice of *amicus curiae* that originated under Roman law that it got to the English Common Law System.[9] The manner by which the *amicus curiae* has been informing the court on points of law has been known as "oral shepardizing" (the bringing up of case laws or precedents unknown to the judge) and the *amicus* is said to serve as oral shepardizer.[10] In addition to its role of "oral shepardizer," an *amicus* could also act on behalf of infants or alert the court to manifest error, such as the death of a party.[11]

Owing to the influence of the English judicial practice in the United States, the *amicus* practice entered the American Common Law System in the early Nineteenth Century (as of 1823).[12] When an *amicus* was introduced to the Common Law world (both England and the United States), the aim was to serve as an impartial friend who assists the court by helping it to avoid error, and to assist it to maintain judicial honor and integrity.[13] However, as Allison Lucas notes, the *amicus curiae*, which was a neutral friend of the court at the beginning has latter moved from neutrality to partisanship, from friendship to advocacy.[14] That is why Mohan entitled his illuminating article on *amicus curiae* as "*amicus curiae*: Friends no more?" with a view to indicate how the institution which was previously seen as friends of the court gradually turn out to be guardians of partisan interests.[15]

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[9] *Ibid.* See also, Center for International Environmental Law, Protecting the Public Interest in International Dispute Settlement: The *Amicus Curiae* Phenomenon (2009) < www.ciel.org > accessed on June 27, 202. However, it has to be made clear that the literatures that historicize the coming of *amicus curiae* practice from Roman law to common law do not tell us the manner through which it got from Roman law to common law.

[10] Michael K. Lowman, *Supra* note 6.

[11] *Ibid.*

[12] *Ibid.*

[13] *Ibid.* Lowman also notes that although the *amicus curiae* device originally served as the judiciary's impartial friend, the common law maintenance of an adversary judicial process gradually undermined this role. Common law procedures were based on the theory of "trial by duel. Here, the parties were deemed to be the masters of the suit. Under common law procedure, it was the parties' sole privilege and prerogative to control the course of the litigation, free from a stranger's interference. As a result, the common law system was particularly resistant (inflexible) to expanding third-party involvement at the trial level. Later on, in response to the potential inequity of the common law adversarial system, common law courts gradually molded the *amicus curiae* device into an informal judicial method of representing third-party interests previously ignored under the adversarial system.

[14] Allison Lucas, *Supra* note 6, P1605

[15] Mohan, Cf. S. Chandra Mohan, *Supra* note 6.

Talking at the level of the two gigantic legal systems, the literature relating to the evolution of *amicus practice* in Civil Law jurisdiction indicates that it is a recent phenomenon. In this respect, Stephen Kochevar once wrote:

> Historically, *amicus* briefs did not appear in modern Civil Law[16] jurisdictions. Today, although Civil Law *amicus* practice is by no means universal, *amicus* briefs appear, formally or informally, in Civil Law courts around the world. This broad development can be split into two trends. First, various Civil Law Jurisdictions have formally recognized *amicus* activity through rules, statutes, or court decisions. Second, NGOs regularly submit *amicus* briefs to Civil Law courts, even when such courts have adopted no formal mechanisms to accept their submissions. Both trends are interregional and relatively recent.[17]

As understood from the above quote, even though modern Civil Law is believed to be descended from the early Roman Law, it does not precede the Common Law in practicing the *amicus* procedure. The question now is where Ethiopia stands in the Common-Civil Law divide in relation to *amicus* practice. This issue is dealt in depth under the fourth section. Under the present section, it is sufficient to have a general picture of the institution of *amicus curiae* and its development trajectory under the Common Law and Civil Legal systems. What could be generally deduced in relation to the meaning and historical evolution of the use of *amicus curiae* is that there are variations at general comparative law level (at Common and Civil Law) and even in individual jurisdictions as to the meaning ascribed to the practice and the growth path it has been going through.

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[16]Even though Kochevar has not made clear what he exactly mean by "modern civil law" or where the old/traditional civil law ends and the modern civil law begins, two possible meaning may be implied from the whole body of the article and from general literature on common law legal system. The first is that modern civil law could be contrasted with Roman law which is often described as an intellectual ancestor of the civil law legal system. The second possibility is that modern civil law refers to codified civil law as opposed to the fragmentary pre-codification civil law.

[17]Stephen Kochevar, '*Amicus Curiae* in Civil Law Jurisdictions' (2013) 122 Yale Law Journal 1653

Apart from the meaning and historical evolution of *amicus curiae* in early Roman Law, in Common Law and under Civil Law Legal Systems, the other point to consider under this section is whether *amicus* issue is considered as a substantive or procedural matter. The existing literature on *amicus curiae* elaborate that in countries that have clearly recognized the *amicus* practice in their laws, the matter is incorporated in their procedural laws rather than in substantive laws.[18] This indicates that *amicus curiae* participation is a matter of procedure than substance. To offer one example, *amicus curiae* is recognized under Art. 22 (3) (e) of the 2010 Constitution of Kenya and under the rules of court proceeding on the enforcement of the bill of rights, known as the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules of 2013. Under the rules, friend of the court is defined as an independent and impartial expert on an issue which is the subject matter of proceedings but is not party to the case and serves to benefit the court with their expertise.

The other issue is whether only individual professionals (mainly professional lawyers) could be admitted as an *amicus curiae* or whether organizations could be admitted as such too. As Allison Orr wrote (in the context of the American *amicus practice*), those who stand as *amici* were originally individual professional lawyers, not organizations.[19] However, since the early 1990s, both individuals and different governmental and non-governmental organizations are participating as amicus curie.[20]

Another equally important point to consider under the present section is whether *amicus curiae* practice relates only to the factual or legal aspects of a given case or to both. The existing literature indicates that the *amicus curiae* submission might relate to both question of law and fact. In *Hoffman v. South African Airways*, the Constitutional Court of South Africa, under paragraph 64 of its ruling stated that:

[18]John Mubangizi and Christopher Mbazira*, Constructing the Amicus Curiae Procedure in Human Rights Litigation: What can Uganda Learn from South Africa*, Law, Democracy and Development (2012), Vol.16, p199

[19] Allison Orr Larsen, 'The Trouble with *Amicus* Facts' 100 Virginia Law Review (2014) 1757

[20] *Ibid.*

> *Amicus curiae* assists the Court by furnishing information or argument regarding questions of law or fact. An *amicus* is not a party to litigation, but believes that the Court's decision may affect its interest. The *amicus* differs from an intervening party, who has a direct interest in the outcome of the litigation and is therefore permitted to participate as a party to the matter. An *amicus* joins proceedings, as its name suggests, as a friend of the Court. It is unlike a party to litigation who is forced into the litigation and thus compelled to incur costs. It joins in the proceedings to assist the Court because of its expertise on or interest in the matter before the Court. It chooses the side it wishes to join unless requested by the Court to urge a particular position.[21]

In similar vein, Adem K. Abebe also wrote that *amicus curiae* engages in a given case by offering a court information on points of law or fact.[22]

The last point worth mentioning here is the difference between *amicus curiae* and third party intervener. In this regard, Palchetti observes that unlike third party intervener, the *amici curiae* would not become parties to the case nor be bound by the court's decision; they would not necessarily be entitled to have access to the pleadings and other documents of the case. Their participation to the proceedings would be limited simply to the submission of briefs presenting their views on specific questions.[23] Similarly, Obonye wrote that:

> … although an *amicus* intervention is a third-party procedure to all intents and purposes, it must not be conflated or confused with the classical third-party intervention, with which it cohabits the same conceptual space. While intervening third parties are mostly parties to the treaty with the necessary *locus standi* and intervene in proceedings to protect their right(s) or legal interest(s) which are likely to be affected by the expected judgment of the court, an *amicus curiae* may not have any specific legal interest in the

[21]Amanda Spies, *Supra* note 5.
[22]Frans Viljoen and Adam Kassie, *Amicus Curiae Participation Before Regional Human Rights Bodies in Africa,* Journal of African Law (2014), Vol.22, P58
[23] Paolo Palchetti , Opening the International Court of Justice to Third States (2002) 6 Max Planck UNYB 139, 166

> dispute but nonetheless intervenes to bring information that is relevant for the resolution of the matter before the court.[24]

The historical origin of the institution of *amicus curiae* being where it may and the development trajectory of the institution being as it may, the undeniable truth this date is that the participation of *amicus curiae* before the adjudicatory bodies of different countries is an undeniable fact and it is also on an increasing rate.[25] Its theoretical underpinning is serving the interest of justice by assisting the adjudicatory organ. *Amicus curiae* practice is now common in South Africa, Kenya, Canada, United States and in many other countries and both individuals and different organizations such as Non-Governmental Organizations (NGOs)[26] are participating in different cases as *amicus curiae*. The type of cases in which *amicus curiae* participate also encompasses many areas that includes, but not limited to environmental issues, issues relating to human rights litigation, election cases, constitutional interpretation cases and criminal cases. The manner in which the *amicus curiae* participates in a given case could be through the submission of *amicus* brief or both by submission of *amicus* briefs[27] and by presenting oral information (argument) to the adjudicatory organ.

[24]Jonas Obonye, The Participation of *Amicus Curiae* in the African Human Rights System (PhD Dissertation, University of Bristol, 2018).

[25]Nowadays, the practice of *amicus curiae* is not confined to domestic jurisdictions alone. It is also getting its way to international adjudication process. One area of international adjudicatory process in which amicus curiae is now in practice is

[26] For instance, as Allison Lucas writes, The American Civil Liberties union, for instance, is playing a tremendous role as amicus curiae through the amicus briefs submission it makes to different levels of courts in the United States (See Allison Lucas, *Supra* note 6, Pp 1605, 1608).

[27]'*Amicus* briefs' simply refers to a written document which states the position of a given amicus curiae on a factual or legal or both aspect of a given case and being submitted to a given adjudicatory organ.

3. PARTICIPATION OF *AMICUS CURIAE* IN CONSTITUTIONAL INTERPRETATION PROCESS AND ITS SIGNIFICANCE: PRACTICAL LESSONS FROM SOME SELECTED COUNTRIES

This section elaborates on how *amicus curiae* could serve in safeguarding human rights in the process of constitutional interpretation by drawing insights from comparative practice. The countries selected are Kenya, South Africa and Albania with aim of drawing some valuable lessons for Ethiopia. These countries are selected purposively based on three reasons that indicate resemblance among them. First, the countries have adopted their living constitutions in nearly the same historical periods. By ‘’living constitutions” I mean the constitutions that are currently in force in the four jurisdictions as opposed to the constitutions that were adopted and discarded in those countries historical past. The living constitution of Ethiopia, officially named the Constitution of the Federal Democratic Republic of Ethiopia, was adopted in 1994 while the living constitution of South Africa was adopted in 1996 and the living constitution of Kenya was adopted in 2010 replacing the country’s independence Constitution of the 1963. Similarly, the living constitution of Albania was adopted in 1998. Second, even though to varying degrees, of the four countries, Albania, South Africa and Ethiopia have practiced an *amicus* procedure in their constitutional interpretation process. Whereas, Kenya, as the only country in the world that has heretofore explicitly recognized *amicus curiae* in its living constitution is, for stronger reason, included into the selection. Besides, as the three countries in the selection are in the African continent, they share some common (if not uniform) socio-economic, political and cultural settings. It should be clear from the outset that as the gist of this article is the issue of *amicus curiae* in the constitutional interpretation process, it does not delve into the comparison of *amicus* practice in other areas of adjudicatory processes except as a matter of co-incidence.

3.1.PARTICIPATION OF *AMICUS CURIAE* IN THE SOUTH AFRICAN CONSTITUTIONAL INTERPRETATION PROCESS AND ITS SIGNIFICANCE

South Africa is one of the African countries with rich practice of *amicus curiae* participation in the process of constitutional interpretation. Regarding the

status of the institution of *amicus curiae* in the country's constitutional interpretation process, Amanda Spies wrote:

> Although not unknown in South African law, *amicus curiae* participation was previously restricted to the English Common Law understanding of primarily assisting the court, or a litigating party, with regard to a specific legal requirement. The Constitution of South Africa entrenched a new constitutional democratic order in which the principle of participatory democracy was firmly established. This favorable constitutional climate and the establishment of the Constitutional Court as the highest court in all constitutional matters played an important role in establishing and developing the new-found role of *amici curiae*. The Constitutional Court was the first to adopt specific rules that regulated *amicus curiae* participation and has set the benchmark for *amicus* participation, remaining the preferred court in which to lodge these applications.[28]

As clearly observed from the preceding quote, the practice of *amicus curiae* in the South African constitutional order is rooted in the very fabric of constitutional right to democratic participation and this is favorably put into practice through the positive role played by the country's constitutional court by enacting the rules of the game for *amicus* procedure and by admitting *amicus* briefs in the process of constitutional interpretation cases it has been entertaining. The relevant rule that the constitutional court adopted for the regulation of *amicus curiae* participation is known as "rule 10".[29] According to the rule, the admission of *amicus curiae* is dependent on the written consent of the litigating parties except in the situation in which the chief justice of the court might allow *amicus curiae* participation in the absence of written consent of the parties.[30] The constitutional court has elaborated on the significance of *amicus curiae* in *Minister of Health v. Treatment Action* Campaign (as cited in Amanda Spies) by arguing that:

[28]Amanda Spies, s*upra* note 5.
[29] *Ibid.*
[30] The South African Constitutional Court Rules, Rule 10.

> The role of an *amicus* is to draw the attention of the Court to the relevant matters of law and fact to which attention would not otherwise be drawn. In return for the privilege of participating in proceedings without having to qualify as a party, an *amicus* has a special duty to the Court. That duty is to provide cogent and helpful submissions that assist the Court. The *amicus* must not repeat arguments already made but must raise new contentions; and generally these new contentions must be raised on the data already before the Court. Ordinarily, it is inappropriate for an *amicus* to try and introduce new contentions based on fresh evidence.[31]

Mubangazi also tells us that the significance of the role of *amicus curiae* has been acknowledged and recognized in South Africa through legislative and judicial practice.[32] Legislatively, provision was first made for *amicus curiae* through the Constitutional Court Rules in 1995. In the year 2000 a rule modelled upon the Constitutional Court Rule 10 was introduced into the rules regulating such practice in the High Courts of the country. Essentially, Rule 10 of the Constitutional Court Rules provides guidelines as to who can act as an *amicus curiae* in a Constitutional Court hearing. In that regard, the rule provides that any person interested in any matter before the Court may, with the written consent of all the parties, be admitted as an *amicus curiae*. Under Rule 10(4), if consent is not given by the parties to the case, an application may be made to the Chief Justice of the Court. The rule also provides for the form and content of an *amicus curiae* application. Essentially, the application should briefly describe the interest of, and the position to be adopted by, the *amicus*. It should also set out the submissions and state their relevance to the proceedings. Rule 16A of the High Court Rules, which is drafted along the same lines as Rule 10 of the Constitutional Court Rules, provides for submission by *amicus curiae* in the High Court.[33]

The literature indicates that *amicus curiae* has been playing a crucial role in advocating human rights in the constitutional interpretation process.

[31] '*Amicus Curiae* Participation, Gender Equality and the South African Constitutional Court' (PhD Dissertation, University of Witwatersrand 2014) as cited in Amanda, *supra* note 5.
[32] Mubangizi and Mbazira, *supra* note 18.
[33] *Ibid.*

According to Mubangazi, the prevalence of *amicus curiae* participation in South Africa in human rights litigation has to be appreciated in two contexts. The first is the general context of public interest litigation which was born out of the apartheid era as part of the political struggle in which human rights activists and civil society organizations sought to fight the apartheid regime through advocacy, mobilization and litigation. With the advent of democracy, there was "an inevitable shift from challenging an unjust system towards litigating cases that are aimed at enforcing rights enshrined in the Constitution." This has been greatly helped by the liberal position adopted by the South African Constitution on *locus standi* for those wishing to enforce the rights in the Bill of Rights of the Constitution by litigating in the public interest. Although, technically, *locus standi* can be distinguished from the *amicus curiae* procedure, the courts have applied the same *locus standi* flexibility to the *amicus curiae* procedure.[34]

The second is that the role of *amicus curiae* has to be seen in the context of the prevalence of human rights NGOs in South Africa. Again, due to its unique history, South Africa is known to have numerous human rights NGOs.[35] Many of these NGOs have either used the liberalized standing requirement to initiate court cases or have sought to be admitted as *amicus curiae* on behalf of individuals or groups in litigation on various human rights issues. Indeed, in many of the case discussed earlier, most of the parties that appeared as *amici curiae* were NGOs. In this respect, the Treatment Action Campaign (TAC), the Freedom of Expression Institute (FXI) and the Institute for Democracy in South Africa have been particularly active and most successful. To that list should be added Lawyers for Human Rights (LHR) which has been involved in several Constitutional Court cases including the famous *S v Makwanyane and others* which abolished the death penalty. In addition to NGOs, university-based research centers and law clinics have also played a big role in developing the *amicus curiae* procedure. These centers have taken advantage of their research capacity to make precise and clearly pointed intervention supported by research evidence. Examples in this regard include the Community Law Centre (CLC) at the University of the Western Cape, the

[34] *Ibid.*
[35] *Ibid.*

Centre for Child Law at the University of Pretoria, and the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand.[36]

The other example of constitutional interpretation cases having human rights issues and in which the constitutional court has admitted *amicus* participation is the *Omar v. Government of the Republic of South Africa and Others*.[37] The applicant was challenging the validity of the Domestic Violence Act section 8 which mandated the issuance of an arrest warrant pursuant to a criminal protection order. The Court dismissed the application and held that the possibility that complainants will exploit, manipulate or misuse the procedure provided by section 8 did not render the Act unconstitutional. The Commission for Gender Equality was the only *amicus* admitted in this matter. The Commission advanced submissions dealing with the context of the Domestic Violence Act, the context of the present application, the constitutional framework within which the application falls, the relevant international law instruments, the legislative scheme in respect of section 8, the legislative history and background thereto as well as the constitutional imperatives sought to be advanced. More importantly, they argued that the recognition and protection of the right of every person to physical safety and integrity was recognized by the South African courts even prior to the advent of the current constitutional democracy. Furthermore, they argued that this right is now entrenched in section 12(1) (c) of the Constitution and is bolstered by several other related rights. These *amicus* submissions were of great assistance to the court and many of them were clearly taken into consideration in arriving at the decision as reflected in the judgment.[38]

The other relevant case is *Mazibuko and Others v City of Johannesburg and Others.*[39] Mazibuko and four other residents of Phiri, Soweto challenged, firstly, the City of Johannesburg's Free Basic Water policy in terms of which six kilolitres of water were provided monthly for free to all households in Johannesburg and, secondly, the lawfulness of the installation of prepaid water meters in Phiri. The three respondents were the City of Johannesburg, Johannesburg Water and the national Minister for Water Affairs and Forestry.

[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid.*
[39] *Ibid.*

The Centre on Housing Rights and Evictions (COHRE) (an international non-governmental organization which works to promote and protect economic, social and cultural rights) was admitted as *amicus curiae* to address the issues that arose in the appeal in the context of international and comparative law on the right to water. The Constitutional Court held, firstly, that section 27 (of the constitution) places an obligation on government to take reasonable legislative and other measures to seek the progressive realization of the right to water and, secondly, that the installation of the meters was neither unfair nor discriminatory. COHRE's role was crucial as it addressed the court on important issues, including; the duty to consider international and foreign law, the right to water in international law, the positive right to free basic water, the negative right to water, the procedural challenge to pre-payment meters and the equality challenge.[40] What we could understand from the above case is that *amicus curiae* is important in assisting the court in disposing constitutional issues in general and in upholding human rights in the constitutional interpretation process in particular.

3.2.PARTICIPATION OF *AMICUS CURIAE* IN THE KENYAN CONSTITUTIONAL INTERPRETATION PROCESS AND ITS SIGNIFICANCE

In Kenya, the role of *amicus curiae* has been recognized only in a limited way until the adoption of the 2010 Constitution of the country which gives an explicit and broader recognition to *amicus curiae*.[41] The situation changed radically with the introduction of the constitution. The country, unlike any other jurisdiction, has incorporated the friend of the court within its constitution.[42] It is worthwhile to reproduce the relevant provision of the constitution as follows:

> 'An organization or individual with particular expertise may, with the leave of the court, appear as a friend of the court'.

It has to be noted that under the Kenyan Constitution, the explicit recognition given to *amicus curiae* as quoted above is found under chapter 4 of the very

[40] *Ibid.*
[41] Kerkering and Mbazira (eds), Supra note 18; See also the 2010 of Kenyan Constitution, Art.22 (3) (e).
[42] *Ibid.*

constitution which stipulates the bill of rights. This is an indication of the trust that the Constitution attaches to the institution of *amicus curiae* in assisting the prevalence of human rights. Besides, it provides as procedural tool for the enforcement of human rights and the power to make rules for these procedural rules for the enforcement of human rights, including rules of *amicus* procedure is, vested in the chief justice.[43] Based on the power constitutionally conferred on him, the chief justice has come up with "The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013".[44]

Amicus is especially welcome in constitutional cases, which inherently involve issues in the public interest. These cases require a nuanced perspective that the parties may not be able to provide but that *amicus* can.[45] In Kenya, unlike the case of the three other countries in the selection[46], there is no separate adjudicatory organ entrusted with constitutional interpretation. Constitutional interpretation power is vested in the ordinary courts of the country.[47] Accordingly, original jurisdiction on constitutional interpretation is vested in the high court of the country and anyone who is dissatisfied with the decision of the high court can appeal to the court of appeal and still it is possible to appeal to the Supreme Court of the country if one is not satisfied with the decision of the court of appeal.[48] This indicates that *amicus curiae* participation in constitutional interpretation could take place at each level of these three layers of courts.

One example of constitutional interpretation cases in which human rights issue was at stake is the *Federation of Women Lawyers (FIDA-KENYA) and*

[43]Christopher Kerkering and Christopher Mbazira (eds), *Friends of the Court and the 2010 Constitution: The Kenyan Experience and Comparative State Practice* on *Amicus Curiae* (Kenyan Judicial Training Institute 2017); Kenyan Constitution, Art. 22 (3) (e), P32

[44].*Ibid.*

[45]*Id.*, P83

[46]In Albania and South Africa, constitutional interpretation is entrusted to special entities called constitutional courts while this power is entrusted to a separate organ called House of Federation in Ethiopia.

[47] Among others, the high court has a bench called "Constitutional and human rights division"

[48] See cumulatively Arts. 165 (3) (d) 164(3) (a) and 163 (4) (a) of the 2010 Constitution of Kenya.

et al v the Attorney General and et al.[49] The history of the case looks like the following: JMM, an 18 years old girl was raped by an older man in 2014 and got pregnant. She received unsafe abortion from an unqualified "doctor" on 8th December 2014 and consequently suffered from health and financial risk. Her mother and legal representative, PKM (2nd petitioner) and others such as FIDA KENYA (1st petitioner) sued many respondents such as the Ministry of Health. The first respondent is Kenyan Attorney General. The petitioners' arguments involve the following: PKM, the mother of the victim and the second petitioner in the case argued that the government of Kenya, through the Ministry of Health national guidelines on the management of sexual violence in Kenya, second edition (2009 guidelines), made pursuant to section 35(3) of the sexual offenses act of the country, allowed termination of pregnancy occurring as a result of rape. But, no clear information is put as to the manner by which this legal termination of pregnancy could be achieved. They contend that the physical and mental health of many women and adolescent girls would be protected if information was available with regard to the cadre of health professional that can provide services for legal termination of pregnancy. In September 2012, the Ministry of Medical Services issued the 2012 standards and guidelines and the training curriculum. However, argued PMK, the 3rd respondent (Director of Medical Services (which is structurally regulated under the second respondent, the Ministry of Health) has withdrawn the 2012 standards and guidelines for reducing morbidity and mortality from unsafe abortion in Kenya (2012 standards and guidelines), and the national training curriculum for the management of unintended, risky and unplanned pregnancies (the training curriculum) on 3rd December 2013 and 24th February 2014, respectively. In this memo (letter) of 24th Feb 2014, the Director of Medical Services (DMS) directed all medical service workers not to participate in any training on safe abortion and use of medabon (the drug that procures abortion). It stated that anybody attending the trainings or using the drug medabon would be subjected to appropriate legal and professional proceedings. The Director of Medical Services went on to state in the memo that "the 2010 Constitution of Kenya clearly provides that abortion on demand is illegal and as such there was no need to train healthcare

[49] FIDA is Spanish acronym for "International Federation of Women Lawyers" and its full Spanish name is Federation International De Abogadas. FIDA-KENYA is the Kenyan branch of FIDA that works for the rights and interests of women in Kenya.

workers on safe abortion or importation of medicines for medical abortion". PMK claimed that this withdrawal undermines the right to access safe legal abortion services, therefore leading to women and girls in the position of JMM (the victim) to secure unsafe abortion from unqualified and untrained persons such as the doctor who procured her abortion on 8th December 2014. It left a gap and exposed JMM and others in her position to a denial of, *inter alia*, their reproductive health rights. They also said Art. 64(4) of the Constitution exceptionally allows abortion. The petitioners argued the withdrawal (DMS Directives) impose a disproportionate burden on survivors of sexual violence by conditioning permitted abortion services upon finding a trained health professional from already extremely limited pool of providers. As a result, he recklessly endangered JMM's life by creating an environment where she could not realistically access safe abortion services. PMK's position is supported by the third and fourth petitioners.

The first respondent was Kenyan Attorney General and it is sued as the principal legal adviser to the government pursuant to the provisions of Art.156 of the Constitution. The second respondent was the Ministry of Health which is responsible for the development of policies aimed at the provision of high quality and affordable health care for the people of Kenya. The Ministry is also charged with the development of well trained and motivated workforce of health professionals with the ability to adequately respond to any public health related issues and emergencies. As a relief, the petitioners requested that the court declare the action of the government as violations of constitutional rights of JMM to the highest attainable standard of health and to benefit from scientific progress in health, the right to health related information, to pay compensation for JMM and to reinstate these withdrawn guidelines to function.

Three organizations were joined to the petition as *amici curiae.* One was Women's Link Worldwide (WLW) – the organization that works on the advancement of human rights of women and girls. Relying on the Inter-American Court of Human Rights case of *Artavia Murillo et al (in Vitro fertilization v Costa Rica*[50]*, it* argued that the right to life from conception

[50]In this case, the Inter-American Court of Human Rights ordered Costa Rica to lift its unique ban against in vitro fertilization (IVF), rejecting Costa Rica's argument that embryos had personhood and full human rights in pursuance of article 4(1) of the American Convention on

(which is recognized under the Kenyan Constitution) is not absolute and cannot be used to restrict other rights disproportionately, or to discriminate and that the right to life from conception does not give pre-natal life the status of a person. Regarding the right to benefit from scientific progress of sexual and reproductive health, WLW argued that this right is recognized in Art. 11 of the constitution which provides, "The state shall recognize the role of science…in the development of a nation'' and it is also recognized in article 33(1) which provides that "every person has…the right to freedom of scientific research. The 3rd respondent violated this right by restricting access of women and girls in Kenya to scientific progress by banning the safer, affordable, less invasive and up-to-date option (medabon) which has been made available by science and approved within the country as essential.

The second was National Gender and Equality Commission (NGEC) – a constitutional commission established pursuant to Art 59(4 and 5) of the Constitution with the overall mandate of promoting gender equality and freedom from discrimination in accordance with Art. 27 of the same Constitution. It relied on National Gender and Equality Commission of Kenya and UN women Report 'Determining the economic burden of gender-based violence to survivors in Kenya' (2015) and argued that sexual violence imposes both direct and indirect costs on women and girls, their households and the society. The Commission also referred the court to the recent changes in law in other countries in Africa, which now provide guidance on how to ensure access to safe and legal abortion for survivors of sexual violence. The Commission raised that in 2005, Ethiopia reformed its Criminal Code Art.551 to specifically and clearly allow for abortion in case of rape and incest. Furthermore, the Ministry of Health in Ethiopia has provided clarity by providing guidelines in the form of the family health department technical and procedural guidelines for safe abortion services in Ethiopia (2006). The guidelines clarify that women need not provide any documentation concerning rape: their request for abortion and pregnancy results from sexual violence is sufficient to obtain a legal abortion. The guidelines further provide that health

Human Rights. Some organizations such as the Center for Reproductive Rights, the Allard K. Lowenstein International Human Rights Clinic at Yale Law School and the University of Toronto have participated in the case as *amicus curiae* for the claimants. Besides, some organizations such as Human Life International and the University of St. Thomas School of Law participated in this case as *amicus curiae* for the defendant.

providers will not be prosecuted in the event the women's allegation is eventually proven false.

The third was the Kenyan National Commission on Human rights (KNCHR) which is established as per Art. 59 (1) of the Constitution. It has the constitutional mandate to promote, respect, protect and observe human rights and develop a culture of human rights in Kenya. The Commission confined its submissions to analyzing the question whether the lack of a statutory and physical framework to protect, facilitate and implement the right under Art. 26(4) violates women and girls right to life, dignity and freedom from torture and cruel, inhuman or degrading treatment, right to equality and non-discrimination, right to information, right to goods and services of reasonable quality, among others. It was its submission that the phrase "If permitted by any other law" as used in Art. 26 (4) means that besides constitutional exceptions, laws can permit abortion based on other grounds. It noted the provisions of section 35(3) of the sexual offenses act in this regard. It submitted that the 2009 national guidelines, although developed before the 2010 Kenyan Constitution, reflect the spirit of Arts. 26 (4), 28 and 29 (d) and (f) of the Constitution. It submitted that the withdrawal of the 2012 standards and guidelines and the training curriculum have the effect of interfering with the availability, accessibility, acceptability and quality of health care services to women and that they had the further effect of imposing a particular hardship to poor and rural women seeking the same services. It argued that forcing a woman to keep pregnancy resulting from sexual abuse is in contravention of Art. 29 (d) and 25 (1). Further, it was Kenyan National Commission on Human Rights' submission that both Arts. 2(4) and 165(3) (b) give this court the power to invalidate any act or omission that is in contravention of the Constitution. This power of the court is consistent with the obligation of the court to be the final custodian of the Constitution.

On 12th June 2019, the Constitutional and Human Rights Division of the High Court of the country ruled that the withdrawal of the guidelines by the DMS violates Arts. 10 and 47 of the Constitution and it also disabled the efficacy of Art. 26 (4) of the Constitution and rendered it a dead letter and it *ultra vires* the powers of the DMS since those powers are bestowed upon the board. It violated the right to the highest attainable standard of health provided under Art. 43 (1) (a). It also ruled that PMK, who was personal representative of the

JMM during the time the JMM was suffering (and who is representative of JMJ in court proceedings as well (JMM died in the course of the proceeding before decision) must be compensated by the government for the material and emotional harm she suffered by relying on Art. 23 of the Constitution. It fixed the amount of compensation to 3,000,000 (three million) Kenyan shillings. It also indicated in its decision that this compensation is a remedy under public law and it does not exclude or replace a compensation that exists as a remedy under private law in tort actions.

All that could be discerned from the above case is that the role of *amicus curiae* in assisting the adjudicatory organ to arrive at a balanced decision and in upholding human rights is so vital especially when issues of constitutional interpretation are involved and the Kenyan High Court has made use of it.

3.3.PARTICIPATION OF *AMICUS CURIAE* IN THE ALBANIAN CONSTITUTIONAL INTERPRETATION PROCESS AND ITS SIGNIFICANCE IN ASSISTING THE ADJUDICATORY ORGAN AND FOR THE PREVALENCE OF HUMAN RIGHTS

Under the Constitution of Albania, constitutional interpretation is vested in a separate body called constitutional court.[51] The Albanian Constitutional Court is known for admitting *amicus curiae* in the process of the constitutional interpretation it undertakes. One constitutional interpretation case in which *amicus curiae* has participated and which has direct relevance with the issue of the prevalence of human rights in the Albanian Republic is the case in which the constitutionality or otherwise of the provisions of the law made by the Albanian Assembly, that is, Albanian Law no. 84/2016 *"On the Transitional Re-Evaluation of Judges and Prosecutors in the Republic of Albania (Vetting Law)* is brought before the constitutional court of the country for review. It is on October 7, 2016 that the main opposition party of the country requested the constitutional court to declare the vetting law incompatible with the constitution of the country and the European Convention for Human Rights. The constitutional court before which the constitutionality of the provisions of the law is brought for review requested the European Commission for Democracy through Law (the Venice

[51] The 1998 Constitution of the Republic of Albania, Arts. 124 through 134.

Commission) to submit an *amicus* brief on the case. Among the issues on which the constitutional court requested for *amicus* brief, two of them are of significant importance in this paper as they relate to human rights issues that arise in the constitutional interpretation process.

The first is that the constitutional court requested the Commission to submit *amicus* brief whether the lack of possibility for judges and prosecutors undergoing the vetting process to challenge the decisions given by the re-evaluation institutions before domestic courts is in breach of Art. 6 (the right to a fair trial) of the European Convention on Human Rights (ECHR).[52] On this point, the Venice Commission opined that the answer to this question depends on the qualification of the Appeal Chamber in the Constitution and the Vetting Law. For the Commission, those legal texts provide sufficient elements in order to conclude that the Appeal Chamber may be considered as a specialized jurisdiction which presents judicial guarantees to the persons affected by the vetting procedure. The rights and safeguards contained in the legislative and constitutional scheme seem extensive.

The second is whether the provisions of the law concerning the background assessment are contrary to Art.8 (the right to respect for private and family life) of the ECHR. The background assessment has the purpose to verify the declarations of the judges and prosecutors being assessed with a view to determining whether they had inappropriate contacts with persons involved in organized crime. In this respect, the Commission held the view that this is a legitimate aim in view of the second paragraph of Art.8 of the ECHR (interests of national security, public safety, the prevention of disorder or crime, or the protection of the rights and freedoms of others). For the Commission, the essential consideration is that the working group which has the main role in the background assessment and is composed primarily of security personnel, functions under the supervision and control of the re-evaluation bodies and that all the relevant material before the working group should be available to them. The Commission is of the opinion that while the background assessment is undoubtedly obtrusive, it may not necessarily be seen as an unjustifiable

[52]European Commission for Democracy through Rule of Law (Venice Commission) amicus brief to the Constitutional Court of Albania on the law on the transitional re-evaluation of judges and prosecutors (the vetting law), at its 109th Plenary Session at Venice, 9-10 December 2016.

interference with the private or family life of judges and prosecutors contrary to Art. 8 ECHR.[53] This case indicates how important *amicus curiae* institution is in explicating the issues of human rights and freedoms in the constitutional adjudication process.

At this juncture, it is worthwhile to briefly state the lessons that could be drawn for Ethiopia from the practices of the participation of *amicus curiae in constitutional interpretation process* in the three countries discussed earlier. The practices of South Africa and Kenya give us the lesson that an *ex ante* enactment of the rules that regulate the participation of *amicus curiae* is essential to benefit from such participation. Besides, the practices of all the three countries teaches us that the participation of *amicus curiae* is crucial especially in constitutional interpretation cases in which human rights issues are at the center. Moreover, the South African practice enlightens us on the role that university research centers, especially, those working on legal research issues could play as *amicus curiae*. This gives us an insight that the legal research centers existing at federal and regional level in Ethiopia and the law schools in the country might play similar role if the forum is available to them.

4. PARTICIPATION OF *AMICUS CURIAE* IN THE ETHIOPIAN CONSTITUTIONAL INTERPRETATION PROCESS: EXAMINING ITS CONSTITUTIONAL-LEGAL BASIS AND PRACTICAL RAMIFICATIONS

As indicated in the introductory section, the present section undertakes a two tier evaluation of the participation of *amicus curiae* in the election postponement case at hand. At the first stage, it evaluates the constitutional-legal basis and theoretical usefulness of admitting *amicus curiae* in constitutional interpretation process under the Ethiopian constitutional order. I will call this first stage evaluation a *"constitutional-legal basis and theoretical underpinning"* test. At the second stage, the article critically evaluates two issues. The first issue is whether the participation of *amicus curiae* in the election postponement case at hand has adequately served to safeguard human rights, mainly, the electoral rights of citizens and the collective right to self-determination of Nations, Nationalities and Peoples that

[53] *Ibid.*

is characterized as the defining feature of the Ethiopian federation. The second issue is whether the participation of *amicus curiae* has been undertaken in a way that takes into account the constitutional scale of the federal-regional-balance. I will generally call the second stage evaluation a *"human rights and federal-regional-balance"* test.

Thus, this section is confined to a single recent case in which constitutional interpretation is requested regarding election postponement and the constitutional-legal dimensions thereof.[54] This is simply because of the fact that it is for the first time in the constitutional interpretation history of the country that such thing called *amicus* brief was publicly requested by the CCI and it was only in this case that a public hearing was made by the CCI by making different *amici* the participants of the hearing. For context and clarity, it is worthwhile to reproduce the history of the case as follows.

On April 30, 2020, the HPR approved the postponement of the sixth general election based on the report of the National Electoral Board of Ethiopia (NEBE) which made clear that due to COVID-19 related restrictions, it was unable to implement the planned pre-election activities such as training the election officers, voter registration and education, and dissemination of electoral materials. On May 5, 2020 the HPR decided to request the HoF for constitutional interpretation on the issue of how best to govern the country amid COVID-19 and the manner of postponing the election. The HPR then submitted its request to the HoF through the instrumentality of the CCI. After receiving the request of the HPR for constitutional interpretation, the CCI made a public call for professionals to submit *amicus* briefs on the matter. Accordingly, it received some *amicus* briefs from different individuals and professional organizations. The CCI has even gone further than receiving *amicus* briefs and it conducted a series of public hearings on which *amici curiae* have orally presented their arguments on the case. In the interest of space, it is not worthwhile to reproduce here all the *amicus* briefs submitted to the CCI and the contents of the professional oral opinions given by the *amici*

[54]As to the general analysis of the relevance and status of amicus curiae under the Ethiopian legal system, see Getachew Abera, *'Amicus Curiae*: Its Relevance to Ethiopia'. Indeed, Getachew's article is, to the knowledge of the writer, the only literature one can find in relation to amicus curiae under the Ethiopian legal system.

during the public hearing. It is sufficient to put those submissions only in brief and by a way of categorization.

The *amicus* briefs submitted to the CCI could be generally categorized into two. The first are the ones that support constitutional interpretation as a preferable solution to the constitutional lacuna brought about by the overlap of election season with the outbreak of COVID-19 borne state of emergency.[55] The second categories are those opposing to the need for the constitutional interpretation and the postponement of the election.[56] On 29th May 2020, the CCI submitted its recommendations to the HoF. In its recommendations, the CCI suggested the extension of the power of the two federal houses- the HPR and the HoF and the power of the regional states councils, and the power of the executive organs at both federal and state levels for the period of time that the COVID-19 pandemic continues to be a threat to public health and until the country's COVID-19 State of emergency remains in place, until such future time when new election is held and power transfer is effected." It also recommended for election to be held between nine and twelve months' time following announcement by the Ministry of Health (MOH), by the Ethiopian Public Health Institute (EPHI) and by the members of the scientific community that the COVID-19 pandemic is no longer a threat to public health and after this announcement is approved or endorsed by the HPR. On June, 2020, the "HoF" confirmed the recommendations of the CCI.[57]

[55] In the first category of submissions, see, for instance, Zemelak and others, 'Joint submission to the Constitutional Council of Inquiry of the Federal Democratic Republic of Ethiopia on the matter of the House of Peoples' Representative request for constitutional interpretation, My 15, 2020.

[56] In the second category of submissions, see the International Oromo Lawyers Association (IOLA), Brief of amici to CCI on the sixth national election postponement case, May 15/2020. See also the submission of Abraha Messele and others, 'Amicus curiae on Election, COVID19, and Constitutional Interpretation in Ethiopia, May 15, 2020. It has to be noted that the CCI totally ignored the submissions of IOLA as out of time submission.

[57]According to the International Institute for Democracy and Electoral Assistance (International IDEA), as of 11th June 2020 at least 66 countries and territories across the globe had decided to postpone national or subnational elections due to COVID-19, whereas at least 33 had decided to hold elections as originally planned. See Romain Rambaud, Holding or Postponing Elections during a COVID-19 Outbreak: Constitutional, Legal and Political Challenges in France (International IDEA 2020). So, Ethiopia is not an exception for doing so. It is also not unreasonable to solve constitutional lacuna through constitutional interpretation than trying constitutional discussion which might end up in deadlock. As George notes, the most important function of the judiciary is the resolution of constitutional

Even though the issue of *amicus curiae* is not explicitly regulated under the Constitution of the Federal Democratic Republic of Ethiopia (hereafter the FDRE Constitution) and the subsidiary laws of the country that are directly relevant to constitutional interpretation, it could be implied from some of the constitutional provisions and from the holistic reading of the constitutional document, and from the relevant subsidiary laws themselves. For instance, the FDRE Constitution is committed to democracy and public participation.[58] As the literatures on *amicus curiae* indicate, this practice is believed to enhance democratic values and public participation. Explaining the importance of admitting *amicus curiae* before courts, Anderson wrote, "*amicus curiae* participation is defended as democratic input into what is otherwise not a democratic branch of government"[59]. Obonye also wrote that the democratic argument supports the involvement of civil society actors in the resolution of cases.[60] It is believed that the democratic legitimacy of the judicial decision-making process is enhanced by the introduction of a plurality of voices in the process.[61] He also adds the increased use of *amicus* briefs comports with the reasoning of constitutional writers that constitutional law should strive to reflect the will of the people. This reasoning correlates with the theory of 'active liberty' developed by a former judge of the US Supreme Court, Stephen Breyer who also envisages an active participation of citizens in their government, which includes participation in constitutional litigation and interpretation.[62] The commitment of the FDRE Constitution to fundamental

disputes, that is, disputes regarding the interpretation and application of the constitution. Thus, solving constitutional disputes through certain adjudicatory organ rather than bringing to open public decision especially at critical moments such as the time of COVID-19 pandemic is plausible. As James Madison is also quoted to have saying, *"If every constitutional question were to be decided by public political bargaining, the constitution would be reduced to a battle ground of competing factions, political passion and partisan spirit".* The problem lies in the underlying political turmoil in the country that is brought about by an unpredictable government reform process which resulted in popular hopelessness.

[58]See the preamble of the constitution which talks about democracy and. It should also be noted that since the constitution is general law that stipulates only fundamental issues ad as details are always left to subsidiary regulations, it also not as such expected to have direct stipulation on *amicus curiae*. Indeed, as it has been discussed in this article, only the constitution of one country in the world – the Kenyan constitution of 2010 explicitly address the issue of *amicus curiae* participation in the adjudication process.

[59]Helen A. Anderson, *Frenemies of the Court: The many Faces of Amicus Curiae* 49 University of Richmond Law Review (2015), Vol.49, P361

[60] Jonas Obonye, *Supra* note 24.

[61]*Ibid.*

[62] *Ibid.*

rights and freedoms and the increasing role that *amicus curiae* is receiving in international, regional and national human rights related forums also reinforces the claim for the implied recognition of *amicus curiae* in the constitution.[63] In addition to and apart from the implications that could be drawn from the constitution, the provisions of the subsidiary laws that establish and define the powers and functions of the HoF and the CCI have, at least implicitly, a room for *amicus curiae*. Art. 9 of the CCI proclamation is a relevant provision to the issue of *amicus curiae*. This particular article is entitled *"gathering professional opinions"* and the sub-provisions read as follows:

1. The Council may, before it gives decision or submits its recommendation to the HoF on cases submitted to it for *constitutional interpretation*, call upon pertinent institutions or professionals, to appear before it and give opinions.
2. When it deems necessary for investigating constitutional cases, the Council may require the presentation of any evidence or professional and examine same.

It is not difficult to understand from the above provision that even though the term *amicus curiae* is not stipulated in black and white, it is easily discernable that the cumulative reading of the title of the article which talks about the gathering of *professional opinions* and the operative sub-provisions of the same article which stipulate about the possibilities of gathering *professional opinions* implicate an *amicus curiae.*

With similar connotation, Art. 10 of the HoF proclamation[64], which is entitled "*gathering professional opinions,* stipulates as follows:

> 'The House may, before it passes a final decision on constitutional interpretations, call up on pertinent institutions, professionals, and contending parties to give their opinions'.[65]

[63] Chapter three of the FDRE constitution, that is, Articles 13-44 are devoted to human rights issues.

[64] Consolidation of the House of the Federation and Definition of its Powers and Responsibilities Proclamation No. 251/2001.

[65] The writer argues that since the CCI itself is established as expert body to help the HoF as the CoC which is itself to serve as expert organ is allowed to collect professional opinion, it

Thus, if we concur with the above line of argument, the admission of *amicus curiae* by the CCI and the HoF is both constitutionally and legally defendable. Such participation is also theoretically defensible as *amicus curiae* has the benefits of serving the interest of justice by assisting the CCI and the HoF as it does in other jurisdictions mentioned earlier. Thus, arguably, it fulfills the *"constitutional-legal basis and theoretical underpinning*" test. More importantly, the CCI has put the *amicus* procedure into practice by admitting *amicus curiae* during the process of collecting professional opinions in the process of preparing recommendations to the constitutional interpretation case brought before it by the HPR regarding the issue of the postponement of the sixth national election. As such, the CCI has received *amicus* briefs from different *amici curiae* and it has also conducted a series of public hearings on which a handful of *amici curiae* have orally presented their opinions.

I argue that both virtuous and vicious lessons could be drawn from the participation of *amicus curiae* that was made in the constitutional interpretation process. These strong lessons are, in fact, not utterly unique to the case at hand, but rooted in the time tested positive roles of *amicus curiae* in the justice process as a whole. According to Gomez, one of the merits of admitting *amicus curiae* in litigation process is the enhancement of transparency of the litigation process.[66] Transparency of the conduct and affairs of the government is recognized as one of the fundamental principles of the Constitution.[67] As Art.12 of the Constitution is found under chapter two of the Constitution that stipulates general fundamental principles that binds the activities of the whole institutions that are envisaged under the constitution so that it is relevant to the activities of the CCI and the HoF. Thus, the admission of *amicus curiae* by the CCI and making the constitutional interpretation process open to professional opinion and conducting public hearing in which *amici curiae* participated is crucial in enhancing the transparency of the activities of the institution. It is undeniable that transparent government process is more human rights friendly than the opposite.

is superfluous to entitle the HoF to gather additional opinions as it is believed to have got one through the CCI.

[66] Katia Fack Gomez, *supra* note 6.

[67] FDRE Constitution, Art.12.

Admission of *amicus curiae* is also useful for advancing public interest (public policy).[68] As it has been discussed earlier, *amicus curiae* participates in a given adjudicatory process not for advancing his or her personal interest, but to advance public interest. This argument also holds true for the participation of *amicus curiae* in the constitutional interpretation case to which the CCI had to offer a recommendation. It is true that the individual legal professionals and the associations that submitted *amicus briefs* to the CCI and those who participated on the series of public hearing that was conducted by the council has no direct personal interest in the case. They engaged in it to make sure that public interest is appropriately addressed in the constitutional interpretation process. No doubt that as the constitutional interpretation issue under consideration is related with the postponement of election and as the issue of election is connected with the governance of the public amid COVID-19 and the manner of handling the fundamental rights and freedoms of individuals and groups during this duration, it has a more profound public interest dimension than many other constitutional issues.

The other noteworthy benefit of *amicus curiae* and indeed the one that is inextricably linked with the origin of the *amicus curiae* institution itself is keeping the adjudicatory organ from committing an error in the process of conducting adjudication. Of course, whether a given adjudicatory organ is really prevented from committing an error in its judgment on a given case at a given time largely depends on the subjective evaluation that one might give to such judgment. The same logic holds true in relation to the constitutional interpretation recommendation that is undertaken by the CCI in the election postponement case. It is not unwise to argue that one of the reasons why the laws governing constitutional interpretation in Ethiopia allows, though implicitly, the admission of *amicus curiae* is to prevent the adjudicatory organ from rendering erroneous decisions that transgress the rights and freedoms of individuals and nations and nationalities and presumably this is one of the reasons why the CCI made a call for *amicus* submission.

Last but not the least, the admission of *amicus curiae* into the constitutional interpretation process in the election postponement case opened a new chapter

[68]. Katia Fack Gomez, supra note 6; Eric de Brabandere, 'NGOs and the Public Interest: The Legality and Rationale of *Amicus Curiae* Interventions in International Economic and Investment Disputes, (2011) 12 Chicago Journal of International Law 85

in the Ethiopian constitutional interpretation jurisprudence. As such, it serves as a stepping stone for the future constitutional development of the country by indicting the possibility of receiving the assistance of *amicus curiae* especially in novel constitutional cases or in hard cases (to use Dworkin's expression). Indeed, the role of *amicus curiae* in the development of the legal order is strongly felt even in centuries-old democracies that have well-developed legal systems such as the United States of America let alone in Ethiopia where democratic culture is less entrenched. Appreciating the role of *amicus curiae* in the American legal order, Allison Lucas wrote that:

> 'There is little doubt that *amicus* briefs have shaped the law. The most visible court to be influenced by *amici* has been the Supreme Court, and one of the most influential *amicus curiae* has been the American Civil Liberties Union' ("ACLU").[69]

In short, the above quote indicates the significance of amicus curiae in assisting the adjudicatory organs in reaching at a reasoned decision and the Ethiopian case cannot be an exception to this. However, the article also argues that the introduction of amicus curiae in the constitutional interpretation issue at hand was not without observable defects. Accordingly, the defects that were observed in relation to the participation of *amicus curiae* in this case could be summarized into seven major points.

The first is that, even though the constitutional provisions and other subsidiary legislations implicitly recognize the possibility of admitting *amicus curiae* during the constitutional interpretation process, the procedural rules for its admission are yet not well developed and the practice is at its rudimentary stage. Indeed, the CCI appears to have created and used temporary rules for the *amicus* procedure in the case at hand as there were no pre-existing and publicly known rules of *amicus* procedure adopted by the CCI itself or by the HoF or by any other organ[70]. Indeed, as *amicus* procedure is not known in the court system of the country, there is even no clear procedure which the CCI

[69]. Allison Lucas, *supra* note 6.

[70]It has to be noted that under article 16 (6) of Council of Constitutional Inquiry proclamation no 378/2013, the CCI is mandated to prepare its rules of procedure and submit to the House of the Federation, and implement same upon approval. However, the rule is yet inexistent

could have emulated. By extension, the fact that there was no well- developed prior jurisprudence of *amicus* practice in the Ethiopian legal order in general and on the part of the CCI in particular might have an impact on how to better use the system. For instance, whether the CCI sought to use the *amici* as an impartial advisor alone or whether it also used it as litigating *amici* who also reflect the interest of third parties (any special interest group that could be affected by its recommendations) was not clear. This appears to have created a problem as to the criteria of admitting or rejecting a given *amicus curiae* and the manner of reaching at such decisions.

Second, as the CCI is an advisory body to the essentially political organ (the HoF) and as it is not a final decision making judicial organ on constitutional interpretation, it inevitably makes political calculations of the recommendations it offers to the HoF more than the professional opinions of the *amicus curiae*. Thus, the fact that many members of the CCI are legal professionals cannot be a guarantee to save its decisions from political influence as the CCI undoubtedly makes calculations of the likelihood of rejection or admission of its recommendations by the HoF before giving one. Given that the HoF is an inherently political organ, it is hardly possible to expect a politically neutral decision on the constitutional interpretation issues which it entertains. In other words, it is not in the nature of a political organ to render politically neutral decision irrespective of the quality of the *amicus* submissions it received. A closely related problem is that as the HoF is itself a political body that is elected every five years and as the issue of election also puts the very term of office of the very house in question, it is in violation of a long cherished legal maxim – *nemo judeax in causea sua* (Latin for one cannot be a judge in his/her own case), to allow the HoF to decide on the issue of election postponement. This appears to make the *amicus* process less appealing as the organ that renders decision in its own case is more likely to consider its own fate than the professional arguments of the *amici curiae*.

Third, the one sided nature of the case (absence of direct respondent to the House of Peoples' Representatives request for constitutional interpretation) is at odds with the conventional practice of *amicus* procedure where there are

always identifiable litigating parties (plaintiff and defendant).[71] The point is that had there been an identified respondent to the constitutional interpretation question presented by the HPR, we inevitably expect the participation of two kinds of *amici* – those who support the plaintiff side and those who support the defendant side. Had the case involve two parties, the thesis (*amici* argument on the side of the plaintiff) and antithesis (*amici* argument on the side of the defendant) might have enabled the CCI to come up with a good synthesis in its recommendations to the HoF. Unfortunately, this was not the case in the election postponement case at hand as there was no direct respondent to the request of the HPR.

Fourth, the manner and the criteria under which the *amicus* briefs were received and the corresponding public hearing conducted by the ICC did not seem to adequately take into account the federal nature of the Ethiopian state that is rooted in the fundamental right to self-determination of Nations, Nationalities and Peoples of the country. As Arun Saga clearly notes, a body that adjudicates constitutional interpretation issues in a given federal country is always expected to make sure that the decision it renders does not distort the constitutional balance between the federal (central) and the sub-national governments.[72] In our case, as the sixth national election involves the elections that are undertaken both at federal and regional levels, that is, both for the federal house of peoples representatives and for state councils, all the regions that constitute the Ethiopian federation should have been invited by the CCI to appear as an *amici* and offer their opinions. Of course, it is understandable that the state of emergency is declared countrywide and it affects the activities that are undertaken in every state of the federation. Even so, every activity that is undertaken in normal time or during emergency time should not undermine the hall mark of the constitution of the country, that is, the federal arrangement. Any constitutional recommendation of CCI and any decision of the HoF on constitutional interpretation issue must not undermine the rights of Nations, Nationalities and Peoples of Ethiopia and this right is rooted in the firm federal principles as stipulated in the very constitution itself and this

[71] Of course, the case that is entertained by the Albanian Constitutional court also does not involve direct respondent to the case even though the Albanian Assembly might be presumed as an implicit respondent.

[72] Arun Sagar, 'Constitutional Interpretations in Federations and its Impact on the Federal Balance', Perspectives on Federalism (2011), Vol.3, No.1.

matter could have been better reflected had the regional states were directly invited as *amicus curiae*. Indeed, the close reading of the non-derogable rights clause of Art. 93 of the constitution itself support this line of argument. As this point is of a paramount importance, the relevant part of the Art., that is, Art. 93 (4) (c) is reproduced as follows:

> 'In the exercise of its emergency powers the Council of Ministers cannot, however, suspend or limit the rights provided for in Articles 1, 18, 25, and sub-Articles 1 and 2 of Article 39 of this Constitution'.

As the above quoted article cannot be fully understandable unless it is read with the full wording of Arts.1, 18, 25 and 39 (1) and 39 (2) to which it makes cross-reference, it is worthwhile to reproduce the relevant part of these provisions and sub-provisions to which cross-reference is made:

> Art.1: This Constitution establishes a Federal and Democratic State structure. Accordingly, the Ethiopian state shall be known as the Federal Democratic Republic of Ethiopia.
>
> Art. 39 (1): Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.

As clearly understood from the above citations, the cumulative reading of Arts. 1 and 93 (4) (c) of the constitution envisages that Ethiopian state should always remain federal even when the country is in state of emergency. The cause of the state of emergency is immaterial whether it is health catastrophe like the COVID-19 or other. Making Art.39 (1) which stipulates unconditional self-determination right (including and up to secession) rights of Nations, Nationalities and People non-derogable is, therefore, inextricably linked to the strict emphasis given to the federal arrangement under Art.1 of the FDRE Constitution. This self-determination right, which is protected as the building block of the federation and which defines the essence of the constitution could not be realized unless Nations, Nationalities and Peoples are able to exercise the right to elect their representatives in a timeframe set by the Constitution. In other words, election and the timeframe for election are inextricably linked with the exercise of the right to self-determination set under Art. 39 (1) and this in turn is meant to make the federal arrangement intact all the time.

Specially, in regional elections where the right to self-determination of the Nations, Nationalities and Peoples is more at stake, the CCI must have heard the views of the regional states as *amicus curiae* in order to prepare a more legitimate recommendation. Regrettably, the CCI failed to ensure the participation of regional government organs as *amicus curiae*. It is true that in any adjudicatory process the fairness or justice of the matter is evaluated against both the procedure by which the decision is arrived at and by the outcome of the case as well. In short, deciding on the postponement of election without considering the views of Nations, Nationalities and Peoples collectively at least through the instrumentality of the respective regional government in which they reside as *amicus curiae* at least in relation to regional elections (elections to the state councils[73]) is in violation of the non-derogable rights clause of Art.93 of the FDRE Constitution itself. Even though their points of argument are directly not from the perspective of the CCI's failure of engaging regional states as *amici* in the election postponement case, Teklemichael Abebe and Endalkachew Geremew brilliantly rebuked the decision that is directly given by the HoF in confirmation of the CCI's recommendation on the fate of regional state councils and regional executive organs in their newsletter wrote to the Ethiopian Insight.[74] Once again, I want to make a caveat. That is, as I have repeatedly indicated earlier, my point of contention under the fourth defect does not pertain to whether the CCI and the HoF have the power to entertain the fate of regional election amid COVID-19 or on the quality of the recommendation offered by the CCI and the decision rendered by the HoF in this regard. It is only related to the failure of the CCI

[73]Under the Ethiopian federal system, State Councils refers to the legislative organs of the regional states that make up the federation (See generally article 47 cum article 50 of the FDRE Constitution).

[74]Teklemichael Abebe and Endalkachew Geremew, 'Council of Constitutional Inquiry Verdict: Because I said So! *Ethiopia insight* (Washington, DC, June 22, 2020). In this piece, they wrote that he CCI held that the mandate of the regional councils and executive bodies shall also be extended as that of the federal parliament and government because elections matters are federal issues. The CCI enmeshed the decision to postpone elections with the decision regarding the terms of the regional council and governments. The former is a federal matter, while the latter is undoubtedly a matter left to the regional constitution... therefore, it will be unreasonable for the CCI to make such determination that has serious implication on the powers of the regional governments without giving them the opportunity to present their cases". As it is understood from this quote, the recommendation of the CCI and the decision of the HoF on the fate of regional elections and the term of office of the state councils and state executives encroached upon jurisdiction of regional governments.

to ensure the participation of the regional governments as *amici curiae* in the light of the special significance the constitution attaches to federalism.

The fifth defect that could be discerned in the process of *amicus curiae* participation in the election postponement case is what I would like to call *"dual presence"* defect. As pointed out earlier, there were four legal professionals (here after called the four professionals) who proposed to the incumbent Ethiopian government (as constitutional experts) the four possible options to solve the so called "constitutional crisis" that was brought about by the overlap of the country's sixth general election with the outbreak of COVID-19 pandemic and the resultant state of emergency decree. One of their suggestions was to ask the HOF to render constitutional interpretation on the issue.[75] In this sense, the four professionals were prominent presence in the background of the subject that led to constitutional interpretation. Unwarrantedly, these four professionals were among some professionals who latter submitted *amicus* briefs to the CCI and who also appeared before the CCI as *amici curie* when the CCI collected professional opinions through a televised public hearing. This is what I mean *dual presence*. At first stage, these four professionals acted under the auspice of the executive, especially under the auspice of the Federal Attorney General and the Office of the Prime Minister and they suggested four alternatives to solve the constitutional lacuna. At the second stage, they acted as *amicus curiae* and submitted *amicus* briefs to the CCI and also participated as *amicus curiae* while the CCI conducted public hearing to collect professional opinions. Thus, while it is easy to imagine the great influence the opinions of these four professionals have had on the CCI, it is reasonable to doubt the neutrality of these four professionals' participation as *amici curiae* in the case viewed from the perspective of the qualities of *amicus curiae*.[76] As observed earlier regarding the qualities that the *amicus curiae* need to have to be allowed to participate in a given proceeding, rule 54 of the Kenyan Supreme Court Rules requires the court to take into account the expertise, independence and impartiality of the persons in question. In the case at hand, as the four professionals were the ones arguing on the side of the government from the start suggesting the

[75]As to the profile of the four professionals and their suggestions on the election postponement case at hand, see Yonatatan T. Fissha and others,'Making sense of Ethiopia's Constitutional Moment' *Ethiopian Standard* (Addis Ababa, May 14,2020)
[76]Kerkering and Mbazira (eds), *supra* note 43.

alternative ways of postponing the sixth general election, one can plausibly doubt their independence and impartiality while they appear as *amici* before the CCI.[77] From this point of view, one can safely argue that an *amicus* procedure was used by the CCI as procedural opportunity to advance government's version of the argument rather than seeking the assistance of an impartial shepherdizer.[78] Of course, as discussed before, this defect could be seen as the result of the absence of clear and publicly known *ex ante* procedural rules that guide the CCI on *amicus* participation, but it could have been avoided had the CCI by taking an insight from comparative practice of other jurisdictions.

The sixth defect that could be discerned from the process of the *amicus* process and indeed, the one that is nearer to defect in the outcome than mere process defect is the inability, or perhaps, the unwillingness of the CCI to make use of the points obtained from some *amicus submissions* and from the opinions forwarded by some *amicus curiae* during the public hearing on the matter. In this respect, Teklemichael Abebe Sahlemariam and Endalkachew Geremew noted in their newsletter to Addis Standard that:

> The CCI has missed an historic opportunity in Ethiopia's constitutional experiment. This is particularly frustrating knowing that the Council called for *amicus curie* from experts in the field and held a hearing. The irony is that the Council never tried to make use of the constitutional jurisprudences provided from the submissions, which was supposed to add value to its reasoning, methodology, quality and persuasiveness of the decision. The CCI is supposed to produce precedent-setting and respectable reasons as its counterparts in other countries do. However, the CCI has

[77] As to the profile of the four professionals and their suggestions on the election postponement case at hand, see Yonatatan T., Fissha and others,'Making sense of Ethiopia's Constitutional Moment' *Ethiopian Standard* (Addis Ababa, May 14,2020)

[78] One of its problems is partisan element. Some even tend to call *amicus curiae* a frenemy (frienemy). Even though the original idea and practice of *amicus curiae* institution was serving as friend of the court and as disinterested party, it is now shifting, it is argued, from neutral friendship to positive advocacy and partisanship. One of the reasons for this shift is the growth of interest group politics. It is even further argued, of course in the American context, that amici are often compared to lobbysts. See Helen A. Anderson, supra note 54; Kerkering and Mbazira (eds), *supra* note *43.*

> proved that it merely is an instrument for conferring legitimacy on the incumbent government and, hence, is an untrustworthy institution. ….. The CCI's total disregard of these submissions is regrettable. The CCI neither acknowledged these submissions nor provided reasons for choosing the interpretation route. Hence, this choice was merely arbitrary. The CCI should have explained the circumstances that require amendment or interpretation. The CCI failed to make that delineation. The CCI should have seized this opportunity to provide guidance on how constitutional silence should be addressed.[79]

Thus, even though publicly introducing *amicus curiae* in constitutional interpretation in an unprecedented manner makes the case truly historic and precedent setter, the defects that were discussed above could lead one to reasonably hold the view that the *amicus* procedure was used merely as a procedural mask for political-legal opportunism the incumbent government and the governing party made use of it.[80] Owing to the profoundly catchy-style of expression they have used, I will wrap up the sixth defect with Teklemichael and Endalkachew's passage that goes to say "the legal professionals who shared their expertise (as *amicus curiae*) with the CCI deserve accolade. Their able submissions deprived the CCI of any excuse. They have tested Abiy's administration promise of judiciary reform—and it has been found wanting".[81]

The seventh and the last defect which the author identified is the failure of the CCI to make an exceptional call for "human rights institutions" such as the Ethiopian Human Rights Commission to submit an *amicus* brief since the issue of the constitutional interpretation at hand is concerned with election postponement and election postponement entails the issue of voting rights

[79]Teklemichael Abebe Sahlemariam, Endalkachew Geremew, 'Council of Constitutional Inquiry Verdict: Because I said So! *Ethiopia insight* (Washington, DC, June 22, 2020). Here, the gist of the heir comment is not on the quality of the CCI's decision such, but on the failure of the CCI to make the utmost use of the arguments forwarded by *amicus curiae*.

[80]By "opportunism" it is meant the act of taking advantage of the moment to press a self-interested case (See Kim Lane Scheppele, 'The opportunism of populists and the defense of constitutional liberalism' German Law Journal (2019) Vol.20, p 314.

[81]Teklemichael Abebe Sahlemariam, Endalkachew Geremew, 'Council of Constitutional Inquiry Verdict: Because I said So! Ethiopia insight (Washington, DC, June 22, 2020).

which is essentially a human right.[82] Stressing on the relevance of the participation of *amicus curiae* in election related issues and in other areas of human rights, Christopher Kerkering and Christopher Mbazira wrote that "although amicus participation may occur in any number of disputes, it may be most helpful in less traditional litigation, such as challenges involving fundamental rights and freedoms, economic and social rights, gender discrimination, or election disputes. These cases are multivariable and almost always require information that lies beyond a judge's experience and training. Moreover, reaching the right decision is never more important than in these cases since the impact will be felt throughout many communities and for years to come".[83] The participation of the Kenyan National Commission on Human Rights in the case of FIDA and et al as discussed earlier is an example of constitutional interpretation in which human rights are at stake and in which national human rights institution's participation as an *amicus curiae* is so important. It is also theoretically grounded in, for instance, Dworkin's Interpretative Theory of Law which attaches special significance to human rights in the legal interpretation process.

One may argue that the seven defects mentioned earlier could be the result of the inexperience of the CCI and the HoF in relation to the manner of handling the participation of *amicus curiae*. At the first glance, this argument appears appealing. However, given the rich of experience of *amicus* practice existing in other countries as mentioned in this piece, the CCI or the HoF should or could have taken note of such experiences by consulting different literatures in order to avoid such defects. In short, they were not unavoidable defects.

[82]See article 38 of the 1995 Constitution of the Federal Democratic Republic of Ethiopia and article 25 (b) of the 1966 International Covenant on Civil and Political Rights (ICCPR). These articles tell us that voting and being elected is a human right.
[83]Kerkering and Mbazira (eds), *supra* note 43.

5. CONCLUSIONS

The admission of *amicus curiae* in the case at hand is constitutionally and legally justifiable at least from the implied provisions of the constitution and relevant legislations. It also has theoretical underpinning as its ultimate aim is to serve the interest of justice by assisting the CCI and the HoF by divulging all the possible arguments and by enhancing the transparency of the case. The beginning of using *amicus* curiae in this case had set a groundbreaking constitutional norm for future development of the constitutional order of the country in general and for the protection of fundamental rights and freedoms and to collect opinions that maintain federal-regional power balance. It has great significance in assisting the CCI and the HoF in order not to make errors when they decide on key constitutional interpretation cases. Thus, the trend of using an *amicus* procedure in election postponement cases better be repeated in the process of settling other constitutional cases, especially, the ones in which human rights and the issue of federal-regional power balance are profoundly at stake.

However, the article has also identified that the introduction of *amicus curiae* in the constitutional interpretation issue at hand was not without observable defects. First, as the *amicus* procedure was hitherto unknown in the country and as the rules of the game were not enacted a *priori,* the rules were not time tested ones and they did not capitalize on the centrality of human rights. Second, as the CCI is an advisory body to the inherently political organ (the HoF) than being an independent decision making judicial body, it has inevitably made political calculations of the recommendations it offered to the HoF than relying on the qualities of the opinions of the *amicus curiae*. A closely related problem is that as the HoF is itself a political body that is elected each five year and as the election case at hand also puts the continuation of the term of office of the very house in question, it is in violation of a long cherished legal maxim – *nemo judeax in causa sua* (Latin for one cannot be a judge in his/her own case) to allow the HoF to decide in this particular case even if it has a mandate to interpret the constitution. As an institution that entertains an issue in which it has direct stake, it gives weight to those opinions of the *amicus curiae* that safeguard its interest than the opposite. In this sense, the *amicus* submissions were inclined to one side from the start and elements of partisan justice were observable. This appears to

make the *amicus* briefs less appealing in protecting electoral rights of individuals and the rights to self-determination of Nations, Nationalities and Peoples and federal-regional power balance. Third, the one sided nature of the case (absence of direct respondent to the House Peoples Representative's request for constitutional interpretation) is at odds with the conventional practice of *amicus* procedure where there are always defined litigating parties (plaintiff and defendant). Fourth, the manner and the criteria under which the *amicus* briefs were received and the corresponding public hearing conducted by the ICC does not seem to offer the federal nature of the Ethiopian state and the existence of diverging ethno-national interests. Fifth, the dual presence of the four professionals in the case is against the neutrality and impartiality criteria of *amicus curiae*. Sixth, the *amicus* procure in the case did not give proper emphasis to the federal-regional power balance. Finally, the fact that there is no well- developed prior jurisprudence of *amicus* practice in the Ethiopian legal order in general and on the part of the CCI in particular have had an impact on the manner of using the procedure. For instance, whether the CCI sought to use the *amici* as an impartial advisor alone or whether it also used it as litigating *amici* who also reflect the interest of third parties (any group that could be affected by its recommendation (if not decision) was not clear.

6. RECOMMENDATIONS

1. It is advisable for the CCI to adopt clear rules of procedure which, *a priori*, regulate the admission of *amicus curiae* in issues involving constitutional interpretation. Among others, it is better if the prospective rules encourage *amicus curiae* participation in constitutional interpretation issues that entail election issues, other human rights as well as federal and regional power-balance dispute. By the same logic, it is also advisable for the HoF to adopt clear rules that govern the admission of *amicus curiae* while it entertains issues of constitutional interpretation. The lessons that we derive from South Africa, Kenya and Albania also guide us to come up with clear rules that regulate *amicus* participation in the constitutional interpretation process of our country. It is advisable for the prospective rules to seriously take into account the fact that Ethiopia is a federal country that the rights of Nations, Nationalities and Peoples is the hallmark of the federation that the admission of *amicus curiae* in grand constitutional issues be undertaken in such a way that ensures

balanced participation of the building blocks of the federation in order to avoid grievances that disturb the peace and prosperity of the country.

2. It is advisable that the practice of *amicus* participation which is boldly observed in the election postponement case be practically repeated in other constitutional interpretation issues especially in relation to the settlement of post-election disputes and in issues in which human rights and freedoms are highly at stake.

3. Based on the lessons drawn from South African Practice, it is advisable to encourage legal research and training centers existing both at federal and regional level and the university law schools of the country to participate as *amicus curiae* in grand constitutional interpretation issues as they are in a better position to conduct research and to suggest the likely solution to complex or hard cases (to use Dworkin's expression).

4. This article examined only the issue of the participation of *amicus curiae* in constitutional interpretation cases and it did not address the participation of *amicus curiae* before the ordinary courts and quasi-judicial organs of the country. Therefore, the author recommends that interested individuals and institutions better conduct further study and provide recommendation whether *amicus curiae* participation is necessary or not before ordinary courts and quasi-judicial organs of the country.

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THE BINDING INTERPRETATION OF THE FEDERAL SUPREME COURT CASSATION DIVISION: A CRITICAL ANALYSIS TO ITS' NOVELTY AND RICKETY**

***Hirko Alemu** **

ABSTRACT

In Ethiopia, the Federal Supreme Court is endowed with the power of Cassation over any court decision, be it federal or state courts. Moreover, its decision is declared to be binding on courts at all levels. While many pragmatic considerations can be, and indeed have been, given for the existence of the Cassation Division under the auspices of the Federal Supreme Court and making its decision binding, it has been found that numerous fouling factors surround the Division. Evaluated against relevant literature, legislation, interviews, and observation, the defects of the Cassation Division are proved to be so severe that if left uncorrected, they will defeat the very purpose for which the institution of Cassation was established. In this piece, these defects are critically evaluated both from theoretical and practical vantages. After pinpointing the significant shortcomings, which the author labelled as 'rickets' and explored them, this article has suggested general and specific measures that must be employed if the need is sought to rescue the FDRE Cassation Division from the menaces by which it is to be swallowed and help prove its worthiness.

Key Words: *Binding decision, Cassation, Cassation Division, Ethiopia, Legal System, Judicial Lawmaking, Interpretation of Laws, Precedent*

** This piece is a refined version of my LLB Thesis written few years back. At that time, the Federal Court Proclamation 25/1996 (as amended) was in force, and it was written based on that Proclamation. However, as the piece remained unpublished since then and now the new Federal Court Proclamation has come out, an extra effort is made to make sure that the points raised in the initial version do not lack significance in light with the newly enacted Proclamation.

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INTRODUCTION

The Cassation Division has attained constitutional recognition under the FDRE Constitution.[1] The Federal Courts Proclamation (1234/2021)[2] has provided that the Federal Supreme Court has a power of Cassation over any final decisions (from court or other adjudicative organs) so far as it exhibited a fundamental error of law. More importantly, such decisions are given a binding status under Art. 10(2) of the same proclamation.[3] Indeed, that seems generally justifiable for such decision rendered expectedly with 'extra ordinary' caution by the pinnacle of justice shall not simply be '*a restricted railroad ticket good for this day and train only'*.

The main objective of this piece is to critically analyze the binding effect of the critical decisions of the Federal Cassation Division and consider certain procedural feeble. Given this objective, the remaining part of this work is organized under three main sections. In the first section, general introductory matters will be dealt with. As such, the section will discuss the framework of our Cassation (Division). Then comes the second section, where the decision-making process of the Division is evaluated from the screening stage to its final disposition. The third section will, more extensively, deal with the positive impacts of these binding decisions and the challenges surrounding the ambit of our Cassation system. Finally, a conclusion of the entire piece and recommendations are provided.

1. BINDING INTERPRETATION OF THE FEDERAL SUPREME COURT CASSATION DIVISION

The Ethiopian legal system predominantly subscribes to the civil law legal system, although, in real sense it is a cocktail of laws in continental bottles. In the old Ethiopia, judges were assumed to render justice, through adjudicating cases, on behalf of the Emperor or the King, and thus the Chief Justice was referred to as *afenegus ('the mouthpiece of the king';)* for the king was deemed

[1] FDR Constitution, Art.80 (3).
[2] The Federal Courts Establishment Proclamation No.1234/2021.
[3] It must be noted that the same thing was provided for under the repealed Federal Courts Amendment Proclamation No. 454/2005. See the Federal Courts Re-Amendment Proclamation No. 454/2005, Art. 2 (4).

to be a fountain of justice.[4] The conceptual underpinning decisions were taken as a law principle and were followed in the subsequent adjudications. These substantive and procedural norms were referred to as *atse-ser'at* (the law or the work of sovereign); Jembere has defined the term as a *precedential jurisprudence that developed out of case law or judge-made law.*[5]. The understanding of the emperor as the ultimate source of justice and his decision should be revered in the subsequent judgments, supplemented by the old-aged Amharic saying which goes "a case is further supported by a case as a thorn is pulled out by a thorn" has served as a vindication of the practice of precedents.

The order that lower courts must abide by the decisions of the superior courts was instilled and practiced almost until 1942, when Ethiopia altered its procedural laws.[6] Changes in procedural laws in 1942 have somehow relegated judicial decisions [even of superior courts] to merely an object of cognizance, relieving them of a duty to be abided by them. It was, however, resurrected by the Imperial Court Proclamation of 195/1962, Art. 15 of which declared the decisions of the superior courts to be binding on subordinate courts on matters of law. Coming to the *Dergue* period, the power of Cassation was conferred upon the Supreme Court. Thus, through its establishment proclamation, the Supreme Court had a power of setting an 'interpretative precedent'. The goal was to maintain a uniform interpretation of laws across the country.[7] Then came the Transitional Government Court Establishment Proclamation, proc. No. 40/1993 (1985 E.C), which has classified courts at different tiers and provides that "an interpretation of the law made by a Division of the Central Supreme Court constructed by no less than five judges shall be binding". Art. 10(2) of the Proc. No. 1234/2021 provided that the interpretation of law by the Cassation Division of the Federal Supreme Court with not less than five judges shall be binding from the date the decision is

[4]Aberra Jembere, Legal History of Ethiopia, Some Aspects of Substantive and Procedural Laws 1434-1974, Addis Ababa University (1998), P81.
[5] *Ibid.*
[6] See *id*, P96. See also Anchinesh Shiferaw, The Legal Effects of the Decisions of Cassation Division of the Federal Supreme Court under Proclamation No.454/2005. Its Constitutionality and Prospect (LL.B. Thesis, Addis Ababa University Law, 2006), P31.
[7]Bisrat Teklu and Markos Debebe, *Change for Aptness: Fighting Flaws in the Federal Supreme Court Cassation Division,* Jimma University Journal of Law (2013), Vol. 5, P1.

rendered. However, the Cassation Division may render a different legal interpretation some other time.

In Ethiopia, while Cassation was officially introduced in 1987, it is constitutionally entrenched only as of 1995. It is not a full-fledged court, nor is it the fourth tier of Court. It is a Division within the Federal Supreme Court that shall see the exactitude of the decisions; verifying whether the final decision rendered synchronize with the letter [and spirit] of laws. The Cassation is assumed as a special Division.[8]

The primary reasons for having a Cassation system were provided for by the Constitutional Assembly that drafted the constitution itself. One of them is to rectify the errors in the proper application of laws.[9] Though the existence of Cassation would not guarantee, toto, the removal of any errors committed, for the human mind is all we know, the fact that a 'final decision'[10] of the Court is to be evaluated and reviewed by well-experienced judges with a more significant number [of constituency] would foretell us to have such a system. The second goal was to maintain a 'national and uniform' interpretation of laws.[11] This is to be achieved because any final court decision, be it federal or regional, would ultimately have to be pass through the scrutiny of the Cassation if they contain a fundamental error of laws.[12]

As far as the binding effect of the decisions of the Cassation Division of the Federal Supreme Court is concerned, the newly enacted Proc. No. 1234/2021 merely reinforced what has already been provided by the Federal Courts' Re-amendment Proclamation No. 454/2005. The rationales of conferring binding status to the findings of the Cassation Division are meant to fulfil the goal of

[8] See Muradu Abdo, Some Questions Related to the Cassation Powers of the Federal Democratic Republic of Ethiopia Supreme Court: A Comparative and Case Oriented Study, (LL. B Thesis, Addis Ababa University Law Library, 1998), P38.

[9] Minutes of the Constitution of the Federal Democratic Republic of Ethiopia, Vol. 5 (*Hidar* 21-24,1987 E.C).

[10] Here, by a 'final decision', the author refers to the Court's decision concerning which appellate remedies have been exhausted and whose merit has already been settled instead of being an interlocutory issue.

[11] *Ibid*

[12] ውብሸት ሽፈራው እና ሐይሌ አብርሃ, በኢፊዲሪ የፌዴራል ሰበር ስርአት- አላማው ፣አተገባበሩ እና ተግዳሮቶቹ ፣ (Unpublished material with the author), ነሀሴ, 2007 E.C), P64.

Cassation- the goal of attaining uniform interpretation of laws in the country. The Minutes of Proclamation No. 454/2005[13]- provides the rationale as:

> "የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ዓላማ የተለያየ ትርጉም ለሚሰጣቸዉ የህግ ድንጋጌዎች ትርጉም በመስጠት በአገሪቱ ወጥ (uniform) የሆነ የህጎች አተረጓጎም እና አተገባበር እንዲኖር ማድረግ ነዉ::ይህም ዓላማ የተሳካ እንዲሆን የችሎቱን ዉሳኔዎች በየትኛዉም ደረጃ ላይ የሚገኙ ፍ/ቤቶች ሊከተላቸዉ ይገባል::....አንዳንድ ሕጎች ዝብርቅርቅ ባለ መንገድ በተለያዩ ፍ/ቤቶች እንዲተረጎም የተደረገ ሲሆን የዜጎችን በሕግ ፊት በእኩል የመታየት ሕገ-መንግስታዊ መብት መጣስ አስከትሏል::ተከራካሪ ወገኖችም አስፈላጊ ላልሆነ ወጭና እንግልት ተዳርጎዋል:: የፍርድ ቤቶችን ዉሳኔም በአንዳንድ ጉዳዮች ጨርሶ የማይተነበይ (unpredictable) እያደረገ ነዉ::ይሕም ሀገሪቱ በተያያዘችዉ የልማትና ዲሞክራሲያዊ ስርዓት ግንባታ ጥረት ላይ የሚደቅነዉ ችግር በቀላሉ የሚታይ አይሆንም::እነዚህን ችግሮች ለማስወገድ የሰበር ችሎቱ ዉሳኔዎች በየትኛዉም ደረጃ ላይ የሚገኙ ፍርድ ቤቶች ላይ አስገዳጅ ማድረግ አስፈላጊነቱ አሳማኝ ሆኗል::ይሄንን በማድረግ ወደ ሰበር ችሎቱ በተደጋጋሚ የሚመጡትን ተመሳሰይ ጉዳዮች በማስቀረት የሰበር ችሎቱን ጊዜ በአግባቡ ለመጠቀም ያስችላል::"

This can roughly be translated as:

> *The Cassation Division of the Federal Supreme Court aims to interpret interpretations adopted by different courts and maintain uniform interpretation and application of laws. And for that purpose, the decisions it renders should be binding on all lower courts. Chaotic interpretations by the lower courts concerning some provisions of the law have seriously impaired citizen's constitutional right to equality before the law. Moreover, the decisions of courts are, at times, proved to be unpredictable at all. Hence, the challenge it poses to its developmental and democratic endeavors is not negligible. To do away with these flaws, it is found necessary to make the decisions of Cassation Division binding. Doing so would also reduce the caseload at the Division and allow the Division to utilize its time efficiently.*

[13] It is believed that the same rationale persists as far as the newly enacted Federal Courts Proclamation No. 1234/2021 is concerned. This author has tried to consult the Minutes of this new proclamation but in vain.

2. NOVELTIES AND RICKETS OF THE BINDING INTERPRETATION OF THE CASSATION DIVISION

2.1. NOVELTIES OF THE BINDING DECISIONS OF THE CASSATION DIVISION

2.1.1. Uniform Interpretation of Laws

This has been the most compelling reason to make the decisions of the Cassation Division binding on all tiers of courts in the country.[14] Enwrapped in it was that if the findings of the Cassation Division are binding on all level of courts, then the latter would have to interpret laws uniformly, taking note of the position held by the former. "My exposure to Cassation Division's binding decisions on labor laws and extra-contractual liability law", says Dr. Mehari, "shows that the importance of the Cassation Division to maintain uniform interpretation and application of laws is unquestionable".[15] Mehari further noted that the Division is thankful with regards to the merit of the decisions as well. However, Mehari did not get-through without mentioning that the inaccessibility of the Division's findings in many respects has significantly affected the Court's compliance to the rule adopted by the Division and thereby resulted in the ununiform interpretation of laws. Many legal professionals share this point, too.[16]

The Division has also settled specific controversial provisions of laws by rendering binding interpretation of those provisions. Moreover, it has also been noted that the lower courts' reference to the interpretation adopted by the Cassation Division is gradually increasing. It has also been understood that the Division sometimes adopts different interpretation even with regards to the same provision of the law, which would put the lower courts in confusion as to which of the positions of the Cassation Division to uphold. This is attributed to, says Mehari, the fact that the Division does not have a supporting staff

[14] Minutes of the former Federal Courts Amendment Proclamation (454/2005).
[15] Interview with Dr. Mehari Redae, Professor of Law at Addis Ababa University, School of Law and Legal Practitioner, on December 1, 2017
[16]Tewdros Meheret, Attorney at Federal Courts and instructor at Addis Ababa University and other two legal practitioners who sought anonymity.

(assistants) who would help them in tracing the track record of the decisions and identify what has been said in earlier interpretation. In their absence and given limited nature of human memory, we cannot blame these judges.[17]

2.1.2. Equality of the Citizens before the Law

As per Art. 37 of the FDRE Constitution, everyone has the right to bring a justiciable matter to Court or any other judicial body and obtain decision or a judgement. Furthermore, Art.25 of the same document enshrined that all persons are equal before the law and deserve equal protection. If that is the case, it is the right of all persons to be treated alike if their cause is alike. This equality of citizens would only be ensured if and only if the Division treats similar issues similarly, i.e., the position held yesterday when a person was a defendant should be held today when he is a plaintiff so long as the problems are the same and of course in so far as there is no compelling reason to reverse the previous position.

Moreover, the equality maxim dictates that parties shall be treated without discrimination on status or other attributes. There are also rumors which purports that the Division sometimes, with a conscientious drive to preserve the government interest, deviates from the precise rules in the legislation. One Practitioner, who requested anonymity, has held that it is hard to expect the outcome of the case before Cassation if the dispute is between government enterprises (say government banks such as a commercial bank or tax authority) and a private individual.[18]

2.1.3. Predictability

The concern of predictability and certainty of the Cassation Division's decisions stems from the fact that the Division may reverse its own previous decisions. The writer is not essentially against the power of the Division to

[17] Mehari, *supra* note 15.

[18] This author also shares, to some degree, the rumors concerning the partiality of the Division. However, in arriving at this conclusion, one should not lose sight of some special legislation that is meant to limit the power of the judiciary. For instance, see "Property Mortgaged or Pledged with Banks Proclamation, Tax Proclamations, Anti-Terrorism Proclamation by which the legislator is limiting the power of the judiciary to review decisions of some institutions. The legislator is somehow excluding the intervention of the Courts by promulgating laws to that end.

change its own previous decisions. Instead, what concerns him most is that if decisions are frequently reversed by the Division and the mechanism and requirement of reversals are not transparent, the legal system would risk itself to capriciousness, which would disturb the justice system and wash out the confidence that the litigants would otherwise have in courts.

Mehari notes that the Division is by far less effective in terms of ensuring predictability. He further held that sometimes the Division takes itself in what one may call 'implied' reversal of rulings. The rule is that the Cassation Division must constitute itself in seven judges to reverse its previous position. However, it has been noted that sometimes the Division renders decisions that overrule the previous position, though it is not declared that the last position is repealed. Because of this, says Mehari, it is not possible to predict what the proper position of the Cassation Division concerns the interpretation of the specific legal provision. In this regard, Hankinson has observed that the less predictable the court decisions are, the more likely individuals will transgress the decisions.[19]

At this juncture, a frazzling issue is an ever-increasing flow to and reversals of these decisions by the Council of Constitutional Inquiry (CCI) and House of Federation (HoF). The CCI was established to be an advisory body to the HoF on constitutional disputes. In 1991 E.C, only 3 cases were taken to the CCI from Cassation Division. But this number was increased to 274 in 2005, 388 in 2008, and 572 cases in 2009 E.C. Only between Hamle 1, 2009 – *Meskerem* 30, 2010, about 192 cases have been reverted to the CCI. The finality of the decisions of the Division has been significantly affected. Even if what percentage of these reverted cases have been reversed by the HoF remains another inquiry of its own, the fact that significant number of decisions will be referred to the HoF after being decided by the Cassation Division clearly shows that the finality of decisions is at risk.

2.1.4. Speedy and *Apropos* Justice

This shall be understood to mean if the Cassation Division renders a binding interpretation for a given law, then that would be utilized by all courts and

[19] Deborah G. Hankinson, *Stable, Predictable and Faithful to Precedent: The Value of Precedent in Uncertain Times* as cited in Workneh Alemnew Alula, infra-note 35

parties do not have to make trials until Cassation, for its position has already been known and taken note of by the lower courts. That way, it would help parties get speedy justice; they would get from the first instance court what they would have otherwise, theoretically, secured from the Cassation Division, which sits in Addis Ababa only. Though it has contributed a lot in this regard, legal practitioners believe that much is desired. The Cassation has enormous contributions to shaping the legal system, not to be an ungrateful biped.

2.2. THE RICKETS OF THE BINDING INTERPRETATION OF THE CASSATION DIVISION

Rickety commonly refers to something inclined to shake due to weakness or defect. Thus, the writer is interested in exploring more the imperfections of the binding interpretation of laws of the Cassation Division. One may thus analogize these shortcomings or defects that obstruct the Division's decisions from being good precedent with needful quality with the effect of rickets on a child in standing upright because of lack of vitamin 'D'.

2.2.1. Institution Related Rickety

The first institutional rickety to mention is the absence of specialized benches. The Cassation Division judges are assigned to entertain every sort of cases, be it criminal, civil, commercial, labor, tax and revenue, etc. The Federal Supreme Court has three Cassation Divisions but not specialized ones, and the existing divisions among the Division do not seem sufficient. Moreover, the judges are distributed randomly, and one can imagine how a single judge can properly appreciate rules on all kinds of legal issues.

As one goes through the decisions of the Cassation Division, one can quickly notice that the findings are disposed of by the same judges presiding, i.e., judges that presided over civil cases are also the ones presided over the criminal, commercial, tax and labor issues. For instance, in the decisions published in volumes 1 and 2, the judge named Menberetsehay Taddesse has presided over the entire cases. He was also absent only in few cases in subsequent books. One survey was also done, and it has been reported that in decisions reported in Vol. 12, out of judges that tried contractual issues, only

two of them were absent in criminal matters.[20] Furthermore, it has also been said that the same judges that dominated Vol. 11 dominated subsequent volumes.[21] If the Division does not have specializations and no cluster of cases is there; if judges are called upon to entertain every sort of cases regardless of their inclination and competency, errors in Division's decisions seem to me unglamorous, for we cannot expect a mortal to be omniscient.

The Cassation Court of France, for instance, has three civil chambers, one commercial chamber, one criminal chamber and one labor chamber (total of 6 chambers).[22] It is noteworthy that the Cassation Court of France does not review "public law matters involving national or local governments, including matters between a citizen and a public authority (including the government, regional departmental or administrative bodies) or State-owned Company, financial contracts involving public investments, and any litigation between a civil servant and the administration he or she serves".[23] Only cases other than these would be brought to the attention of the Court (these six chambers). In Ethiopia, on the other hand, every sort of decision, be it public or private, regional, or federal, court decision or an arbitral award, would be seen in Cassation so long as it is a final decision and exhibited a *prima facie* fundamental error of law. This author would like to suggest that there must be specialties of divisions of the Cassation Benches for them to give a well-reasoned decisions with in-depth analysis that will, not only serve as binding decision, but as tool to enrich the jurisprudence.

2.2.2. Personnel Related Rickety

There is a general agreement that the number is far below the required amount in terms of judges administering the Cassation Division.[24] To begin with, the fact that the number of screening judges is three has caused many cases not to be appropriately filtered for Cassation. And because of this, more than 60% of cases that these screenings judges licensed to appear before a panel of five judges have been utterly rejected. The higher the number of judges, the more

[20]Bisrat Teklu and Markos Debebe*, supra* note 7.
[21] *Ibid*
[22] Laurent Cohen-Tanugi, *Case Law in a Legal System Without Binding Precedent: The French Example, Commentary No. 17,* Stanford Law School (2006)
[23] *Ibid*
[24]ዉብሸት እና ሐይሌ *supra* note 12, P108.

they would have had the time and propensity to see a case from different angles and correctly identify cases that should be seen in Cassation. It has been disclosed that most of the time, the screening judges would have to form 1:2 ratios to decide a case, i.e., a case would appear before the Cassation bench if two judges believed that it contained a fundamental error of law.

Tewdros Meheret, who has been a practitioner at the federal courts, including the Cassation Bench itself, notes that added to the number issues, there has to be tailored trainings for these judges.[25] Though they are trained in law and trainings related to specific areas of law do not seem acute, it seems critical in areas specific to Cassation such as what fundamental error of law means, how to write Cassation judgment, how to separately set the *ratio* of the judgment and so on. It has been suggested that meaningful capacity building training is needed for the judges presiding over the Cassation Divisions so long as we aspire to have a binding interpretation of laws that would positively affect the legal system. Aschalew has already found that lack of specializations accompanied by lack of unique and Cassation Division's focused training for the judges has resulted in erroneous and inadequately analyzed decisions.[26]

2.2.3. Absence of Cassation Particular Procedure/Guideline

The Cassation Division does not have any guideline which would assist it in discharging its duty of bringing about uniform and predictable interpretation of laws through decisions it renders. No task of the Cassation Division is definitively provided except for the legislatively determined bindingness of its understanding of laws. The details, such as the quality of judges, the parameter for filtration of cases, manner of judgment writing, qualification of judges, the standing issue before the Division, etc. are not answered formally.[27] We have even accepted that when a given decision is to be reversed, the Cassation must

[25] An interview with Ato Tewdros Meheret, *Supra* note 16.

[26] Aschalew Ashagre, *Precedent in Ethiopia* as cited in Muradu Abdo (ed.), *supra* note 8, P 32

[27] In my interview, Ato Tsegaye Asmamaw, the former Vice President of the Federal Supreme Court noted that they select judges of Cassation on random basis. In fact, Ato Tsegaye has also admitted the absence of any guideline on who should sit for Cassation and the necessary requirement is causing problems and informed that it should not be like that. Because of this, a judge may be appointed as a 'Cassation judge' for all kinds of cases -be it civil, criminal, commercial, labor, tax, or any others (Interviewed conducted with Ato Tsegaye Asmamaw on Nov.2, 2017 in his office).

be constituted by seven judges, but this was not legislatively determined until the newly enacted Proclamation No.1234/ 2021 tried to clarify this. Aschalew, who is conversant with the Federal Court of Ethiopia in general and the Cassation Division in particular, has censoriously recommended providing the particularities of Cassation Procedures in a legislative manner.[28] This newly enacted Federal Court Proclamation has also tried to give answer to some fundamentally outstanding questions left unanswered by its predecessors such as what such as a fundamental error of laws is, but some others such as what *ratio decidendi* is, and how to distinguish it still remains unanswered.

Finally, who should enact this Cassation Guideline was also a question of concern in the past. Whether this enactment of Cassation guideline should be left to the Federal Supreme Court, or should it be done so by the superior body, perhaps the parliament in the form of General Cassation Procedure Proclamation, was an issue out there as well.[29] However, Art. 27 of this Proclamation envisaged that it is the mandate of the Federal Supreme Court to come up with this Guideline. To the best of the knowledge of this writer, the Federal Supreme Court has not yet come up with this Guideline.

2.2.4. The Decisions Lack Necessary Qualities

Court decisions are bound to bear necessary contours; regardless of whether it has a precedent value for the lower courts or not. The arithmetic expectation of the findings of the Cassation Division is high because it is to resolve not only an instant case before it but also other cases yet to arise. However, the decisions of the Cassation Division are blamed for lacking necessary qualities both in terms of its content and analysis. Tewdros, for instance, believes that with its current form and the level of research employed, the decisions would not add anything to the jurisprudence at all.[30] Geza shares this view. In that

[28] Interview on January 3, 2018, in his office

[29] Geza Ayele, a former Counselor for the Commercial Bank of Ethiopia, Interview conducted on December 28, 2017 in his office

[30] An interview with Ato Tewdros Meheret, *supra* note 16. The Division must overcome this challenge and render decisions supported by well and adequate reason, and relevant and proper laws are interpret/applied. But there is a debate as to giving long and detailed analysis or short in the decision of Cassation Court of France. France Cassation Court is criticized for giving short decisions. And there is argument in favor or against giving short decisions. Some say the Court is only expected to state not more or less of what is stated under the provisions

case, the Division is merely ruling on instant cases, which would hardly enhance the jurisprudence.

The judgments are sometimes overly abridged while sometimes contained details of the analysis of facts and few legal constructions. If the purpose is to persuade lower courts to take its footsteps, the Cassation Division must support its decisions with detailed analysis and reasoning rather than just devoting a page and half, which is, at times, merely a summary of facts of the case. Tamirat Kidanemariam, who has long years of legal practice, believes that the Division should see 'out of the box' in deciding cases; it shall refer to its past decisions, literature, and foreign experiences, among others.[31]

It has also been discovered that sometimes the Cassation Division does not even refer to the appropriate provision of the law. Yoseph Amero, former high court judge and currently consultant and attorney at law at federal courts, is of the opinion that the Division often renders decisions that do not involve any interpretation of the law at all.[32] The Division shall act with maximum comfort by getting rid of this obliviousness. Moreover, the unimaginable caseload at the Division has seriously impaired the efficiency of the case disposition. It has been noted that the decisions of the Cassation Division are not well elaborated considering the appropriate jurisprudence and scholarly writings, and experience of foreign courts. Often, it is mechanically limited to analysis of legal provisions. As a result, in addition to inconsistent decisions it renders, it has been found that the Division sometimes gives judgment that contradicts its reasoning.

2.2.5. Retrospective Effects of the Ruling

It has also been discovered that decisions of the Cassation Division bind retrospectively to the instant case which triggered reversal itself. But the party or even both parties to the current litigation may have relied honestly on the Division's position in the old precedent.

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of the law. And Some argue that the Court must give more detailed decisions. This author believes that both sides should be weighed properly to arrive at a desired one.

[31] Interview held on January 2, 2018

[32] Interview held on December 28, 2017 in the premise of the Federal Supreme Court

There are many claims and counterclaims elsewhere and whether to adopt retrospective or prospective effects in judicial rulings. Jeremy Bentham has avowedly blamed the retrospective effects of judicial order. On the other hand, there are convincing reasons why prospective effect shall not be adopted, one of them being that it is nonsense to apply a precedent that the Court itself has admitted being wrong. It is also held that it discourages individuals from starting legal proceedings challenging the presumptively bad precedent since the party that initiated the proceeding by investing his/her time, money, and effort would not benefit from them.[33] However, because of the seriousness of the repercussions resulting from retrospective application of decisions, some countries have opted for flexibility in their applications. They provide a kind of an exception in which the prospective effect would be adopted if applying it retrospectively would seriously affect businesses and legitimate parties' expectation.

Our Cassation Division does not have such an excuse at all, i.e., where a prior position is reversed, the transactions that are based on the former precedent set, which is now being challenged would not apply at all. The new precedent would start to apply as of the instant case that triggered reversal. The only cases on which the interpretation of the Cassation Division would not be applied are in relation to cases that are already disposed, and this rule has been held by the Division itself in File No. 68573.[34] By implication, today's position would apply to other cases, including instant case at hand, other pending cases, and future cases yet to arise. Art. 27 of the Proclamation No. 1234/2021 stated that interpretation of law rendered by the Cassation Division of the Federal Supreme Court with not less than five judges shall be binding from the date the decision is rendered.

2.2.6. Inconsistent Decisions

It has also been found that the decisions of the Division are located below the bar in terms of expected consistency. The Division reverses its position so frequently that it has hard to identify which position is overruled and which

[33]Sarah Verstraelen, The Temporal Limitation of Judicial Decisions: The Need for Flexibility Vs. the Quest for Uniformity, *German Law Journal*, Vol. 14, No. 9, P1701.

[34] Getachew Deyas and Fentu Tesfaye vs. Rukia Kedir, Federal Supreme Court Cassation Division, Vol. 13 (2012), Pp.623-625.

one stands.[35] For example, because of inconsistent positions that it adopted at different times concerning Arts. 1000(1) and (2) and 1723 of the Civil Code, parties could not be sure which position to trust.[36] If inconsistency of the decisions of the Division persists as it is right now, says Indalkachew Worku, from the Federal Attorney General, it would undeniably defeat the very purpose for which we sought the precedent in the Ethiopian legal system.[37] On top of all these reasons, says Gutema Mitiku, judges do not refer to past precedents unless and until brought to their attention by the lawyers or the parties have caused such inconsistencies.

2.2.7. Inaccessibility of the Decisions (Week Case Reporting System)

In the previous section, it has been explained that only a few (insignificant, to be honest), out of bulk, cases are being published to the public. At times less than 1% of the cases decided by the Division in a year were published.[38] However, it has also been underscored that irrespective of whether it is published or not, they are binding regarding interpretations adopted by the decisions. That is very much troubling as there is no way to take cognizant of the findings until they are published.[39] Moreover, even the ones published are not sufficiently accessible as it is published only in Amharic (as discussed below) and circulated in limited places.

Art.10 (3) of the newly enacted Proclamation is hoped to help a lot in this regard although the realization of it yet to be seen. This provision stated that the Federal Supreme Court shall publicize decisions rendered by its Cassation Divisions on binding interpretation of laws by electronics and print Medias as soon as possible.

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[35]Workneh Alemnew Alula, *Contract Form Concerning Immovable: Analysis of the Cassation Decisions of the Federal Supreme Court* in Muradu Abdo (ed.), *the Cassation Question in Ethiopia*, P167.

[36]ዉብሸት እና ሐይሌ *supra* note 12, P115.

[37] Interview with Indalkachew Worku, Federal Attorney-General Prosecutor at Legal Study and Dissemination Coordination Office Coordinator, on November 14, 2017.

[38] There is an attempt to ensure a better accessibility of the decisions by making the decisions available online as well. That being a good move, the fact of internet access limitation should also be considered.

[39] Interview with Mekesha Dereje and judge Hassan Nasebo, the Federal High Court, Lideta Division, as well as Adugna Kebede, prosecutor

For instance, in 2007 E.C, 12,140 cases were entertained by Cassation Division, but only 78 cases have been published. In 2008, out of 15,515 cases seen by the Cassation Division, only 255 cases were published. In the same fashion, out of 16,778 cases seen by Cassation Division in 2009 E.C, only 88 cases have been reported. In terms of percentage, only 0.6% in 2007 E.C, 1.6% in 2008 E.C and 0.5% cases have been reported.[40]

2.2.8. Language Barrier

While the decisions of the Cassation Division are being published only in Amharic, they are declared to be binding on courts at all levels, both at federal and regional levels.[41] Implicit in it is that Amharic is the working language of not only the federal government but also the regions-which does not hold water. The regions have their working language and so do their courts. For instance, courts in Oromia Regional State could, and should indeed, only entertain cases using *Afan* Oromo. The *status quo* dictates that judges, lawyers, and litigants in Oromia should read and act according to the rules propounded by the Cassation Division in Amharic.

2.2.9. Ultra- virus to Its Mandate

Perhaps this is the most perplexing issue among the legal communities whenever the theme is the decisions of the Cassation Division. Its mandate is clear; that it shall ensure the proper interpretation and application of laws by the lower courts by rendering binding understanding of laws through cases that appear before its table. However, at times, the Division acts as a veritable

[40]It is to be noted that the Division is entertaining more cases than the regular divisions of the Federal Supreme Court itself. For instance, in 2007 E.C, while 12140 cases have been brought to the Cassation Division, only 2,905 cases have been brought to the Court in the form of appeal. In 2008 E.C, while the Cassation had to entertain 15,515 cases, the regular Divisions of the Court only had to see 3,618. In the same fashion, during 2009 E.C, while 16778 cases have been brought to Cassation, the regular court division had to see only 3924 cases. I think, the decisions of Cassation Division in the Division gave binding interpretation of laws must be properly published and made accessible to public, particularly, to judges, lawyers, advocate, legal community in general. The Federal Supreme Court must organize department which is entrusted with task of publication and making precedents to the public. The decisions of the Divisions that need publication should be those with binding interpretation of laws; those decisions which were simply confirming decisions of the lower courts and do not have binding interpretation of laws, or a repetition of an already rendered precedent need not be published.

[41]The Federal Courts' Proclamation No.1234/2021, Art. 26 (3).

lawmaker.[42] Mehari has observed that "courts, no matter how high they are situated in the judicial hierarchy, cannot amend laws".[43] Similarly, Cardozo has once stated that *"the judge is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his ideal of beauty or goodness. Therefore, in their task of interpreting and applying a statute, judges have to be conscious that in the end the statute is the master and not the servant of the judgment".*[44]

However, the Cassation Division is widely blamed for exceeding its mandate. It has gone to the extent of setting a new rule which goes even contrary to the intent of the legislators. Bisrat and Markos have even contended that Cassation Division has evaded its reasons for existence.[45] The introduction of *de facto* divorce by the Cassation Division in file no. 20938,[46] where it is stated that marriage can be dissolved by *de facto* separation (without court approval) is a clear example of the Division's introduction of rules not intended by the legislator at all. On the other hand, the Revised Family Code recognizes divorces only through a court judgment. With apparent disregard to this stance of the law, the Cassation Division held that marriage can also be dissolved through *de facto* separation.

2.2.10 Conciliatory Trend to Its Mandate and Failure to justify Its Privilege

Not only is the Division encroaching on the legislative mandate of the lawmakers, but also it concedes its constitutional and legal mandate to be guardian of citizens' rights from executive usurpation. Sometimes, seemingly not to confront the executives, the Division takes a rather waffling position and takes a position that would not vindicate the role of courts *vis-a-vis* administrative agencies. For instance, in its decision in file no. 14554, it has set a precedent that it may not overrule the title deed issued by the

[42] ዉብሸት እና ሐይሉ፣ *supra* note 12, P110
[43] Mehari Redae, *Case Comment: Dissolution of Marriage by Disuse: A legal Myth*, Journal of Ethiopian Law (2010), Vol. 22. No. 2, P45
[44] Benjamin Cardozo, *The Nature of Judicial Process as cited in Guru Prasanna Singh, Principles of Statutory Interpretation,* 5th ed, Wadhwa and Company Law Publishers (1992), Pp.16-17
[45] Bisrat Teklu and Markos Debebe, *supra* note 7, P49.
[46] Shewaye Tesamma vs. Sara Lenagena, Federal Supreme Court Cassation Division Decision Vol. 4, 2008.

administrative authority even if it was issued counterfeitly.[47] Kumelachew Dange, consultant and attorney at law at federal courts, thinks that this is an erroneous interpretation of the law and a backlash from its constitutional and legal berth to ensure that the citizens' rights are protected.[48]

3. CONCLUSIONS AND WAY FORWARD

The Cassation Division's business of rendering binding interpretation of laws through its decisions shall be seen within the broader framework of the convergence of the two major legal traditions. Within that context, the FDRE Constitution has mandated the Federal Supreme Court to have a power of Cassation over any final decisions so long as available remedy has already been exhausted and exhibited *a prima facie* fundamental error of law. The decisions of the Cassation Division are declared to be binding on all tiers of courts at any level through the Federal Courts Proclamation Re-Amendment Proclamation No.454/2005 and the same position is held by the newly enacted Federal Court Proclamation 1234/2021. Since its inception, and more importantly, since its decisions were declared binding, the Division has taken enormous steps in rescuing the justice system from many menaces, the job which the author referred to as the novelty of the Cassation Division.

The Division will play and is playing, irreplaceable role in ensuring uniformity of interpretation of laws. It has been found through the study that the four primary goals purported to be achieved upon conferring binding force to the decisions of the Cassation Division, i.e., uniform interpretation of laws, equality of the citizens before the law, predictability, and speedy justice, have been, though not as much as desired, somehow addressed by the Division.

One of the most critical issues addressed in this article is the nature of binding interpretation that the Cassation Division renders. It has been argued that considering the extent and limitations of the power of the Division and purpose of establishment, the orthodox precedent under the common law legal tradition was not introduced. Moreover, the Cassation Division may only give interpretative precedent and not legislative precedent. However, the Cassation

[47] W/ro Tsige Atnafe vs Balambaras Wube Shibashi, Federal Supreme Court Cassation Division decisions, Vol. 3, File No. 14554

[48] Interview on December 28, 2017, in the premise of the Federal Supreme Court

Division's interpretation with regards to provisions of the law should be pursued in similar matters by the lower courts and other judicial organs.

Taken altogether, the author has tried to assess the novelties and rickets of the binding decisions of the Cassation Division. The piece is interested in purposive and pragmatic wonders of our Cassation Divisions' decisions. Hence, the following recommendations are hereby made:

1. Though I do not have courage to urge the Cassation Division to be an autonomous court of its own separate from the Supreme Court, as it is in some countries, I heartfully recommend the restructuring of the Division both in terms of personnel and institutional capacity. The Cassation Division shall structure itself in specialized divisions considering the varieties of cases that come before it. The judges should be assigned to the divisions based on their inclination and competency. It is now recommended that the same judge shall not preside over more than two divisions. Moreover, they shall be given some regular training on capacity building on critical issues.

2. The Federal Supreme Court shall have a Cassation procedure of its own. Unlike its predecessors that failed to tell us who shall assume this responsibility, the newly enacted Federal Court Proclamation 1234/2021 has already stated that it is the Federal Supreme Court that shall come up with the Cassation Guideline. This task of coming up with this Guideline may be facilitated by the plenum of the Federal Supreme Court.[49]

3. It has also been found that the Cassation Division is assuming by far much more cases than the regular divisions of the Supreme Court themselves. This high caseload, the writer thinks compromises the quality of decisions, as the judges would not have enough time to consider a case from different perspectives. Moreover, it is hard for these judges to remember the position they had in former precedents or decisions. Therefore, it is recommended to hire assistants for the Divisions of the Cassation Benches. For every Division that I have

[49] The Federal Court Plenum is, as provided for under Art. 42 of the Proclamation No. 1234/2021, a forum consisting primarily of the President, the Vice-President and judges of the Federal Supreme Court, the Federal High Court's Presidents and the Federal First Instance Court and the Presidents of Regional Supreme Courts.

proposed above, it is recommended to hire at least two assistants (law professionals). The works of these assistants are to trace the records in relation to similar cases that the Cassation Division has decided and undertake the research works, consult legislative history and jurisprudence on that specific issue and legal analysis and then write a memo to the judges concerning case before the Cassation Division.

4. Regarding publication, it has been underscored that only less than 1% of the cases decided are being published in a year. Yet and ironically, it has been held that the decisions of the Cassation Division remain binding even if they are not published. The writer has a firm belief that this must be changed. All decisions of the Cassation Division should be published. Of course, the *status quo* operation of the Cassation Division would make it impracticable in publishing the entire decisions. However, if we consider some of the recommendations that I have made above (such as making the number of screening judges five and equipping them with special pieces of training and adopt firm admission criterion, which would, in turn, reduce the number of cases the Cassation Division must entertain) publishing these cases would not be difficult.

5. The Cassation Division must adopt more stringent and tighter requirements for admission cases. With the current practice, in which the Cassation Division is overburdened than even other divisions of the Supreme Court, it may not have ample time to render quality decisions with detailed analysis. I believe that the number of cases that should be seen in Cassation should be significantly reduced. The study has uncovered that, as things stand now, the Federal Supreme Court Cassation Division is more of an additional appeal forum rather than a mechanism of rectifying severe legal defects which would unless addressed, affect the country significantly. Thus, it is suggested that the number of cases before the Division be reduced. Moreover, the writer recommends that the Division take its job more seriously as it plays a double function, i.e., settling the instant dispute and setting precedential rule. The writers' latter suggestion is best, and elegantly, explained by Schauer as:

> *"An argument from precedent seems at first to look backwards. The traditional perspective on precedent, both inside and outside of the law,*

has therefore focused on using yesterday's precedents in today's decisions. But in an equally if not more important way, an argument from precedent looks forward as well, asking us to view today's decision as a precedent for tomorrow's decision-makers. Today is not only yesterday's tomorrow; it was also tomorrow's yesterday".[50]

6. Given the decisive role that the Cassation Division and its binding interpretations would play in the country's justice system, I would like to recommend establishing a committee that is entrusted with a duty to make necessary evaluations on the performance of the Cassation Division and pinpoint the challenges. The committee shall make a regular evaluation of the functioning of the Cassation Division and call for any measures that should be taken. For the committee's task is purely to make evaluations, which might be annual or bi-annual, the writer would like to recommend the committee to be *ad hoc* to be constituted by credible personnel.

7. Finally, the writer would like to urge the Cassation Division to work together with other relevant stakeholders. Typical ones are law schools, regional Cassation divisions, government organs and law professional associations. I even suggest that it shall have a memorandum of understanding with these institutions. Instead of operating solitarily, it would rather be beneficial if the Cassation Division takes advantage of these bodies and professionals' research work and views.

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[50] Frederick Schauer, *Precedent* as cited in Mattias Derlén and Johan Lindholm, *Characteristics of Precedent: The Case Law of the European Court of Justice in Three Dimensions,* German Law Journal, Vol. 16, No.5, P1075.

ANALYSIS OF ISSUES REGARDING RURAL LAND RIGHTS OF A SPOUSE ACQUIRED BY NON-ONEROUS TITLE IN OROMIA REGION

Obsa Teshale*

ABSTRACT

This article examines the status of rural land rights of a spouse acquired by non-onerous title in Oromia Region through analysis of pertinent legal frameworks, interviews, court cases, laws of selected countries and available literature. The findings reveal that there are three approaches to rural land rights of spouses acquired by non-onerous title followed by different countries, i.e., uniform, pluralistic and contribution based approaches. Among these approaches, an approach that has legal ground in the Oromia Region is the uniform approach. That means, such rural land rights are considered as private holding of the spouse like other chattels. On top of these, from data analysis, it is revealed that exceptionality approach, which regards such rural land rights as common holding if another spouse has been using the land, has become dominant especially at the higher courts of the Region and the Federal Supreme Court Cassation Division. Unlike other jurisdictions, there is yet no legal basis to adopt this approach in the Region. To add complexity to the matter, existing decisions of the House of Federation (HoF) affirmed the uniform approach. Overall, inconsistent decisions were given on this issue. To rectify this inconsistency which negatively affects predictability of court decisions and public confidence in court of law, this study suggested that family and rural land laws have to be revisited, existing precedent system has to be enriched by legal reasons, and rural land rights enshrined under laws shall be properly implemented.

Key Terms: *Non-onerous title, Rural Land Rights, Spouse, Uniform and Exceptionality Approaches*

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INTRODUCTION

Land is the most crucial natural resource bestowed to human beings. The FDRE Constitution clearly upholds public ownership of rural land, which is literally stated as 'the right to ownership of rural … land … is exclusively vested in the state and in the peoples of Ethiopia'.[1] However, land principles in the FDRE Constitution were neither preceded nor succeeded by national land policy.[2] Other legal frameworks, which are relevant to this article, are the FDRE Rural Land Administration and Land Use Proclamation[3], Oromia Rural Land Use and Administration Proclamation[4], and Oromia Rural Land Administration and Use Regulation.[5] The Oromia RLUA Proclamation marked the peasants' right over land as 'possession'[6] unlike the FDRE RLALU Proclamation that employed the phrase 'holding right'.[7] Yet, both of them are more or less defined in similar vein. Hence, a bundle of rural land rights is currently disaggregated into ownership right and less than ownership rights. In other words, the ownership right is exclusively vested to the State and Peoples of Ethiopia while an individual peasant, pastoralist or semi-pastoralist is granted the less than ownership rights.

Property acquired by non-onerous title, which earned by a spouse before marriage or thereafter through donation or succession, is usually personal property of the spouse. Nevertheless, there is contentious disparity among

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[1] FDRE Constitution, Art.40 (3). See also B. Nega, B. Andenew and S.GebraSellasie, Current Land Policy Issues in Ethiopia' (EEPRI, Land Reform, 2003/3), P108 http:// www.fao.org/tempref/docrep/fao/006/y5026e/y5026e02.pdf <accessed 12 August 2020>; WibkeCrewett and BenediktKorf, 'Ethiopia: Reforming Land Tenure' (Review of African Political Economy No.116, 2008), Pp203-204.

[2] Muradu Abdo, 'State Policy and Law in Relation to Land Alienation in Ethiopia' (PhD Thesis, University of Warwick, School of Law, 2014), P11; available at http://wrap. warwick.ac.uk/74132/1/WRAP_THESIS_Spur_2014.pdf <accessed on 26 Sept., 20 20>.

[3] The Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No.456/2005 *Fed. Neg. Gaz*.,11th Year No.44 (hereinafter, the FDRE RLALU Proclamation). Like its predecessor (Proclamation No.89/1997), it does not explicitly repeal Proclamation No.31/1975.

[4] A Proclamation to amend Proc. No.56/2002, 70/2003, 103/2005 of Oromia Rural Land Use and Administration Proclamation No.130/2007, *Megeleta Oromia*, 15th Year No.12, (hereinafter the Oromia RLUA Proclamation).

[5] Oromia Region Rural Land Administration and Use Regulation No.151/2012, *Megeleta Oromia*, 17th Year No.151 (hereinafter, the Oromia RLAU Regulation).

[6] See Art.2 (7) of the Proclamation. Nevertheless, this term is not consistently used throughout the proclamation. Just to cite, Arts.2 (6), 6 (4) (5) (7), 10 use the term 'holding'.

[7] FDRE RLALU Proclamation, Art.2 (4).

legal scholars, especially, academicians, researchers, lawyers and judges, as regards legal status of a spouse's rural land right acquired by non-onerous title in Oromia Region. The centre of gravity for this controversy is whether a spouse's non-onerous rural land right will be personal property of the spouse, akin to other goods. According to some legal scholars, rural land rights acquired by non-onerous title should be considered as personal property of the spouse.[8] Essentially, this argument emanates from directly applying the family code provisions to land and other goods uniformly. Other legal professionals, however, argue that such rights shall be deemed as common property of the spouses because land has to be treated differently from other goods.[9]

As regards Ethiopia, almost there is no literature that directly deals with the issue at hand. A certain writer and judge noted that neither rural land law nor family law has stipulated status of such rural land and thus there is inconsistency of court decisions. Hence, he argued that a peasant woman shall equally share rural land acquired by her husband before marriage if she has been using it for a long period of time because the husband and the government has consented to and have recognized her use right.[10] But he had not adequately scrutinized relevant laws to reach on this conclusion. Another author also concluded that the Federal Revised Family Code (that is the same to Oromia Family Code regarding the issue at hand) uniformly recognize a woman's right to equal share of a common property, including land, upon divorce.[11] But, he did not specifically deal with applicability or otherwise of this provision on spousal rural land right acquired by non-onerous title. Therefore, the legal status of a spouse's rural land right acquired by non-onerous title is not systematically investigated in the Ethiopian setting. That is why, analyzing this issue is quite imperative.

This article is essentially intended to determine the legal status of rural land right acquired by a spouse without onerous title in Oromia Region. In most jurisdictions, if not all, a property acquired through non-onerous title is

[8] See Text to *infra* note 82.

[9] See Text to *infra* note 115, 135 & 138.

[10] Desalegn Berhanu, 'Rural Land Disputes Resolution Mechanisms in Oromia Regional State: A Case Study of Dugda Woreda Court in Eastern Shoa Zone' (AAU, LLM Thesis, 2018), P71.

[11] Hussein Ahmed, 'A Woman's Right to and Control over Rural Land in Ethiopia: The Law and the Practice, IJGWS (2014), Vol.2 (2), Pp145, 163.

considered as personal property of the spouse. Both the Oromia Family Code[12] and the Federal Revised Family Code[13] have similarly adopted this effect of non-onerous title. This is a legal status of the property acquired by non-onerous title. Whether this legal status is equally applicable on rural land right or not is systematically investigated in this article.

This article deals with the following two major questions. First, does the legal status of non-onerous title enshrined under the OFC apply to rural land right similar to other chattels? To put differently, is there any discrepancy between above-mentioned rural land laws and the OFC as regards legal status of a spouse's rural land right acquired by non-onerous title? Second, does the reality on the ground exhibit the ideal laws of spousal rural land right acquired by non-onerous title? In order to address these questions and other related legal issues, legislations primarily the FDRE Constitution, the pertinent rural land laws and the OFC were thoroughly scrutinized. Laws of some selected countries, which directly and explicitly deal with issue at hand, were also briefly overviewed. Additionally, court cases and decisions of the HoF were analyzed and interviews were conducted with Legal Researchers, Practicing Lawyers and Judges of the three levels of Oromia Courts as well.

Following this brief introduction, the remaining of this article is divided into four major parts. The first part provides the essence of property rights in general and that of rural land rights in particular. The second part presents the general overview of rural land right of a spouse acquired by non-onerous title. Specifically, the notion of non-onerous title and approaches adopted by some countries regarding status of such rural land right will be discussed under this part. The third part tries to normatively and empirically analyze the status of such rural land right in the Oromia Region. The final part is a recap.

[12] Oromia Family Code Proclamations No.69/2003 and No.83/2004, Art.76 (hereinafter OFC). Note that according to Art.2 of Proc No.83/2004, the re-numbered articles of the OFC are used throughout this Article.

[13] Revised Family Code Proclamation No.213/2000, *Fed. Neg. Gaz.*, 6th Year, Extra-ordinary Issue No.1, Art. 57 (hereinafter RFC).

1. RURAL LAND RIGHTS UNDER THE AMBIT OF PROPERTY RIGHTS

A brief discussion about notion of property is very important because the term property is sometimes improperly understood that it connotes only ownership right.[14] Legally speaking, property is not a thing rather it is a relationship between a person and a thing. It refers to rights/interests that a person claims and exercises over certain object.[15] To be considered as property, the right is not necessarily required to be ownership right. The term property may also refer to relationship between persons as regards to certain thing. It is a right to exclude or include other persons in the use of the thing.[16] Broadly, it implies correlation 'between the right holder, others and a governance structure'.[17]

The property rights over things, particularly over land, metaphorically consisting of a bundle of sticks/rights.[18] The bundle of rights existing on a plot of land can be unbundled into use right (the right to derive benefit thereof through cultivation/grazing), management right (the right to decide how and when to use the land and the purpose for which the land may be used), income right, capital right (the right to transform it), transfer right, and exclusion right.[19] Hence, among a bundle of rights, lack of the right to dispose land (for instance through sale) does not inhibit to be called property because sticks in the bundle can be divided to different persons in a decentralized bundle of rights system.

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[14] See Text to *infra* note 110.

[15] Land and Property Rights (FAO 2010), P12, available at http://www.fao.org/3/a-i1896e.pdf <accessed 14 Sept. 2020>. See also the French Civil Code (1804), Art.544 that defines property as the right of enjoying and disposing of things in the most absolute manner; available at http://files.libertyfund.org/files/2353/CivilCode_1566_Bk.pdf <accessed 19 Sept.2020>. However, there is no definition of the term property under Ethiopian Civil Code and other laws of the country.

[16] *Ibid.*

[17] Wibke Crewett, Ayalneh Bogale and Benedikt Korf, 'Land Tenure in Ethiopia: Continuity and Change, Shifting Rulers, and the Quest for State Control', (CAPRI Working Paper No.91), P2, available at http://dx.doi.org/10.2499/CAPRIWP91 <accessed 14 Sep. 2020>.

[18] Land and Property Rights (n15). See also Wibke Crewett, Ayalneh Bogale and Benedike Korf (n 17), 3. A bundle of rights means attributes of ownership that comprise, according Roman law, *usus, fructus* and *abusus*. See Daniel Weldegebriel, Land Rights and Expropriation in Ethiopia (Doctoral Thesis in Land Law, 2013), P31, available at https://www.springer.com/gp/book/9783319146386 <accessed 25 August 2020>.

[19] *Ibid.*

Montgomery Witten noted that 'what is sometimes called the 'bundle' of land rights is, in almost all cases, fragmented and distributed over many holders so that an individual's rights in a particular parcel of land are actually quite restricted and limited by the rights of the State and other parties.'[20] For example, in Ethiopia land rights are distributed among various holders.[21] The bundle of rural land rights is disaggregated into 'ownership right' and 'less ownership rights' in Ethiopia. Then the state and the peoples of Ethiopia are exclusively bestowed the ownership right while the other holders are granted less than ownership rights, which are in tandem referred to non-uniformly in various rural land legal frameworks.[22] In Ethiopia, rural land-holding right is acquired for indefinite period of time either through government grant or from land-holder through inheritance or donation. It can also be acquired for a definite period of time by contract of lease, rent, share cropping and farming (out-grower mechanism).[23]

2. RURAL LAND RIGHT OF A SPOUSE ACQUIRED BY NON-ONEROUS TITLE: AN OVERVIEW

2.1 NOTION OF NON-ONEROUS TITLE

Truly there is no direct definition of non-onerous title. It is an opposite of onerous title.[24] It is also, as used under Art.76 of the OFC, more or less the same with lucrative title. Lucrative title is a title acquired without giving anything in exchange rather a person acquires anything by gift or succession.[25] Property acquired accordingly is treated as the personal property of a married person.[26] In the OFC context, however, non-onerous title can be broadly comprehended as a property that is acquired before marriage by any means or that is individually acquired during marriage through donation or succession.

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[20] Montgomery Wray Witten, *The Protection of Land Rights in Ethiopia*, Afrika Focus Vol. 20 Nr. 1-2, 2007, Pp155-156.

[21] *Ibid.;* See also the FDRE Constitution, Art.40 (3) (4) (5) (6).

[22] Mainly 'use right', 'holding right', 'usufruct', and 'possession', which are not actually synonymous, are utilized. The rural land laws employed one of them or more interchangeably.

[23] The FDRE RLALU Proclamation, Arts.5 & 8. See also the Oromia RLUA Proclamation Arts.5, 6 (14), 9, 10.

[24] Black's Law Dictionary (9thedn), P 1624.

[25] *Id.,* P1623.

[26] *Ibid*.

This broad definition is employed throughout this article. Rural land right is basically acquired by lucrative title under the current Ethiopian legal system.

2.2 APPROACHES ADOPTED BY SOME SELECTED COUNTRIES

Alignment between land and family laws is another matter worthy discussion that may involve two major issues. First, it is tremendously needed to ensure enforceability of the land rights. Sometimes land rights protected by the land law might be circumvented by the family law.[27]Very importantly, the second issue is whether or not land is treated differently from other goods in marital relationship. In this regard, looking at laws of other jurisdictions is very imperative. Vietnam and Tanzania granted ownership of land to the public at large. Liberia and Kenya, however, followed private ownership of land. Yet, all of these countries have tried to address this issue in one way or another. Hence, these countries are purposively selected for the researcher believes that their experiences can be reckoned as most important approaches regarding issue at hand and lessons can be drawn thence.

In Vietnam, land is treated like other goods. The land use right obtained before the marriage or personally inherited by or given separately to one of the spouses or that is obtained through transaction with personal property during the marriage shall be personal property of the spouse.[28] But Liberia espoused legal pluralism, which means, pecuniary effect of marriage is a little bit different across various types of marriage. In civil marriage, land acquired by a spouse before or during marriage is considered as separate property of the spouse. In customary marriage, however, each spouse has a right to one-third of the other's real and personal property at the time of marriage regardless of one's contribution to acquisition of the property.[29]

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[27] Women's Secure Rights to Land (Landesa Rural Development Institute, Centre for Women's Land Rights), P4; available at https://www.landesa.org/wp-content/ uploads/ Landesa-Women-and-Land-Issue-Brief.pdf<accessed 26 September 2020>.

[28] Gina Alvarado and others, Property and Land Rights in Marriage and Family (Vietnam Land Access for Women (LAW) Program), Pp 13, 33, 37; available at https://www. land -links.org/ wp-content/uploads/2016/09/Toolkit_3.pdf <accessed 23 September 2020>. See also Law on Marriage and Family (2014) Arts.33 (1) 2nd Para., 43, 59 (4), 62 (1).

[29]My-Lan Dodd and others, 'Women's Land Rights in Liberia in Law, Practice and Future Reforms: LGSA Women's Land Rights Study' (2018), P9 available at https:// landwise. resourceequity.org/records/3044 < accessed 26 Sept. 2020>.

In Kenya, property (including land rights) acquired individually before or during marriage by a spouse is reckoned as personal property of the spouse. Nevertheless, the other spouse may get interest in the personal property if he/she contributed towards the improvement of the property.[30] Contribution can be monetary or non-monetary that includes, *inter alia*, domestic work and management of the matrimonial home, childcare, companionship, management of family business/property and farm work.[31] A spouse may contribute by his/her labour or other means to the productivity, upkeep and improvement of the land. By virtue of this contribution, the spouse acquires interest in the land 'in the nature of ownership in common' with the other spouse (in whose name the land is registered).[32] Likewise, in Tanzania, the spouse who contributes in such manner gets interest in the land 'in the nature of occupancy in common' with the other spouse.[33] Generally, in Kenya and Tanzania, contribution of another spouse is very decisive factor to determine whether or not the land is personal property and thus it seems that contribution of a spouse to the personal land transforms the land to a common property of the spouses. In nutshell, the above countries follow different approaches, i.e., uniform, pluralistic and contribution based approaches. These approaches are very essential to effectively carry out analysis of legal frameworks and collected data in the subsequent part.

3. THE STATUS OF RURAL LAND RIGHT OF A SPOUSE ACQUIRED BY NON-ONEROUS TITLE IN THE OROMIA REGION

Rural land right is not specifically addressed under both the RFC and the OFC, unlike Law on Marriage and Family of Vietnam. Yet, there are general provisions dealing with property of a spouse acquired by non-onerous title. Moreover, under the FDRE RLALU Proclamation, the Oromia RLUA Proclamation and the Oromia RLAU Regulation, there are provisions that regulate relationship between spouses as regards to rural land rights. Accordingly, this part firstly looks into general issues of matrimonial property and personal property under family laws of Ethiopia. Then it carries out

[30] Matrimonial Property Act (2013), Sect. 9 and Land Registration Act (2012), Sect. 93 (2).
[31] Matrimonial Property Act (2013), Sect. 2.
[32] Land Registration Act (2012), Sect. 93 (2).
[33] Land Act (1999), Sect.161 (2).

systematic investigation regarding the status of rural land rights of a spouse acquired by non-onerous title through analyzing relevant provisions of family laws and rural land legislations. Lastly, it presents collected data that include case analysis and interview. This is very important to identify whether the reality on the ground is in line with the letter and the spirit of law because judicial activism is immensely observed at the higher courts regarding the issue at hand.

3.1 MATRIMONIAL AND PERSONAL PROPERTY UNDER FAMILY LAWS OF ETHIOPIA

In general, common and personal property dichotomy is pecuniary effect of a marriage. 'The two extremes are full community and complete separation of property of husband and wife. Between them there exist several kinds of limited community.'[34] If common property of spouses is restricted to property acquired during marriage by their labour, it may be deemed as limited community.[35] The time and method of acquisition of a property are two yardsticks used to determine a limited community.[36]'Generally, *separate property* is property owned by a spouse prior to marriage and all property acquired after marriage by gift, inheritance or bequest. All other property acquired during marriage by a husband or wife is their *community property.*'[37]

Laws of some countries are acquainted with the notion of 'matrimonial home', a place where spouses have established their home.[38] In Kenya, matrimonial land is considered as common property of spouses regardless of who acquired it.[39] This lesson is glimpsed to explore later on whether such concept is recognized under our laws. In Ethiopia, according to Art. 57 of the RFC, 'the property which the spouses possess on the day of their marriage, or which they

[34] Jan Gorecki, *Matrimonial Property in Poland*, The Modern Law Review (1963), Vol.26, P156.

[35] Caroline Bermeo Newcombe, *The Origin and Civil Law Foundation of the Community Property System: Why California Adopted it and Why Community Property Principles Benefit Women,* University of Maryland Law Journal of Race, Religion, Gender and Class (2011), Vol.11(1),P5.

[36] *Ibid.*

[37] Kenneth W. Kingma, *Property Division at Divorce or Death for Married Couples Migrating between Common Law and Community Property States,* ACTEC Journal (2009), P78.

[38] Black's Law Dictionary (9thedn), P559.

[39] Land Act (2012), Sect. 2 and Matrimonial Property Act (2013), Sect. 2, 6.

acquire after their marriage by succession or donation, shall remain their personal property.' Art.76 of the OFC has similar provisions. This is simply property of a spouse acquired by non-onerous title. The underlying justification of these provisions is to circumvent conclusion and dissolution of marriage that merely intends to get property.[40] If such property is exchanged by another property during marriage, the latter property will also be personal property of the spouse provided that this fact is approved by court.[41] According to Mehari Redae, this is needed to prevent unjust enrichment of common property or personal property of another spouse by the personal property in question.[42] He also noted that any court (including Cassation Division) may undertake this approval act because there is no time limit provided and there is no specifically empowered court of law.[43] A property conjointly donated or bequeathed to the spouses is considered as common property unless there is contrary stipulation.[44]

The other point is that even if there is 'a fabricated legal interpretations' by courts of the country, proof of joint contribution/effort to establish common property does not have legal basis in Ethiopian family laws.[45] The rebuttable legal presumption is that all property shall be deemed as common property regardless of in whose name it is registered. Sileshi Bedasie formulated that simplicity is a merit of this presumption.[46] It is also logical and fair to make common property a default regime in a country where marriage is culturally and religiously considered as property unionization.

[40] See W/ro Askale Lema v. H/Mikael Bezzabih, Federal Supreme Court (hereinafter FSC) Cassation Division, Vol.5, File No. 26839.
[41] The OFC, Arts.78 and 81 (2). See also the RFC Arts.58 and 62 (2).
[42] Mehari Redae, *Content and Implementation of Federal Family Law* (in Amharic), (Addis Ababa, 2012 E.C) , P81.
[43] Id., P82.
[44] The OFC, Art.81 (3). See also the RFC, Art.62 (3).
[45] Jetu E. Chewaka, Bigamous Marriage and the Division of Common Property under the Ethiopian Law: Regulatory Challenges and Options, Oromia Law Journal, Vol.3 No.1, P110.
[46] Sileshi Bedasie, *Determination of Personal and Common Property during Dissolution of Marriage under Ethiopian Law: An Overview of the Law and Practice*, Oromia Law Journal Vol.2, No.2), P149.

3.2 LEGAL FRAMEWORKS

The FDRE Constitution guarantees right of peasants to obtain land for free and not to be evicted from their possession.[47] It also stipulates that women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men *with respect to use, transfer, administration and control of land*.'[48] That means, women shall be given equal protection of laws in this regard. However, this does not excessively enable women to encroach on rights of others, including legally protected personal property of their husbands and the vice versa.

The FDRE RLALU Proclamation Art.6 (4) states that where land is jointly held by husband and wife the holding certificate shall be prepared in the name of both joint holders.[49]Thus it can be argued that sole existence of marriage does not automatically result in joint holding certificate on private holding of a spouse.[50]In the same vein, the Oromia RLUA Proclamation stipulates that 'husband and wife holding a common land-holding, shall be given a joint certificate of holding specifying their names.'[51] This is what has been already provided by the FDRE RLALU Proclamation. Spouses have equal right of using the land registered in their names.[52] On the other hand, each spouse can have independently a holding certificate for his/her private holding.[53] The

[47] The FDRE Constitution, Art.40 (4-5). Right of peasants over rural land is referred here as 'possession' but as 'usufruct' under Art.97. See the Oromia Regional State Revised Constitution, Proclamation No.46/2001, (hereinafter the Revised Constitution of Oromia Region), Arts.40 (4-5) and 47 (2) (j).

[48] FDRE Constitution, Art.35 (7) *(Emphasis added)*.

[49] At this juncture, the question that needs to be settled is which land is deemed as joint holding of spouses. The notion of 'joint holding' might be understood as a counterpart of 'joint ownership' which is known in bundled property rights of other goods. If persons (whether or not couples) jointly acquired holding right, such right will be deemed as joint holding.

[50] Rural Land Laws of some Regional States such as Afar and Southern Nations, Nationalities and Peoples (SNNPs) stipulate that private holding pre-martially acquired is not affected because of marriage. See the Afar National Regional State Rural Lands Administration and Use Proc. No.49/2009, Art.9 (7) and the SNNPs Regional State Rural Land Administration and Utilization Proc. No.110/2007 (Debub Neg. Gaz., 13th Year No.10), Art.5 (5).

[51] The Oromia RLUA Proclamation, Art.15 (8). See also the Oromia RLAU Regulation, Art.15 (11)

[52] The Oromia RLUA Proclamation, Art.15 (9); Oromia RLUA Regulation, Art. 15 (16).

[53] Ziade Hailu and others, *Protecting Land Tenure Security of Women in Ethiopia*, Pp11-12; available at: https://www.uneca.org/sites/default/files/uploaded-documents/ CLPA/2019/

Oromia RLAU Regulation Art.15 (17) also states that 'persons who live together but each of them have their own land holding may be given individual land-holding certificate.' Hence, during marriage spouses may have joint holding certificate and separate holding certificate on joint land-holding and private land-holding respectively.

Upon dissolution of marriage by divorce, spouses shall have the right to share their land-holding that was registered by their name equally.[54] That means, only joint land-holding, which is initially eligible to be registered in the name of both spouses, is required to be shared by spouses equally. Private holding is, however, retaken by a spouse in question according to the family law because there is no contrary stipulation under the rural land laws.

According to Art.5 (13) of the Oromia RLAU Regulation, during divorce spouses or members of their families shall have the right to share or use in common *the residential areas* while they share *their holdings*.[55] This provision is a little bit confusing because it is not clear about which residential area it is talking. Does it apply to the residential area found in joint land-holding alone or any residential area? What does residential area mean? Is it synonym of the term 'premise' that is defined under Art.2 (14) of the Regulation? These questions are not clearly answered by the law. Thus it is difficult to determine whether or not the notion of 'matrimonial home' is statutorily recognized as common property in the Region. But the provision probably wants to give special emphasis to a residential area that is found in common land-holding. If this is what is contemplated by the provision, the residential areas in private holding won't be considered as common holding. In order to identify whether non-onerous rural land right of a spouse is *de jure* private holding or common holding, let's further look at some issues under family law and rural land laws in the next sub-sections.

Papers/Womens-access-to-land-and-security-tenure/final_submission_259.pdf <accessed 02 October 2020 >.

[54] The Oromia RLUA Proclamation, Art.6 (13). See also the Oromia RLAU Regulation Arts.5 (7-11) and 15 (13).

[55] Emphasis added to Oromia RLAU Regulation Art. 5 (13).

I. The Family Law

Obviously, under the OFC, a property acquired by non-onerous title is deemed as a personal property. Conceptually the term property is a right that can be ownership or less than ownership. Thus any rural land right of a spouse acquired by non-onerous title is personal/private to the spouse.[56] However, income or fruit derived from this private land-holding shall be a common property. Accordingly, once a marriage is dissolved, it will be retaken by the spouse like other goods as per Art. 116 (1) of the code. Even when the marriage subsists, there are at least two things that make such land-holding different from a common land-holding.[57] First, each spouse has exclusive right to administer their respective private land-holding and to receive income thereof. Second, consent of another spouse is not necessary to make any juridical act relating to the land-holding.

II. Some Other Issues under the Rural Land Laws

The first issue is about rural land policy. To date, Ethiopia does not have land policy document. There is no land policy that envisages rural land right acquired by non-onerous title is common holding. Secondly, looking at land holding certificate and its status might be helpful. Holding certificate is a certificate of title issued as proof of rural land use right.[58] Even if it is not clearly stated in rural land laws, there is no doubt as to refutability of holding certificate. It furnishes rebuttable presumption regarding who is holder of a land.[59] Putting differently, if joint holding certificate is improperly given on a private holding, the concerned spouse may rebut it by adducing other evidence. Because underlying justification of presumption of common property is that '… each spouse contributes labour or capital for the benefit of the community, and shares equally in the profits and income earned there from'[60] rather than encroachment of common property on personal property.

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[56] Ziade Hailu and others, *supra* note 53, P12.

[57] The OFC, Arts.78, and 87 (*acontrarion* reading).

[58] The FDRE RLALU Proclamation, Art.2 (14), and the Oromia RLUA Proclamation, Arts.2 (21) and 15 (4). See also Art.15 (2) of the Oromia RLAU Regulation.

[59] See the Civil Code, Arts.1195-1196, and the Oromia RLAU Regulation, Art.25 (1). See also Ato Tilahun Gobeze v. Ato Meketa Hailu*et al*, the FSC Cassation Division, Vol.13, File No. 69821.

[60] Silashi Bedasie, *supra* note 46, P148.

Hence holding certificate is not conclusive evidence rather it is a *prima facie* evidence of having holding right.

Lastly, identifying the effects of jointly using such land right during marriage and contribution of another spouse is quite imperative. Commonly, spouses use private holding for livelihood of their family during subsistence of their marriage. Does this act transform the private holding to common holding? What about contribution of a spouse towards productivity, upkeep and improvement of private holding of another spouse? Regarding the first question, the land laws do not have answer but the family law has. According to the family laws, another spouse has a right to use income or fruits derived from the private holding of a spouse. Thus jointly using private holding *per se* does not transform it into joint holding.

There is also no legal framework as regards effect of another spouse's contribution towards productivity, upkeep and improvement of private holding of a spouse. The OFC, Art. 118, stipulates that court may award indemnity (not other rights) to a spouse at whose personal property expense personal property of another spouse is enriched.[61] Particularly, labour seems common resource of spouses during marriage. Hence, one may safely conclude that the contribution based approach is not recognized in laws of the Region. Overall, there is no discrepancy between the rural land laws and the OFC as regards issue at hand. Thus, the uniform approach is adopted in the Region. This approach ensures equality of men and women by protecting their respective personal property. To do so, however, both of them have to be found on equal status. The disadvantage of this approach is that, it may create inequity by evicting a spouse from holding that he/she had been using during marriage. This problem is highly exacerbated when land is substantially in the hand of male or female only and when marriage subsists for a long period of time. Particularly, where there is patriarchal dominancy in acquisition of land right, invariably pursuing this approach could create injustice since it ultimately makes divorced women landless.

On the other hand, promoting personal property regime in all property rights is useful for women as useful as for men provided that both of them are given equal opportunity in the acquisition of the rights at the outset. In this regard,

[61] See also RFC, Art.88.

the 1960 Civil Code of Ethiopia and Proclamation No.31/1975 had played pivotal role by eliminating sex based discrimination as regards modes of getting land rights including succession.[62] The contemporary legal frameworks undoubtedly treat both men and women equally regarding acquisition of land rights.[63] Therefore, setting aside existing down-to-earth, the uniform approach can be theoretically considered as an egalitarian approach.

3.3 THE REALITY ON THE GROUND

As far as the reality on the ground is concerned, there are two approaches followed by different court cases and interviewees. Sometimes one can get these approaches followed in a single court. The journey to one of these approaches could be ignited only if one of the spouses alleges that the contested rural land is his/her private holding. Moreover, if this allegation is not adequately proved by evidence, the issue at hand won't appear at all because the legally presumed common property (or joint holding) is left un-refuted.

3.3.1 The Uniform Approach

The uniform approach means unvaryingly applying provisions of family laws which deal with property of a spouse acquired by non-onerous title to rural land and other goods. Cases and data collected through interviews that adopt this approach are analyzed hereunder.

A. Court Cases

In *Liku Dugasa v. Kebeda Disasa*, citing Art. 76 of the OFC, Woliso Woreda Court decided that 1.75 hectares rural land, which was acquired by a husband before marriage (through succession) and registered in his name alone, is not a common holding of the spouses.[64] In this case, the spouses have jointly used the land for 15 years. In *Kecini Bededa v. Megersa Huluka*, 0.75 hectare rural land that was acquired by a husband has been jointly used for not more than 2 years. In the same vein, 0.75 hectare rural land that was acquired by a wife has

[62] See the Civil Code, Art.837 and Public Ownership of Rural Lands Proclamation No.31/ 1975, Art.4 (1).
[63] Even affirmative action shall be accorded for women as per Art.3 (10) of the Oromia RLAU Regulation.
[64] WolisoWoreda Court, File No.52872 (2012).

been jointly used for around 6 years. Moreover, each land was registered in their respective names and separate holding certificate was granted accordingly. Thus it was decided that the rural lands are their respective private holdings.[65] Similarly, in *Tejitu Koru et al v. Mulu Merisa,* Sebeta Town Woreda Court decided that the 2nd wife does not have a right on rural land which was gained before marriage, by her deceased husband and the 1st wife.[66] The land was registered in the name of the deceased and has been used by both wives and the deceased during marriage. Thus the court said that a defendant (the 2nd wife) does not have any right on the land because it is common holding of the 1st plaintiff (the 1st wife) and the deceased according to the OFC.[67] To be noted that the defendant has used the land for about 30 years.

In *Yadete Urgecha v. Fikire Amena*, High Court of the Special Zone Surrounding Finfine (hereinafter High Court of the Special Zone) decided that rural land which a spouse acquired by succession before marriage is a private holding.[68] A husband, who was a defendant at a woreda court, had gained 12 hectares rural land by will and used it for 16 years individually and for 3 years and 8 months with a plaintiff. Based on Art. 40 (3) of the FDRE Constitution, rural land laws of the Region and Arts. 61, 76, 81 and 116 of the OFC, the woreda court decided that the land is common holding of the spouses.[69]But the High Court reversed this decision by directly applying Art. 76 of the OFC.In another case, rural land was gained by a husband before marriage (through government grant) and it was not included in contract of marriage. But the spouses have jointly used it for 4 years. Then Tole Woreda Court decided that it is a common holding of the spouses because they have jointly used it.[70] The High Court, however, reversed this decision articulating that there is no right acquired by a wife since she has not jointly used it for a long period of time.[71] What makes this case different from those provided herein above is that it is not explicitly based on Art.76 of the OFC. Rather the land was considered as a private holding owning to non-fulfilment of 'jointly using

[65] Dawo Woreda Court, File No.32132 (2012).
[66] Sebeta Town Woreda Court, File No.10692 (2012).
[67] It was, however, reversed by High Court which decided that it is common holding of the two wives and the deceased because the defendant has been using it. See High Court of the Special Zone, File No.39306 (2013).
[68] High Court of the Special Zone, File No.36252 (2011).
[69] MuloWoreda Court, File No.10416 (2011).
[70] Batire Geresu v. Kasehun H/Meskel, Tole Woreda Court, File No.19789 (2010).
[71] High Court of South West Shoa Zone, File No.41960 (2010).

it for a long period of time', which transforms private holding to common one, according to the court. As to be seen later, this issue appeared in exceptionality approach and developed by judicial activism.

In *Shimallis Korra v. Atsedu Adugna et al*, the Oromia Supreme Court (hereinafter OSC) Cassation Division also regarded 0.625 hectare rural land that was acquired by a husband through succession as his private holding.[72]Yaya Gulale Woreda Court, at which the case was started, decided that the land is a common holding because it was not registered as private holding. High Court of North Shoa Zone confirmed this decision. The OSC Cassation Division, however, said that there is a fundamental error of law committed in these decisions because property acquired by non-onerous title is deemed as personal property. The Cassation Division further argued that even if it might be said that such land could become common holding by stay, it is only two years; that means, jointly using a land for two years is not sufficient to consider it as a common holding of the spouses. Generally, in above cases, the contested rural land is arable land on which crops are seasonally sown and harvested. Thus looking at how courts entertain rural land that is covered by fixed assets might be vital to get full insight.

In *Zeyituna Shukur v. Mohammednur Haile et al*, 0.25 hectare coffee tree, 0.5 hectare agricultural land and 0.125 hectare tree (*berzaf*) were gained by a husband before marriage and there is no seedling additionally planted during marriage. Accordingly, a court determined that the lands are private holdings as per Art.76 of the OFC.[73] In *Anima Aba-Jebel v. Abdo Aba-Oli*, Shebe Sombo Woreda Court also decided that coffee tree which the plaintiff (a wife) individually got from her father through donation is personal property.[74]The question here is that could planting fixed assets on such land convert it to common one. If fixed assets were planted on such rural land during marriage, still there would be no clear law to consider the land as a common holding.[75]

One more issue is that the rural land laws allow exchange of rural land with another rural land. Accordingly, rural land right of a spouse acquired by non-onerous title could be exchanged with another rural land during marriage. But

[72] See OSC Cassation Division, File No.282074 (2011).
[73] Gomma Woreda Court, File No.35930 (2009).
[74] Shebe SomboWoreda Court, File No.13226 (2012).
[75] Rather the Civil Code, Arts.1176-1177 could be used *mutatis mutandis* to regard it as private holding.

the question is that what status such an exchanged land has when marriage dissolved. In *Seble Shumiye v. Tibebu Mokonin*, a court decided that such land is a private holding because the spouses did not cultivate it during marriage.[76] In this case, coffee tree land which was individually gained by a defendant (husband) was exchanged with another coffee tree land during marriage. There was no additional coffee tree planted thereon after act of exchange and the spouses have not cultivated it. Art. 77 of the OFC (which requires approval of court) might be analogically employed in such case. If so, it would have been considered as a common holding because there was no such authentication adduced. Additionally, there are a lot of court cases which espoused the uniform approach.[77] Generally, in all these cases, the courts directly or indirectly applied Art.76 of the OFC.

B. Decisions of the HoF

The HoF has upheld the uniform approach in the following cases. In *Halima Mohamed v. Adam Abdi,* it decided that about 2 hectares of agricultural land which acquired by an applicant (Halima Mohammed) before marriage is her private holding.[78] This case was started at Cinaksen Woreda Court. The applicant had acquired the land with her ex-husband before she got married a respondent. Later on marriage she had with the respondent was dissolved and she claimed the land as her private holding. The court decided that it is her private holding. High Court of East Hararghe also confirmed this decision. Then the case was brought to the OSC Cassation Division which reversed the decisions. The Cassation Division argued that when a marriage is dissolved, spouses shall equally share a land use right they have jointly used, and accordingly the parties have jointly used the contested land for more than ten years. The Federal Supreme Court (hereinafter FSC) Cassation Division dismissed an application brought thereto. Finally, the case was brought to the HoF through the Council of Constitutional Inquiry (hereinafter CCI). The CCI underlined that the applicant did not acquire the land after she married the respondent and argued that the Oromia RLUA Proclamation Art.15 (8) (9), the OFC, the FDRE RLALU Proclamation and the RFC show that spouses may have common holding and their respective private holdings. Accordingly,

[76] Gomma Woreda Court, File No.46818 (2013).
[77] For instance, see Text to note 94, 97, 99, 101, 106, 107 & 109.
[78] HoF, 4th Parliament Year, 5th Year, 2nd Ordinary Session, Sane 18, 2007.

it recommended that the case needs constitutional interpretation because the Cassation Divisions' decisions encourage evicting women from their private holdings in contrary to Art. 35 (2) (7) of the FDRE Constitution.

The HoF also emphasized on the fact that the applicant gained the land with her ex-husband, who is a father of her three children, and they have been using it and raising the children accordingly. Holding this land, the applicant got married the respondent who has another marriage and land. Thus it unanimously decided that decisions of the Cassation Divisions shall be of no effect for they contravened with the applicant's rights (right of equality and non-eviction right) and the best interest of the children that enshrined in Arts. 35 (2) (7), 36 (2) and 40 (4) of the FDRE Constitution. Yet a couple of questions that could be raised here are, would the HoF give the same decision if the respondent did not have another land or if the respondent was wife and the applicant was husband or again if there were no children of the applicant born in the former marriage.

Another case was started at Menz Mama Midir Woreda Court between a wife and a child of her deceased husband.[79] Through his tutor, the child claimed that a rural land which was acquired by his deceased father before he got married the defendant in 1990 E.C. Actually, the deceased acquired the land in 1983 E.C and there is no act of making it a common holding when it was being surveyed during the marriage, particularly, in 1997 E.C. As a result, the court decided that the defendant (the wife) has no right on the land. High Court of Semen Shoa, the Amhara Regional State Supreme Court Cassation Division and the FSC Cassation Division have sequentially affirmed this decision. Lastly, the defendant instituted an application to the CCI.

Looking at a long period of time the defendant stayed in the marriage, the CCI argued as follows: "The defendant has improved the land use right conceiving it as a common holding; and she has contributed her intellect and capital to enhance its productivity and cultivation as well. Thus, she has a right through her contribution in bringing permanent improvement on the land pursuant to Art. 40 (7) of the FDRE Constitution."[80] As a result, the CCI said that the

[79] Kasahe Eshetu v. Tsiye Tamire, HoF, 5th Parliament Year, 4th Year, 1st Ordinary Session, Meskerem 29, 2011.
[80] *Ibid (Translation is mine)*.

courts' decisions infringe Arts. 35 (1) (7) and 40 (3) (7) of the FDRE Constitution and thereby suggested that the defendant shall equally share the land. The HoF, however, underscored that rural land law of the Region[81] allows the spouses to hold their respective private holdings acquired before marriage unless they want to get joint holding certificate thereon (adding it to their common holding); but the deceased registered it as private holding and retained as such during marriage. When a marriage is dissolved, such land shall be regarded as a private holding. Then it concluded that considering the defendant as a co-holder, by the mere fact of being a spouse of the deceased, is contrary to the FDRE Constitution and the rural land law enacted accordingly. Therefore, the HoF decided that decisions of the ordinary courts do not contravene with Arts.35 (1) (7) and 40 (3) (7) of the FDRE Constitution. To be noted that the defendant has minor children born in the marriage and she does not have another rural land. Furthermore, the defendant and the deceased were jointly using the contested land for a long period of time. To put differently, according to this decision, non-onerous rural land right of a spouse is a private holding irrespective of jointly using it during marriage unless the spouses agreed otherwise.

C. Interviews

Some legal professionals also argued that such rural land shall be considered as private holding if conditions prescribed by the family law have been complied with.[82]The fact that spouses were jointly using the land during marriage, which usually employed to consider the land as a common holding, does not have a legal ground.[83] Similarly, another informant eloquently and sequentially explained as this approach has a legal ground.[84] The Oromia RLUA Proclamation states that spouses may get joint holding certificate on common holding but each of them may have private holding that is registered in their respective names. More importantly, it says that the spouses have the

[81] See Amhara Revised Rural Land Administration and Use Determination Proc.No.133/ 2006, Art.24 (3).

[82] Interview with Wakgari Dulume, a Legal Researcher at Oromia Justice Sector Professionals' Training and Legal Research Institute (hereinafter OJSPTLRI), 18 Nov. 2020. Interview with Tamiru Legesu, a Judge at DawoWoreda Court, 11 Dec. 2020. Interview with Biso Bekele, a Judge at the OSC, 12 Dec. 2020.

[83] Tamiru Legesu, *supra* note 82.

[84] Biso Bekele, *supra* note 82.

right to share their common holding when their marriage is dissolved.[85] Opponents of this approach usually relegate a person's right on land to mere use right from possession right that is not in line with objectives of the FDRE Constitution and the rural land laws. Rural land law provisions dealing with succession shall not be extended to issues of marriage because it is specifically dealt with by the law. Furthermore, Art. 35 of the FDRE Constitution does not envisage that a married woman equally share rural land, which is individually gained by her husband, by mere fact of using it during marriage.[86] Thus, there is no discrepancy between family law and rural land laws regarding the issues at hand. Only what has been cultivated on such rural land during marriage (including fixed assets) is considered as a common property but the land remains private holding.[87]

3.3.2 The Exceptionality Approach

This approach is mostly followed in court decisions and supported by most legal experts. According to this approach, rural land right shall be treated differently from other goods due to its unique nature. Various factors are used to substantiate it, for instance, jointly using and joint holding certificate. Court cases and data collected through interviews which espouse this approach are analyzed subsequently.

A. Cases of District Courts

In *Zekariyas Bedane v. Senayit Bekela*, 4 hectares rural land that was acquired by a husband through succession and registered in his name was decided as a common holding. The fact that it has been jointly used by the spouses for about 4 years is emphasized on to this end.[88] In *Tejitu Lelisa v. Kelbessa Bayisa*, 2.79 hectares rural land had been acquired by a defendant and his deceased wife before the second marriage. But the court decided that it is a common holding because the spouses have used it for about 14 years and they have joint holding certificate thereon.[89] In certain case disposed at Akaki Woreda Court, a rural land that was acquired by a husband through succession and jointly used by the spouses for more than 8 years was regarded as a common

[85] *Ibid*.
[86] *Ibid.*
[87] Biso Bekele and Tamiru Legesu, *supra* note 82.
[88] WolisoWoreda Court, File No.51414 (2013).
[89] DawoWoreda Court, File No.34101 (2012).

holding.[90] Likewise, in *Firehiwot Bekele v. Abule Deme*, the court employed the phrase 'jointly using such rural land during marriage' as a decisive factor that converts private holding to a common holding and accordingly quashed defense of a defendant because they have jointly used the land for more than 10 years.[91]

In *Atsedu Kebeda v. Buzune Dida*, a defendant had acquired the contested rural land through succession and accordingly it was registered in his name. But Sebeta Awas Woreda Court said that an individual has only a use right over land and in view of that the parties have used it for 26 years. Accordingly, it ordered that the parties equally exploit use right of the land.[92] *Gadissie Debele v. Tasisa Amente* is another case in which similar argument has been raised.[93] In this case, both spouses individually gained the same size rural lands by succession. Then they have jointly used the land acquired (before marriage) by a husband for 33 years and that acquired by a wife for 15 years. As a result, the court decided that the parties shall equally share both lands because they have been jointly using it. In all these cases, the same argument was employed to regard rural land of a spouse acquired by non-onerous title as a common holding. That is jointly using the land during marriage. However, the spouses have used the land for different length of time that range from 4 to 33 years.

B. Cases of High Courts

In one case, the contested 1.5 hectares rural land was acquired by a wife (respondent) through inheritance, during marriage, and holding certificate has been accordingly issued in her name. Thus, Mulo Woreda Court decided that it is her private holding.[94] But High Court reversed this decision enunciating that as regards rural land the crucial thing is jointly using and accordingly the

[90] Abebu Guta v. Teshome Biru, Akaki Woreda Court, File No.33386 (2012). High Court of the Special Zone confirmed this decision. On top of jointly using the land, the High court underlined that it is not proved as it was individually given to him by will as per Art.81 (3) of the OFC because he got a certificate of heir during marriage. But the case does not explicitly show as it was testate succession. See also High Court of the Special Zone, File No.38883 (2012).

[91] Akaki Woreda Court, File No.30172 (2011).

[92] Sebeta AwasWoreda Court, File No.59143 (2010). This decision was affirmed by High Court; see High Court of the Special Zone, File No.31877 (2010).

[93] Sebeta Awas Woreda Court, File No.82114 (2012).

[94] Legesse Worku v. Direbe Daba, Mulo Woreda Court, File No. 10937(2012).

spouses have jointly ploughed and used the land for 9 years.[95] In *Derartu Robi v. Gutema Amanu*, High Court of South West Shoa Zone said that there is a legal presumption as rural land which has been jointly used by spouses during marriage for a long time is a common holding.[96] This case was started at Dawo Woreda Court. A defendant replied that the contested 2.875 hectares rural land was acquired by him through succession. Admitting this fact, at the first hearing, a plaintiff however argued that she shall share the land because they have jointly used it for 24 years. But the Woreda Court quashed her claim stating that she does not have a right to share the land rather to use fruits derived thereof during marriage.[97] Nonetheless, the High Court reversed this decision by the mere fact that it has been jointly used by the spouses for 24 years.

High Court of Jimma Zone also decided, in *Nabet She Sherif et al v. Yizedin She Sherif et al,* 0.5 hectare of rural land that was acquired by a husband before marriage and has been used by the spouses for 14 years is their common holding.[98] At the lower court, the 2nd plaintiff (wife) claimed half of this land but the defendants (children of her deceased husband) replied that it was acquired by their deceased father before he got married the plaintiff and thus she cannot claim it. Accordingly, the court dismissed her claim based on Art.76 of the OFC. Particularly, the court enounced that a term property under the provision implies one's right over a thing that includes land rights. Moreover, it underlined that jointly using the land during marriage cannot make it a common holding.[99] Nevertheless, the High Court reversed this decision emphasizing on the fact that an individual has only land use right and the spouses have been using the contested land for 14 years.

In *Marema Ijigu v. Mohamed Hasen*, High Court of Jimma Zone reasoned out that there is no doubt as to rural land registered in the name of both spouses is their common holding.[100] By citing Art.76 of the OFC, woreda court decided that crop land, coffee tree land and tree land (*yebarzaf meret*) is private holding

[95] LegessaWorku *etal* v. Diribe Daba, High Court of the Special Zone, File No.39850 (2013).
[96] High Court of South West Shoa Zone, File No.43890 (2010). There is no legal provision particularly cited to show by which law this presumption established.
[97] Dawo Woreda Court, File No.27470 (2010).
[98] High Court of Jimma Zone, File No. 40666 (2010).
[99] GommaWoreda Court, File No.36180 (2009).
[100] High Court of Jimma Zone, File No. 41876 (2010).

of the defendant (husband) because he acquired them, as it is, before marriage.[101] The High Court, however, articulated that the woreda court would have to make sure in whose name the land was registered and thus remanded the case so that the court identifies only this matter and decides as a common holding if it was registered in their names. The High Court took joint holding certificate as conclusive evidence of a common holding. There is also intrusion in the lower court's jurisdiction for it specifically dictated what decision the court has to give.

In these cases too, rural land acquired by a spouse through non-onerous title was regarded as a common holding on account of jointly using it during marriage that is for 9 years and above. In the latter case, however, joint holding certificate was taken as a decisive factor to determine whether or not it is a common holding. But, as it has been previously glimpsed of, the certificate is not conclusive evidence rather prima facie of having holding right.

C. Cases of the OSC

In *Bushuna Jahi v.Tadelu Bedada* and *Beyessa Irko v. Mulu Aduna*, a rural land, which was exclusively acquired by a spouse/man through succession, was decided as common holding by woreda courts by the mere fact that it has been jointly used during marriage/irregular union. For the same reason, the OSC Central Appellate Bench dismissed appeals instituted against these decisions.[102] In the former case, the man and the woman (it was irregular union) have jointly used the land for around 7 years.[103] And in the latter case, the spouses have jointly used it for 27 years.[104] Some decisions of the OSC Cassation Division given upholding the exceptionality approach are also presented as follows.

In *Mulu Gutema v.Abbu Cakkiso*, the OSC Cassation Division said that the lower court would have to frame an issue of fact that whether or not the spouses have been jointly using the land.[105] In this case, the contested rural land was acquired by a defendant (wife) through succession and it was accordingly registered in her name. Hence, Negele Arsi Woreda Court

[101] GommaWoreda Court, File No.37046 (2010).
[102] The OSC,File Nos.322814 and 322873 (2012).
[103] Ilfeta Woreda Court, File No.25714 (2012).
[104] Jibat Woreda Court, File No.24715 (2012).
[105] The OSC Cassation Division, File No.332007 (2012).

determined it as her private holding as per Art. 76 of the OFC.[106] This decision was confirmed by High Court of West Arsi Zone and the OSC South Permanent Bench.[107] But the OSC Cassation Division stated that, according to Art.40 (3-5) of the FDRE Constitution and the Revised Constitution of Oromia Region, a person has only land use right and thus land is not considered as other property. Accordingly, even if rural land is acquired by one of the spouse only, another spouse shall acquire right on the land by mere fact of using it with the spouse. And rural land shall not be remained private holding of the spouse by looking at a way of getting it. Thus, it remanded the case to the lower court so as to elucidate the issue of fact.

Similarly, in *Chala Edeo v. Bube Hermi*, the OSC Cassation Division affirmed that if spouses use rural land together for a long period of time, when their marriage subsists, the land shall be their common holding.[108] In this case, which was initiated at Lemu and Bilbilo Woreda Court, rural land (both agricultural and grass land) was acquired by a defendant (husband) through succession and accordingly registered in his name. Moreover, the parties have jointly used the land for more than 20 years. Thus, the Woreda Court decided that it is not a common holding of the spouses and High Court of Arsi Zone also confirmed the decision.[109]

Then the plaintiff re-appealed to the OSC Eastern Permanent Bench which quashed decisions of the lower courts saying that it is clearly stated under Art.6 (1) of the Oromia RLUA Proclamation that a person has only land use right. Surprisingly, it also articulated that rural land is not a property rather it is a holding.[110] Hence, it said that the lower courts erroneously cited the OFC to decide that the land is private holding whilst the plaintiff has undeniably used it for a long period of time. Lastly, the case was brought to the OSC Cassation Division which noted that the pertinent law is the Oromia RLUA Proclamation because Arts.76 and 81 (3) of the OFC talk about property a thing over which

[106] Negele Arsi Woreda Court, File No.37752 (2011).
[107] High Court of West Arsi Zone, File No.40346 (2012). See also OSC South Permanent Bench, File No.288649 (2012).
[108] The OSC Cassation Division, File No.320416 (2013).
[109] Lemu and BilbiloWoreda Court, File No.39041 (2011). See also High Court of Arsi Zone, File No.90232 (2012).
[110]Literally it says 'Lafti baadiyyaa immoo qabeenya osoo hin taane qabiyyee ta'ee, mirgi namni tokko qabus mirga itti fayyadamuuti.'

a person has ownership. Putting differently, to the Cassation Division, the term property under Art.76 of the OFC refers to only ownership right that does not actually embrace rural land. Consequently, it decided that there is no fundamental error of law committed because rural land which has been jointly used by spouses for a long period of time shall be regarded as a common holding. In another family case, the OSC Cassation Division considered rural land acquired by a wife through succession as a common holding on account of being jointly used during marriage.[111] The land was gained in 1993, a year after conclusion of marriage, and it has been jointly used by the spouses for about 20 years. By citing Art. 76 of the OFC, Lume Woreda Court (where the case arose) decided that it is a private holding of the wife (a plaintiff). High Court of East Shoa Zone, however, reversed this decision because the parties have been jointly using it. The OSC Eastern Permanent Bench also dismissed an appeal of the plaintiff. And then, even if she brought an application to the OSC Cassation Division, it gave an order that there is no fundamental error of law committed because an individual has only a use right on land and nothing evidence is also adduced to prove that the land was individually given to the wife. Nonetheless, specific stipulation is needed, under Art.81 (3) of the OFC, only in the case of will rather than succession as a whole. Moreover, a person's right on land is beyond a use right according to the FDRE Constitution that might be expressed as ownership minus sale and barter rights.

To sum up, in aforementioned cases, rural land acquired by one of spouses through succession was considered as a common holding by mere fact of being jointly used by the spouses. However, the OSC Cassation Division does not clearly address how many years of jointly using it is sufficiently needed. For instance, in one case it gave a decision that jointly using a private holding for only two years is not sufficient to consider it as a common holding.[112]

[111]Demme Utte v. Midekso Degefa, the OSC Cassation Division, File No.336356 (2013).

[112] See Text to note 72. However, if there is a contract of marriage made thereon, duration is a matter that is indifferent; See for instance, Gizachew Nuguse v. Burtukan Mamo, the OSC Cassation Division, File No. 269617 (2010), in which after 10 days partition of the land was claimed and decided as a common holding.

D. Cases of the FSC Cassation Division

In *Chalume Mulatu et al v. Chaleshi Kelbessa,* a husband acquired 1.5 hectares rural land from his parents by donation and accordingly it was registered in his name. Although it is not precisely stated in the decision for how many years, the spouses have also jointly used the land for a long period of time. After the death of her husband, the defendant (wife) has been using it, registering in her own name and acquiring holding certificate thereon. Meanwhile, brothers of her deceased husband (plaintiffs) claimed the land stating that it is their parents' land which has been jointly used by their brother and parents. Ambo Woreda Court decided that the defendant does not have a right on the land and thus she has to leave it. High Court of West Shoa Zone said that the defendant's share in the land is one-eighth because she has been using it with the deceased. However, the OSC Central Appellate Bench decided that the defendant shall neither leave nor share it for the plaintiffs. The OSC Cassation Division also confirmed this decision.

Based on Art. 35 of the FDRE Constitution, Art.6 (13) of the Oromia RLUA Proclamation and Art. 15 of the Oromia RLAU Regulation, the FSC Cassation Division, on its part, argued that once a marriage is dissolved due to death of a spouse, a survived spouse shall continue to use a land that has been jointly used during marriage unless her/his right is lawfully terminated. Consequently, it decided that there is no fundamental error of law committed in the OSC's decision that considered the land as a common holding.[113] This indicates that by the mere fact of jointly using such rural land another spouse may get possession/holding right on it. However, the above-mentioned provisions do not support the conclusion reached on rather they imply that it is likely a private holding.

In another case, the FSC Cassation Division said that family law shall not be applied on rural land regarding it as another property.[114] In fact this case is about rural land upon which a contract of marriage was concluded during marriage but without complying with court approval requirement. Thus, it decided that lack of court approval, prescribed by the family law, does not hinder the land from being a common holding. This case may indicate that

[113] The FSC Cassation Division, Vol.22, File No.138286 (2010).
[114] Desta Takela v. Tsega Tadiyes, the FSC Cassation Division, Vol.20, File No.114279 (2008).

rural land shall be differently treated and thus provisions of family law are not applied thereon. Generally, in the former case, the FSC Cassation Division regarded rural land rights of a spouse acquired by non-onerous title as a common holding on account of being jointly used during marriage. Yet again there is no clear legal ground established to substantiate this approach which may put its legality in question. What is worrisome is that the FSC Cassation Division did not give decision as to how many years of jointly using needed that might lead to turmoil instead of social security.

E. Interviews

Most legal professionals argued that rural land right of a spouse acquired by non-onerous title could be common holding of spouses if they jointly use it during marriage.[115] As regards legal ground of this argument, there is no uniformity among them. Firstly, most of them founded it exclusively on rural land laws and the FDRE Constitution.[116] An individual person has only use right over land that is acquired and maintained by mere fact of holding and consistently using it rather than by one's effort. That is why, leaving a rural land unused for two consecutive years, for instance, obliterates one's use right on it. Furthermore, any person who permanently lives with a land-holder sharing the livelihood of the later has a right to inherit the land. Thus *fortiori*

[115] Interview with Abdi Gurmessa (PhD Candidate), Legal Researcher at Oromia Supreme Court, 03 Dec. 2020. Interview with Tuli Bayisa and Addisu Bayisa, Advocates and Legal Counselors, 05 Dec. 2020. Interview with Milkiyas Bulcha, Advocate and Lecturer at Ambo University, 05 Dec. 2020. Interview with Rebuma Gejea and Mosisa Megersa, Judges at High Court of South West Shoa Zone, 13 Nov. 2020. Interview with Eticha Getachew and Meserat Mammo, Judges at HC OSZSF, 19 Nov. 2020. Interview with Kamil Husen, Judge at Akaki Woreda Court, 24 Nov. 2020. Interview with Kebeda Berhanu, Judges at Sebeta Awas Woreda Court, 26 Nov. 2020. Interview with Desalegn Berhanu, Judge at OSC Eastern Permanent Bench, 18 Nov. 2020. Interview with Oluma Yigezu and Girma Biyazin, Judges at OSC Central Appellate Bench, 27 Nov. 2020. Interview with AlemayehuGadissa and AbdulselamSiraj, Judges at OSC Cassation Division, 23 Nov. 2020. Interview with Beharu Bonsa, Judge at GommaWoreda Court, 11 Dec. 2020. Interview with Lemi Lemessa, Judge at WolisoWoreda Court, 12 Dec. 2020. Interview with Azene Endalemew, Legal Researcher at OJSPTLRI, 18 Nov. 2020. Interview with Dula Tesemma and AsfewTesfaye, Judges at High Court of Jimma Zone, 18 Dec. 2020. Interview with Worku Legesse, Private Advocate and Legal Advisor at Ethiopian Women Lawyers Association, 22 Dec. 2020. Interview with Gizachew Beshiro, President of Shebe Sombo Woreda Court, 26 Dec. 2020; Interview with Gizawu Kebeda and Shiferaw Jarso, Advocates and Legal Counselors, 24 Dec. 2020.

[116] *Ibid.*

another spouse who jointly uses land with the spouse shall get use right on it.[117]

They also argued that if such rural land right is considered as a private holding, pragmatically women will be landless because most of rural land was acquired by men in such a manner backed by cultural influence. This in turn makes equality of men and women which is enshrined under the FDRE Constitution pointless and unfounded practically.[118] This approach is temporarily a pertinent way of re-distributing those lands concentrated in the hand of men until specific law is enacted to avert this asymmetry. Otherwise life of female peasants could be at stake for their livelihood highly depends on rural land.[119] Hence this is an appropriate legal interpretation that can attain justice.[120] Moreover, permitting another spouse to use it can be considered as implied consent to make communal holding and thereby loosing half of the use right there on.[121] Costs as to payment of tax and protection of the land are most likely covered by common property. This approach is also tacitly based on ensuring equity and accessibility objectives envisioned by the FDRE Constitution when it opted for public ownership of land.[122] To conclude, a spouse who gets rural land through non-onerous title does not have special right on it provided that it has been jointly used by the spouses during marriage.[123]

Secondly, it can be argued that jointly using such rural land ensues common holding because this amounts to modifying it.[124] Exertion of labour on such land is considered as making change thereon since modification on (rural) land is carried out in such a way which is slightly different from other goods. That means, 'jointly using' is a family law concept rather than that of rural land law. Therefore, jointly using such private holding during marriage may

[117] *Ibid.*
[118] *Ibid.*
[119] Kamil Husen*, supra* note 115.
[120] Kamil Husen, Abdulselam Siraj, Dula Tesemma and Lemi Lemessa, *supra* note 115.
[121] Alemayehu Gadissa and Desalegn Berhanu, *supra* note 115.
[122] Desalegn Berhanu, *supra* note 115.
[123] Alemayehu Gadissa, *supra* note 115.
[124] Abdi Gurmessa, *supra* note 115.

transform it to common just as an effect of marriage instead of another way of getting rural land rights.[125]

To the proponents of this approach, the question that how many years of jointly using is suffice to ensue communality is very difficult for it is not prescribed by law. Thus majority of them believe that it is a judicial discretionary which requires looking it case-by-case to avert purposely designed 'land commerce under the guise of marriage'. Otherwise it may encourage a person getting married purposely to divorce after certain time and share such rural land rights.[126] General objectives and principles of family law such as legal presumption of common property shall be taken into account to this end.[127] In particular, to some of them, a time limit stated in family law regarding pecuniary effect of irregular union might be adopted analogically[128] while others preferred two years by analogically adopting Art.1149 (2) of the Civil Code[129] or Art. 6 (16) of the Oromia RLUA Proclamation.[130] Still others opted for a reasonable period of time instead of specific duration.[131] Lack of another source of income, getting children thereon, protection and improvement of a land and so forth shall be taken into account above length of the stay.[132] On the other hand, some of them argued that marriage should not be suspected at the outset and thus if the spouses jointly used the land, it should be their common holding regardless of duration.[133] A time limit shall not be taken as a yardstick to determine communality because it obliges a spouse to stick on unwanted marriage just to get land.[134]

A couple of informants have slightly different standing because they differently observe rural land rights of a spouse acquired before marriage and that acquired during marriage by donation or will.[135] To them, the former one

[125] *Ibid.*
[126] Abdi Gurmessa, Desalegn Berhanu, Tuli Bayisa, Kamil Husen, Lemi Lemessa, Oluma Yigezu and Girma Biyazin, *supra* note 115. Boja Gobena *infra* note 135.
[127] Abdi Gurmessa, *supra* note 115.
[128] Abdi Gurmessa and Tuli Bayisa supra note 115.
[129] Desalegn Berhanu, *supra* note 115.
[130] Dula Tesemma, *supra* note 115.
[131] Alemayehu Gadisa and Eticha Getachew supra note 115.
[132] Shiferaw Jarso, *supra* note 115.
[133] Milkiyas Bulcha and Abdulselam Siraj, *supra* note 115.
[134] Abdulselam Siraj, *supra* note 115.
[135] Interview with Dula Leta and Boja Gobena, Judges at OSC Central Appellate Bench, 27 Nov. 2020.

shall be common holding of the spouses if they have jointly used it during marriage. However, if rural land right is specifically given to only one of the spouses during marriage through donation or will, as per Art. 81 (2) of the OFC, it will be private holding irrespective of jointly using it.[136] Private holding of a spouse recognized under the rural land laws shall be understood in this context.[137] This can be taken as exception of the exceptionality approach.

Another legal expert also employed various dichotomizations although he generally accepts this approach.[138] He takes various matters into account such as whether or not a marriage is defective and what type of rural land is it. To him, there shall be no difference between non-defective marriage and irregular union saves what has been stipulated under family law. In case of defective marriage, however, Art. 126 of the OFC provides that a court determines the effect of dissolution of marriage on the basis of equity. So, rural land acquired in such a manner shall not be considered as common holding rather it is better to compensate another spouse with other goods if equity requires so.[139] In case of non-defective marriage, if such rural land is an arable land on which crops have being seasonally sown and harvested or an irrigation land, it will not be considered as common holding unless it has being jointly used for more than ten years.[140]

But, where fixed assets are planted on such rural land, the land shall be regarded as common holding starting from when the seedlings sprout up. Likewise, rural land surrounding home (that is frequently called 'matrimonial home' in some jurisdictions) shall be regarded as their common holding to avoid insecurity emanating from homeless because even rental of house is not known in agrarian areas. In the latter two scenarios, existing jurisprudence of urban land developed by Cassation Division can be analogically utilized.[141] Somewhat differently, other contended that jointly using at least for 12 years

[136] *Ibid.*
[137] Boja Gobena, *supra* note 135.
[138] Interview with EshetuYadeta, President of North Shoa Zone High Court, 07 Dec. 2020.
[139] *Ibid.*
[140] *Ibid.* He noticed that there was a woman who got married five times and divorced each marriage after short years to share rural land acquired by husband. Considering it as a communal within a short lifespan undermines cultural and economic values of land.
[141] *Ibid.*

is needed for arable land whereas if the spouses have planted new fixed assets thereon or fundamentally changed pre-existing fixed assets, duration is a matter that is quite indifferent.[142] Sweepingly regarding such rural land as common holding could be as harmful as considering it private holding all the time.[143]

Finally, as to alignment between land and family laws, there is yet again no unanimity among the proponents of this approach. Some perceived as there is discrepancy between two laws. Boldly they argued that rural land is not considered as property and thus Art. 76 of the OFC shall not apply thereon because it implies private property instead of possession.[144] To some other informants, however, although there is no discrepancy between these laws, Art.76 of the OFC shall be applied on rural land without prejudicing its special nature.[145]

Even if it seems that the term 'property' under the provision envisages things, a court has to interpret it in a manner that embraces rights as well. Because exclusion of land rights from ambit of property amounts to undermining land that be considered as worthiest asset by small-holder community. This is a difference which exists between small-holder community and legal community as regards how they conceive rural land.[146]Before winding up discussion of existing practice, it is better to briefly look at strengths and weaknesses of the two approaches mentioned above and shed light on main causes of disparity of court cases.

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[142]Asfew Tesfaye, *supra* note 115. He analogically used Art.32 of the Oromia RLAU Regulation. Gizachew Beshiro also agreed with him as to arable land but regarding land of fixed assets he opted for at least 5 years.

[143] EshetuYadeta *supra* note 138. .He told that there are cases in which wives were killed by husbands in course of executing decisions given according to this approach. In the same vein, divorced women who had not shared such rural land usually engaged in small businesses such as distillation of liquor that exposes them to sexual exploitation and thereby sexually transmitted diseases. Thus due consideration has to be given to evenly avert these two social upsets.

[144] Rebuma Gejea, Mosisa Megersa, Kamil Husen, Meseret Mammo, Alemayehu Gadissa, Abdulselam Siraj, Desalegn Berhanu, Oluma Yigezu, DulaTesemma, Worku Legesse, Gizachew Beshiro, Shiferaw Jarso (*Supra* not 115).

[145]Abdi Gurmessa, Asfew Tesfaye, Girma Biyazin, Tuli Bayisa, Addisu Bayisa, Milkiyas Bulcha and Eticha Getachew, *supra* note 115; EshetuYadeta, *supra* note 138.

[146] EshetuYadeta, *supra* note 138.

3.3.3 Windfalls and Drawbacks of the Approaches

As it can be inferred from the previous discussion, probably the uniform approach has a clear legal ground and this can be taken as its strength. As a drawback, there is likelihood of bringing injustice particularly on women if it is invariably followed. Likewise, the exceptionality approach has some strengths and weaknesses that are discussed in comparison with the uniform approach as follows. Although the exceptionality approach is preferable in ensuring equity, by covering legal loophole, it may create social instability for there is a sense of belongingness in the society. That is why a judgment founded on such an approach is practically either not executed or judgment-creditor is forbidden to use it after execution. Further, it is usually executed through payment of money to another spouse in lieu. In fact, this emanates from mismatch between how the law comprehends land and how the society realizes it.[147] Others also noted that consequence of this approach is not good in society because decisions given thereby sometimes become cause of crimes[148] and result in social and religious sanctions as well. In a society where culture and religion is strongly adhered to, a wife who shares such land is ostracized and considered as unbeliever (for instance Islam) respectively.[149] Again other concurred that this approach may undermine economic value of land unless it is properly regulated by clear law.[150] That means, it may encourage getting married to divorce after certain time and get one-half of such rural land. Hence, the protection given to such rural land is less than that is granted to a trivial movable thing owned by the same spouse.

On the other hand, directly applying what is stated under rural land laws and regarding only co-jointly acquired rural land as common holding could create structural/systemic injustice in the long run. That is why the uniform approach seems watertight argument theoretically but has a lot of drawbacks practically.[151] If both spouses have their own private holdings registered in their respective name, it does not matter. Otherwise, it is not fair to uphold the uniform approach. In this connection, married women may not get priority

[147] Gizachew Beshiro, *supra* note 115.
[148] A judgment-debtor does not wilfully execute such decision or he ploughs the land after execution. Sometimes such spouse kills another spouse during execution.
[149] Biso Bekele, s*upra* note 82.
[150]Desalegn Berhanu, *supra* note 115.
[151]EshetuYadeta, *supra* note 138.

right in succeeding their parents' rural land because mostly in Oromia Region they leave their parents' land and live on that of their husbands. Protection against eviction and equity are regarded as justifications of public ownership of land. Creating inclusive society and opportunity are also main objectives of the FDRE Constitution. Hence, exceptionality approach is acceptable looking from these perspectives.[152]

However, it can be argued that the family law has already provided a way out for this problem because the spouses may make contract of marriage to this end. The FDRE Constitution and rural land laws also enshrine equality of men and women in acquiring land. More importantly, seeking to ameliorate reality on the ground, at the expense of clear law, is unacceptable since our legal system is more of civil law.[153]

3.3.4 *Raison D'être* of Disparity of Court Cases

As discussed earlier, there is no uniformity of court cases disposition pattern regarding the issues at hand. Under this sub-section, the core reasons of this disparity are going to be touched briefly based on data collected through interview. Firstly, there is lack of clarity of law as regards issues at hand.[154] The rural land laws of the Region do not state spouses have a right to share a private holding rather common holding registered in their name. The family law also employs generic term property.[155] These laws do not explicitly and sufficiently regulate this matter. Jointly using concept which founded the exceptionality approach is also not clearly stipulated by law. On top of this, there is no reasoned and judicially noticeable precedent system because the exceptionality approach followed by the FSC and OSC Cassation Divisions would have to be enriched and seen a bold enough stance.[156]

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[152] *Ibid.*
[153] Tamiru Legesu, *supra* note 82.
[154] Desalegn Berhanu, Rebuma Gejea, Mosisa Megersa, Eticha Getachew, Kamil Husen, Abdi Gurmessa, Alemayehu Gadissa, Tuli Bayisa, Gizachew Beshiro, Gizawu Dabeta, Addisu Bayisa, Milkiyas Bulcha and Azene Endalemaw, *supra* note 115; EshetuYadeta, *supra* note 138.
[155] Dula Tesemma, *supra* note 115.
[156] EshetuYadeta, *supra* note 138.

Secondly, there is prevalence of customary practice that may influence court decisions.[157] Mainly in pastoralist areas of the Region, such as in Borena and Guji areas, rural land is considered as communal property of a tribe which is eventually not allowed to be divided for spouses rather women are given another property such as cattle. A wife who got married leaving her parents' land does not get land when divorced that is against women's rights.[158]This custom enormously induces hesitation in deciding to equally share such rural land by the mere fact of using it.[159] The culture of a society a judge comes from highly influences him to give decisions pursuing the uniform approach.[160]

Thirdly, to several respondents, there is also a gap of legal understanding.[161] Believing existence of discrepancy among relevant laws, some informants argued that there is sometimes lack of knowledge how to reconcile them.[162] Land policy adopted by the Constitution, which envisages equity, shall be taken as a legal ground instead of rural land and family laws.[163] On the contrary, others took that misperceiving as there is contradiction among the laws by itself emanates from lack of legal understanding.[164]

Fourthly, looking it from feminist point of view in a sense that reluctance to directly apply clear laws lest it being injustice for women has exacerbated uniformity above all.[165]

Fifthly, there is no advanced litigation process in every proceeding in general and in the issues at hand in particular. Litigants (including advocates) usually do not argue on law, policy and cassation decisions rather they focus merely on factual matters. This may restrain a judge to entertain issues that are not

[157] Abdi Gurmessa and Tuli Bayisa, *supra* note 115.
[158] *Ibid*.
[159] Gizachew Beshiro, *supra* note 115.
[160] Abdulselam Siraj, *supra* note 115.
[161]Kamil Husen, Kebeda Berhanu, Oluma Yigezu, Desalegn Berhanu, Shiferaw Jarso, Asfew Tesfaye & Rebuma Gejea, *supra* note 115.
[162] *Ibid.*
[163] Worku Legesse, *supra* note 115.
[164] Wakgari Dulume and Tamiru Legesu , *supra* note 82.
[165] Biso Bekele, *supra* note 82.

raised by the parties and it in turn prevents judges from rendering an informative judgment.[166]

Generally, as regards status of rural land rights of a spouse acquired by non-onerous title, practically existence of two main approaches, i.e., uniform and exceptionality approaches, has been revealed based on views of legal experts and court decisions. Probably an approach that has lucid legal ground is the uniform approach. It can be said that the exceptionality approach is developed by judicial activism based on subtle legal interpretation, at the expense of clear law, intending to ensure the so-called fairness. Besides, weakness of this approach is that it usually excludes land from the ambit of property to justify irrelevancy of family law provisions. Incompatibility with social custom can be taken as another drawback of this approach. In fact, invariably pursuing the uniform approach may create social instability as recklessly adopting legally unregulated exceptionality approach. Uniformity of disposition of court cases is being risked due to rivalry of these two antagonistic approaches that in turn negatively affects predictability of court decisions and public confidence in court of law.

4. FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

4.1 FINDINGS

Non-onerous title usually denotes property acquired by donation or succession. Based on Ethiopia`s family laws context, it is broadly comprehended in this article as a property which a spouse acquired before marriage by any means or individually gained within marriage through donation or succession. Almost in all jurisdictions, such property is deemed as personal property of the spouse. As far as rural land right is specifically concerned, there are various approaches pursued by different countries. In this study, three main approaches, i.e., uniform, pluralistic and contribution based approaches, have been identified. Uniform approach treats rural land and other properties equally while effect of such land varies across types of marriage in pluralistic approach. In contribution based approach, contribution of another

[166] EshetuYadeta, *supra* note 138.

spouse is very decisive factor to determine whether or not such rural land is private holding.

Accordingly, it is found out that the Oromia Region family and rural land laws have adopted the uniform approach. The OFC states that property acquired by non-onerous title is personal property. It has employed the term 'property' that can be construed to embrace rural land rights. As a special law, the rural land laws do not clearly lay down differently in order to leave out this general principle of family law. The FDRE Constitution ensures equality of women and men in acquisition, control, administration and transfer of land that shall not in any way include encroachment of one in another's rights. Hence, there is no apparent discrepancy between these laws as regards the issues at hand.

Yet, it is additionally identified that there are a lot of informants and court decisions, particularly the FSC and the OSC Cassation Divisions decisions that follow exceptionality approach which considers such rural land as common holding of the spouses if they have jointly used the land during marriage (in most cases for a long period of time). However, there is no specific legal provision cited to buttress this approach. Instead, it is usually pursued from equity point of view, at the expense of clear law, that can be considered as judicial activism. The OSC Cassation Division, along with the FSC Cassation Division, has been persistently following this approach and trying to ensure uniformity in such a manner. Moreover, there is a court case that took joint holding certificate as conclusive evidence and decisive thing to determine this issue. The article also revealed that the HoF, which is considered as a guardian of the FDRE Constitution, has frequently decided that court decisions given pursuing the uniform approach, which actually disregarded the fact that another spouse has been using it for a long period of time, do not contradict with the FDRE Constitution.

4.2 CONCLUSIONS

The main findings of this article revealed that the legal status of non-onerous title enshrined under the OFC applies to rural land right similar to other chattels because there is no contrary stipulation provided by rural land laws. Obviously, the FDRE Constitution is not supposed to deal with such a specific matter. Rather it generally guarantees equality of women and men before, during and after marriage. This indicates that there is no discrepancy among

family laws, rural land laws and the FDRE Constitution regarding the issue at hand. Therefore, the uniform approach has a solid legal ground in the Oromia Region.

However, due to the FSC and the OSC Cassation Divisions' influence, the reality on the ground is swiftly shifting to the exceptionality approach. Yet, there is no clear legal ground to follow this approach unlike in other countries such as Kenya and Tanzania. Thus, there is clear and consequential lack of uniformity of court decisions. Some causes of this inconsistency are lack of legal clarity, lack of legal understanding, lack of advanced litigation system and well-reasoned cassation decisions, prevalence of customary practice and revitalization of feminist view. In fact, customary practice seems to encourage that such rural land rights remain private holding of the spouse. Family law does not specifically deal with special nature of rural land rights. There are also a few ambiguities in rural land laws, for instance, regarding residential areas. Basically exclusion of rural land rights from the ambit of property that is frequently seen in most court decisions is unacceptable. Without any doubt, invariably pursuing the uniform approach may create social instability since getting rural land was largely patriarchic in the Oromia Region due to cultural influence. However, this cannot be sustainably ameliorated by judicial activism that sets aside clear law.

4.3 RECOMMENDATIONS

Based on the findings of this study, it is recommended as follows:

1. A comprehensive Rural Land Policy shall be issued both at the national and regional level so that the challenges in determining issues regarding non-onerous title can be determined in advance.
2. The OFC shall specifically deal with how rural land rights of a spouse acquired by non-onerous title could be converted to common holding of the spouses. That means the law has to clearly address this matter by taking into account, for instance, actual improvement jointly undertaken on the land rather than only lifespan of the marriage.
3. The Oromia RLUA Proclamation states that spouses shall have the right to share their land-holding that was registered by their name equally. This can be wrongly understood as every land-holding jointly registered is common holding or, in contrary to family law, every land-holding

registered in the name of one spouse is a private holding. Therefore, a phrase that talks about co-registration shall be removed and it has to merely focus on the fact that a land is common holding of spouses.

4. The concept of 'residential areas' recognized under Art. 5 (13) of the Oromia RLAU Regulation, which is seemingly similar to the notion of 'matrimonial home' known in other jurisdictions, should be sufficiently reinforced and clarified to ensure social security basically where one of the spouses does not have a private holding.
5. The rural land laws (and policy to be enacted) shall be contextualized to each type of rural land such as crops land, perennial/fixed assets land and irrigation land, and thereby status of rural land rights of a spouse acquired by non-onerous title should be determined taking these factors into account. The family law too must consider this matter when it stipulates what modification/improvement means concerning rural land. In this course, custom of society shall not be set aside unless it is incompatible with human rights.
6. The system of binding decisions of the cassation Division given on the issues at hand particularly has to be enriched by precise and appropriate legal reasons that can convince the lower courts.
7. Lack of effective implementation, which mainly lingered due to cultural influence, has created asymmetry of getting land-holding rights between men and women. This indicates that inequity, which is usually frightened to be happened to invariably adopt the uniform approach, could be safely ameliorated by proper implementation of this right than pursuing the exceptionality approach or rectifying existing defects in the laws.
8. Further researches need to be conducted on legal status of non-onerous rural land right of a spouse and other related matters such as yardsticks used to convert a private holding to a common holding, and effect of joint holding certificate given on a private holding.

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ONLINE DISPUTE RESOLUTION FOR ELECTRONIC COMMERCE UNDER ETHIOPIAN LEGAL FRAMEWORK: THE NEED FOR REFORM

Alemu Balcha*

ABSTRACT

With the advent of the internet, the international business trend is changing as the traditional business trend is replaced with Electronic-commerce. This paradigm shift has posed a severe and substantial challenge on how to resolve cross-border disputes. In response to these challenges, online dispute resolution (ODR) has emerged as the best avenue to resolve cross-border electronic disputes. In 2020, Ethiopia adopted the "Electronic Transaction Proclamation" and "Digital Strategy for Inclusive Prosperity 2025". This plays a vital role in the advancement of Electronic commerce. The advancement of electronic commerce has led to an increase in the volume of cross-border disputes, whereby resolving such disputes could be a challenge. The purpose of this article is to assess the legal and institutional framework for online dispute resolution under Ethiopian law, identify its shortcomings, and explore opportunities for proper regulation. To this end, it has employed a doctrinal legal research methodology. The paper's finding shows that there is no legal and institutional framework for online dispute resolution under Ethiopian laws despite constitutional backup. Hence, there is a pressing need for Ethiopia to adopt online dispute resolution. First, as the dispute is inevitable and the traditional dispute settlement is unsuitable for resolving online disputes, there should be a proper avenue to settle online disputes to enhance consumers' confidence in E-commerce. Second, the adoption of ODR is necessary for competing at a global level and the facilitation of cross-border trade. Finally, ODR has the potential to ensure the right to access justice enshrined under the FDRE constitution. To this end, Ethiopia should facilitate the room for online dispute resolution by adopting a proper legal and institutional framework.

***Key words**: ADR, ODR, Electronic commerce, Online disputes*

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1. INTRODUCTION

With the advent of the internet, the international business trend is changing. There was a paradigm shift as traditional business trends, which require a physical presence, are replaced with virtual business transactions, commonly called E-Commerce. E-Commerce has brought far-reaching challenges to the business community.[1] One of the main challenges facing E-commerce is how to resolve cross-border disputes in the electronic business environment. Distances between parties, linguistic and cultural differences, difficulties determining the applicable law, and competent jurisdiction and enforcement of judgments are among the main obstacles that could significantly increase the cost of doing business online.[2]

E-commerce has posed challenges to the conventional dispute resolution mechanism.[3] "The use of conventional litigation for disputes arising in this forum is often inconvenient, impractical, time-consuming, and expensive due to the transactions' low value and the physical distance between the parties."[4] The reality of E-commerce transactions is that they typically involve small-value claims, and it is not economically viable for consumers in these transactions to take formal legal action against the suppliers if a dispute were to arise.[5] The cost of court proceedings and the length of time it would take to resolve these disputes is a significant deterrent. The volume of claims that could potentially arise in this manner could be overwhelming for the already strained court systems, and the small value of any possible gains would mean that the traditional court system would not be the best option for resolving disputes arising online.[6]

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[1] Mark Lubbock & Louise Krosch, E-commerce Doing Business Electronically: A Practice Guide (2000)

[2] E-commerce and Development Report (United Nations Conference on Trade and Development, 2003), https://unctad.org/system/files/official-document/ecdr2003_en.pdf <last visited Jun 3, 2021>

[3] Pablo Cortes, Online Dispute Resolution for Consumers in the European Union (Routledge, 2011)

[4] *Ibid.*

[5] Robin Cupido, Online *Dispute Resolution: An African Perspective*, in Scientific Cooperation's on Social Sciences,P183, available at http://ase-scoop.org/papers/IWLP-2016/3.Cupido_IWLP.pdf <last visited Jul 5, 2021)

[6] *Ibid.*

Besides, we have the issue of jurisdiction, especially when dealing with cross-border transactions, where the entirety of the transaction takes place online between parties from different countries.[7] Furthermore, courts may lack the resources and the expertise to keep up with the growth in cross-border disputes arising from an ever-emerging E-commerce.[8] Given that traditional dispute settlement mechanisms may not provide adequate redress in E-commerce transactions, there is a need to consider alternative dispute resolution (ADR) means that would provide speedy, low-cost redress for claims arising from online interactions.[9]

Thus, the modern legal systems face a crucial choice: either adapt traditional dispute resolution methods that have served the legal systems well for hundreds of years or find new ways better suited to a world not anchored in territorial borders.[10] To meet the challenges that this new method of commerce creates, there has been a growing recognition that alternative dispute resolution measures would be well suited for resolving disputes that originate online.[11] The traditional ADR procedures (arbitration, mediation, and negotiation) arguably provide an ideal framework to solve offline disputes. However, some aspects of electronic contracts and conflicts are not addressed by the existing rules.[12] Thus, a new system tailored to address the particular issues arising from electronic commercial transactions is required. This system has come to be known as online dispute resolution (ODR).[13]

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[7]Angelica Rosu, Electronic *Commerce– An International Phenomenon, Generating Commercial Litigations*, 7 in European Integration-Realities and Perspectives, available at http://www.proceedings.univ-danubius.ro/index.php/eirp/article/view/1342/1190<last visited Jul 6, 2021>.

[8] Pablo Cortes, *supra* note 3.

[9] E-commerce and Development Report (2003), available at https://unctad.org/ system/ files/ official-document/ecdr2003_en.pdf

[10] Pablo Cortes, *supra* note 3.

[11]Esther Evan Den Heuvel, Online Dispute Resolution as a Solution to Cross-border E-disputes: An Introduction to ODR , available at http://www.oecd.org/dataoecd/63/57/ 187 8940.pdf < last visited Apr 27, 2021>

[12]Julia Hörnle, *Online Dispute Resolution – The Emperor's New Clothes? Benefits and Pitfalls of Online Dispute Resolution and its Application to Commercial Arbitration*, 17 International Review of Law, Computer and Technology, (2003), Pp27–37

[13] Robin Cupido, *supra* note 5, P184

The concept of online dispute resolution came with the development of E-commerce.[14] UNCITRAL defines "ODR" as a solution that "can assist the parties in resolving the dispute in a simple, fast, flexible, and secure manner, without the need for physical presence at a meeting or hearing," which includes but is not limited to ombudsmen, complaints boards, negotiation, conciliation, mediation, arbitration, and others.[15] There are also other different definitions of online dispute resolution, but in its simplest form, the term refers to the use and adaptation of traditional alternative dispute resolution models (most commonly mediation, negotiation, and arbitration) to resolve disputes which arise online.[16] "Online Dispute Resolution (ODR), originally an off-shoot of Alternative Dispute Resolution (ADR), takes advantage of the speed and convenience of the internet, becoming the best and often the only option for enhancing consumers' redress and strengthening their trust in E-commerce".[17]

Coming to the context of Ethiopia, the concept of E-Commerce is in its infancy stage. The absence of a legal framework was the major obstacle to the development of E-Commerce in Ethiopia. To cope with international business trends and digitalize its economy, in 2020, Ethiopia has taken two significant measures that legalize and promote E-Commerce. The first measure is the adoption of the electronic transaction proclamation.[18] This would solve the conundrum that underlies the absence of a legal framework that regulates E-Commerce. The second measure is adopting the strategy called "the digitalization of economy 2025" as a part of its prosperity plans.[19] The second measure is that the Ethiopian Ministry of Innovation and Technology has developed a digital economy strategy entitled "Digital Strategy for Inclusive Prosperity 2025".[20]The Council of Ministers has approved the Digital Ethiopia

[14] Poonam Kumari & Geetika Sood, *Online Dispute Resolution: Methods and Effects*, 8 International Journal of Science and Research (2019),1594
[15] UNCITRAL, Technical Notes on Online Dispute Resolution, uncitral.org/pdf/english/ texts/ odr/V1700382_English_Technical_Notes_on_ODR.pdf <last visited May 6, 2021>
[16] *Ibid.*
[17] Pablo Cortes,, *supra* note 3
[18] Federal Electronic Transaction Proclamation No. 1205/2022.
[19] Ethiopia Digital Strategy 2025 https://tapethiopia.com/category/downloadable-pdfs <last visited Jul 3, 2020>
[20] *Ibid.*

Strategy 2025 designed to align with the country's national development vision, policy objectives, and priorities.[21]

Adopting the proclamation that regulates electronic transactions and strategies for the digitalization of the economy has a tremendous role in enabling our country to share from the chalice of E-Commerce. This may not be realized as Ethiopia may face challenges in handling disputes that arise online. As dispute is part and parcel of life, with the increase of E-commerce, the number of disputes arising from internet transactions would inevitably increase. This naturally requires an efficient and innovative way of addressing these disputes, especially in consumer transactions. Yet, Ethiopia may not share in the chalices of E-Commerce, as the proclamation has no proper dispute resolution mechanism for online commercial disputes. Further, the other law that deals with alternative dispute resolution has no rules on online commercial disputes.

Therefore, this article aims to assess the legal and institutional framework for online dispute resolution under Ethiopian law, identify its shortcomings, and explore opportunities for a workable legal and institutional framework for online dispute resolution. To this end, doctrinal legal research methodology is employed to investigate the pertinent provision of the FDRE Constitution, Electronic transaction proclamation, federal arbitration and conciliation working procedure proclamation, and Addis Ababa chamber of commerce and sectorial association arbitral rules

The article is divided into seven sections. The second section will uncover a general overview of online dispute resolution. The third section will present the advantages of online dispute resolution and its feasibility for online commercial disputes. The fourth section will unveil common online dispute resolution (ODR) methods. The fifth section will present global initiatives toward the adoption of ODR. The sixth section will analyze the place of electronic commerce and online dispute resolution under Ethiopian law. The seventh section will present the need for online dispute resolution under the Ethiopian framework. Finally, the article ends with brief concluding remarks.

[21] Capital Ethiopia Newspaper https://www.capitalethiopia.com/interview/digital-ethiopia < last visited Jul 3, 2020>

2. GENERAL OVERVIEW OF ONLINE DISPUTE RESOLUTION

The history of ODR is only 30 years, as it arose in the late 1990s as an outgrowth of ADR. [22] ODR emerged from the synergy between ADR and ICT to resolve disputes arising online and for which the traditional means of dispute resolution were inefficient or unavailable.[23] It focuses on how to best use information or communications technology to help disputants resolve their disputes.[24] In the literature on the subject, the terms online dispute resolution (ODR), electronic ADR (E-ADR), online ADR (O-ADR), and internet dispute resolution (IDR) are treated as synonymous.[25] ODR uses technology to resolve disputes between parties through negotiations, mediation, arbitration, or a combination of all three; may be fully automatic or involve human intervention.[26] Initially, ODR focused on resolving online disputes. Recently, however, the focus has shifted to non-financial conflicts and disputes that do not arise online but as a result of "normal'' activities.[27]

ODR arose on the international level first and then was adopted in each country.[28] The ODR can be divided into two parts: the first part is concerned with developing specific dispute resolution applications that can be used to resolve online and offline conflicts, while the second part looks at the future of the ODR, using tools that will provide a support system for mediation and arbitration.[29] The first part is an important online dispute resolution program,

[22] Zhengmin Lu & Xinyu Zhu, Study on the Online Dispute Resolution System in China, 129 Advances in Engineering Research (2017).
[23] Pablo Cortes, *supra* note 3, P79.
[24] Ethan Katsh & Janet Rifkin, Online Dispute Resolution: Resolving Conflicts in Cyberspace (Jossey-Bass) (2001).
[25] Karolina Mania, Online Dispute Resolution: The Future of Justice, International Comparative Jurisprudence (2015), Vol.1, P78.
[26] Jeremey Barnett & Philip Treleaven, *Algorithmic Dispute Resolution—The Automation of Professional Dispute Resolution Using AI and Blockchain Technologies*, The Computer Journal(2018), Vol.61,Pp.399–400
[27] John Zeleznikow, *Can Artificial Intelligence and Online Dispute Resolution Enhance Efficiency and Effectiveness in Courts*, International Journal for Court Administration (2017) ,Vol.8,Pp30–35
[28] Colin Rule, *Online Dispute Resolution and the Future of Justice*, Annual Review of Law and Social Science (2020), Vol. 16, P282.
[29] Sershiv Reddy, Implementing a South African e-dispute Resolution System for Consumer Disputes, 2021, P42; http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1682-58532021000200010#back_fn62 <last visited Jul 20, 2021>.

which involves using an online site for the dispute resolution process, assisting parties by collecting and constructively presenting information, but planning, collaboration, and decision-making remain dominated by human party system users.[30] The second system refers to an online dispute resolution system that helps resolve disputes and is often enabled by artificial intelligence to provide automated feedback. Such an online system may require human beings to further their operations or rely on machines to perform the process automatically.[31] The ODR has become very popular over the last few years because it represents a more promising solution to disputes than litigation and may offer a free, simple, effective, transparent, and fair system.[32]

Based on the institution involved, there are two leading ODR forums; Private and public forums. One important difference between public and private ODR forums is that private programs are often industry-sponsored and used for profit. In contrast, public forums are generally non-profit, funded by the public, and/or legally supported.[33] Two types of ODR platforms are private: self-contained and complete service. The first one is designed to resolve disputes between the public, such as an online marketplace such as eBay, Amazon, or Etsy. In such cases, Members of that community agree to be governed by the terms of service and related agreements governing the community and to determine how and when that ODR platform is used.[34]

The first self-contained private platform was eBay back in 1999.[35] The eBay forum allowed the customer to file a complaint online and start a redress process. If the redress process fails, the online mediation process will begin.[36] The forum was designed to diagnose the problem and conduct an automated negotiation followed by mediation or mediation. This model, which has

[30] *Ibid.*
[31] *Ibid.*
[32] *Ibid*.
[33] Suzanne Van Arsdale, *User Protections in Online Dispute Resolution*, Harvard Negotiation Law Review (2015), Vol.21, P120.
[34] Anjanette H. Raymond & Scott J. Shackelford, *Technology, Ethics, and Access to Justice: Should an Algorithm Be Deciding Your Case?* Michigan Journal of International Law (2014),Vol.35, P501.
[35] Deepika Kinhal, Tarika Jain, Vaidehi Misra &Aditya Ranjan , ODR: the Future of Dispute Resolution in India, https://vidhilegalpolicy.in/research/the-future-of-dispute-resolution-in-India <last visited May 5, 2021>
[36] *Ibid.*

evolved into a complex variety widely used by other private and provincial organizations alike, has been renamed ODR.[37] In contrast, the full-service forum is open to any opponent who fits the ODR approach — in the form of a dispute type, cost, or other factors. Modria is one popular and new role model.[38]

The second platform for ODR is the public platform. Such kinds of platforms are facilitated by government agencies and public organizations, often non-profit, publicly funded, and/or judicially supported. Accordingly, several government agencies and public organizations have developed and implemented their own ODR systems as a voluntary alternative or supplement to court proceedings in traditional disputes.[39] National and international ODR programs have been instituted in Mexico, Canada, and the United States.[40] After a period of running, ODR is considered an effective means of dispute resolution, and currently, people worldwide accept ODR.[41]

3. ADVANTAGES OF ONLINE DISPUTE RESOLUTION AND ITS FEASIBILITY FOR ONLINE COMMERCIAL DISPUTES

Online Dispute Resolution (ODR) is often referred to as a form of ADR, which takes advantage of the speed and convenience of the internet and ICT.[42] It adapts traditional ADR methods, such as digital communication technologies, to help people resolve disputes outside of litigation.[43] While ODR shares many features with ADR, its technological component gives rise to a unique set of benefits and pitfalls.[44] The benefits of ODR are presented as follows:

[37] *Ibid.*
[38] Suzanne Van Arsdale, *supra* note 33, P121.
[39] *Ibid.*
[40] *Ibid.*
[41] Zhengmin Lu & Xinyu Zhu,*supra* note 22
[42] Pablo Cortés What Should the Ideal ODR System for E-Commerce Consumers Look Like? The Hiden World of Consumer ADR: Redress and Behaviour, available at https:// www.law.ox.ac.uk/sites/files/oxlaw/thehiddenworldofconsumeradr-conferencenote.pdf <last visited Jun 3, 2021>
[43] Suzanne Van Arsdale, *supra* note 33, at 109
[44] *Ibid.*

3.1. COST-EFFECTIVE

Litigating a dispute can be costly. A significant portion of the expense is the cost of hiring an attorney. In many instances, parties engaging in online dispute resolution through ODRs will not have to consult an attorney at all. For example, if each party knows the range within which he will settle the case, the parties may use a settlement instrument type of ODRs like automated negotiation to resolve their dispute. Additionally, ODRs can save the parties the cost of long-distance calls and teleconferencing.

Further, it is beneficial for resolving cross-border disputes and issues that may arise because of multiple jurisdictions.[45] For this reason, early adoption of ODR has been in resolving E-commerce transactions where parties are in different jurisdictions, and in low-value disputes arising out of business-to-business and business-to-consumer transactions, where going to courts makes little economic sense.[46] Accordingly, ODR offers a lower cost than offline procedures as there are no travel and accommodation expenses, which in international consumer disputes are frequently higher than the value of the dispute.[47]

3.2.TIME-SAVING

Using the internet to resolve disputes can speed up the Procedure since parties have more flexibility when using ODR asynchronous communications as ODR allows parties to work at any convenient time.[48] In some cases, the parties may reside in different countries. If the parties are far apart, at least one party will have to travel far to litigate. This may be time-consuming. Online communication solves the problem as parties can sit at their home computers and settle the matter.[49]

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[45] Deepika Kinhal, Tarika Jain, Vaidehi Misra & Aditya Ranjan, *supra* note 35.
[46] *Ibid.*
[47] Pablo Cortes, *supra* note 3, P80.
[48] *Ibid.*
[49] Lan Q. Hang, *Online Dispute Resolution Systems: The Future of Cyberspace Law*, Santa Clara Law Review (2001), Vol.41, P837; available at http://digital commons .law. scu.edu /lawreview/vol41/iss3/4 <last visited Apr 14, 2021>

3.3. THE CONVENIENCE OF THE PROCEDURE

"Asynchronous communications allow the parties to be prepared to produce their best response without being easily intimidated or bullied."[50]Moreover, some scholars consider that asynchronous communications allow parties to think more thoroughly than in verbal exchanges before actually sending their message.[51] It also opens lines of communication that are not used in the more formal offline legal procedures. Ponte and Cavenagh maintain that ODR often uses confidential approaches which encourage parties to be more honest in a trusting environment that fosters settlement.[52]

3.4. APPROPRIATENESS

ODR seems to be the most effective tool for resolving online disputes. Ponte and Cavenagh realized that the online community is looking for conflict resolution options that reflect Web speed and efficiency.[53] However, it would be foolish to view ODR as a solution to consumer disputes as ODR faces many difficulties in its implementation.[54] Related to the Law Merchant concept, online users are more likely to adhere to the judgments of their virtual communities than the laws of physical space far away from where they live. People are more likely to accept a system of law that evolves from the public it governs. This could be true of computer-generated communities.[55]

3.5. CONTROL OVER OUTCOMES

The ODR agreement gives the parties more control over the outcome, enhances dispute resolution options, and promotes law enforcement.[56] The parties may enter into agreements without restriction. In addition, when the parties voluntarily agree on a decision, there is a better chance of voluntary compliance than when the decision is handed down by a judge as, in the latter case, one party will usually feel dissatisfied with the decision.[57] Besides, law

[50]Pablo Cortes, Online Dispute Resolution for Consumers in the European Union (Routledge, 2011)
[51] *Id*, Pp63-64
[52] Lucille M Ponte & Thomas D Cavenagh, Cyber Justice, Online Dispute Resolution for E-Commerce (Upper Saddle River, New Jersey: Pearson Prentice Hall 5th ed., 2005)
[53] Pablo Cortes, *supra* note 3, P58
[54] *Ibid.*
[55] Lan Q. Hang, *supra* note 49.
[56] Pablo Cortes, *supra* note 3, P80
[57] *Ibid.*

enforcement is complex, slow-moving, and expensive, especially when enforcing border decisions.[58]

Despite the advantages, online dispute resolution has some weaknesses. One critical element that makes ADR successful is its confidentiality aspect. When this process is conducted online, there is naturally some room for data privacy during and after proceedings. One of the ways to safeguard parties' interests is to ensure that there are guidelines and standards, which mandate encryption of documents and a stringent privacy policy, the details of which should necessarily be informed to the parties.[59] Further, lack of face-to-face contact, technological problems, language barriers, legal difficulties, and loss of public access and pressure could be other challenges of ODR.[60] However, it should be noted that most of these challenges could be mitigated with appropriate practice, technologies, and law.[61] Further, it must be pointed out that some of the advantages and difficulties perceived above are arguable since they are based on certain assumptions that would need reliable empirical data to be categorically confirmed.[62]

As mentioned above, in the internet context, parties located in different parts of the world make contracts with each other at the click of a mouse.[63] However, when a dispute arises, litigation for these disputes is often inconvenient, impractical, time-consuming, and expensive due to the low value of the transactions and the physical distance between the parties. When access to courts is difficult because of the parties' location or for some other reason, ODR may be the only possible means of resolving a dispute. In such cases, ODR is the best (and often the only) option for enhancing the redress of consumer grievances, strengthening their trust in the market, and promoting the sustainable growth of E-commerce.[64] Hence, the law should seek ways to overcome the hurdles in the development of ODR. An effective ODR will

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[58] *Ibid.*
[59] Esther Evan den Heuvel, *supra* note 11.
[60] Pablo Cortes, *supra* note 3, Pp80-81.
[61] *Ibid.*
[62] Philippe Gillitron, *From Face-to-Face to Screen-to-Screen: Real Hope or Fallacy?*, Ohio State Journal of Dispute Resolution (2008), Vol.23, P319 available at https://www.wg-avocats.ch/wp-content/uploads/2020/10/2008 From F2F to S2S - Ohio State Dispute Resolution.pdf <last visited May 12, 2021>
[63] Pablo Cortés, *supra* note 45, Pp21-23.
[64] *Ibid.*

install greater confidence in consumers while increasing their access to justice and recognizing consumers' legitimate rights.[65]

4. COMMON ONLINE DISPUTE RESOLUTION METHODS

The collective term "Online Dispute Resolution (ODR)" is used internationally for different forms of online dispute settlement employing ADR methods.[66] ODR is the deployment of applications and computer networks for resolving disputes with ADR methods.[67] ODR platforms are modeled after traditional ADR mechanisms, such as negotiation, arbitration, early neutral evaluation, and mediation. The processes and interactions thus look similar but use different technologies.[68] Accordingly, the typical online dispute resolution is presented as follows:

4.1. ONLINE ARBITRATION

Online arbitration, which refers to amicable proceedings conducted via the internet, may take either a synchronous or an asynchronous form.[69] Arbitration is a process where a neutral third party (the arbitrator) delivers a decision, which is final and binding on both parties.[70] The Procedure begins after a complaint is submitted via electronic means, whereby the formal examination of the complaint is done.[71] After verifying the authenticity of the complaint, the relevant Procedure begins in the form of formal administrative procedures - in which the other party is informed through the electronic means of communication.[72] Then the other party will be allowed to submit a response within specific periods. In line with this, the appointment of a list of members of an administrative panel consisting of one or three people would follow. Upon the consent of both parties, a single-member panel will be appointed. If one of the parties objects, the complainant and the other party is entitled to

[65] *Ibid.*
[66] Esther Evan den Heuvel, *supra* note11, P8.
[67] *Ibid.*
[68] Suzanne Van Arsdale, *supra* note 33, P111.
[69] Poonam Kumari & Geetika Sood, *supra* note 14, P1595.
[70] Green Paper on Alternative Dispute Resolution in Civil and Commercial Law, https://op.europa.eu/en/publication-detail/-/publication/61c3379d-bc12-431f-a051-d82fefc20a04 <last visited Jun 4, 2021>
[71] Poonam Kumari & Geetika Sood, *supra* note 14, P1595
[72] Karolina Mania, *Online Dispute Resolution: The Future of Justice*, International Comparative Jurisprudence (2015),Vol.1, P78

choose three people from the list of panelists.[73] Then, the panelists render a decision after hearing arguments and looking at the evidence. Once the decision is rendered, the award is enforceable in most countries owing to the wide adoption of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Moreover, arbitral awards frequently prove easier to enforce than court decisions overseas.[74] Despite this, arbitration is probably the least popular ODR method for resolving consumer disputes, especially at an international level.[75]

4.2. ONLINE MEDIATION

Mediation is voluntary dispute resolution facilitated by a neutral third party (mediator) and is a common form of ODR for small consumer disputes.[76] Unlike an arbitrator, the mediator does not render a decision, instead of helping the disputants reach an agreement by encouraging constructive discussion and resolution. The mediator may improve dialogue, encourage parties to share information, cultivate empathy and understanding of the other party's interests, and perhaps even offer suggestions or proposals.[77] Mediators use information management skills to encourage the parties to reach a peaceful agreement; in doing so, they enable the parties to communicate effectively by redefining their issues.[78] The Procedure of online mediation starts when an e-mail is sent to the parties having the basic information on proceedings.[79] Most of the time, online mediation is done through text-based communication and real-time meetings through teleconferences.[80] Yet, the mediator may facilitate the Virtual meetings carried out separately with each party or concurrently with all parties.[81]

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[73] Poonam Kumari & Geetika Sood, *supra* note 14, P1596
[74] Pablo Cortes, *supra* note 3, P 91.
[75] *Ibid.*
[76] Ethan Katsh & Janet Rifkin , *supra* note 24, P 56.
[77]Deborah Greenspan, Helping Clients Determine Whether the Alternative Dispute Resolution Process is Appropriate and How to Reach a Fair Remedy, in Trends in Alternative Dispute Resolution, https://www.blankrome.com/people/deborah-greenspan < last visited Jun 5, 2021>.
[78]Online Dispute Resolution Alternative Dispute Resolution, available at https://en.wikipedia.org/wiki/Online_Dispute_Resolution < last visited Jul 3, 2020>
[79] Poonam Kumari & Geetika Sood, *supra* note 14, P1595.
[80]Karolina Mania, *Online Dispute Resolution: The Future of Justice*, International Comparative Jurisprudence (2015), Vol.1,P78
[81] *Ibid.*

The use of technology can help mediators be more efficient and effective in various ways. First, technology can enable parties to communicate asynchronously via text as opposed to synchronous face-to-face interaction.[82] This can give the parties a bit of cooling distance that allows them to be more reflective and thoughtful in their communications with the other party. Furthermore, it gives the chance disputants to do a little research before they respond to a message from the other side, which can help them be more informed and increase the likelihood that any resolution achieved will not be predicated upon false or erroneous information.[83] Again in the case when the mediators prefer Asynchronous communication, it gives a chance for the mediator to facilitate the room for all parties to participate in the Procedure at the same time, enabling them to have a private caucus conversation with each party individually while allowing both parties and the mediators to conduct a joint discussion.[84] This can enable the mediator to clarify issues individually with parties that may be blocking resolution and to reality test proposed outcomes privately while encouraging private progress in the joint session.[85]

4.3. AUTOMATED NEGOTIATION

Automated negotiation is carried out exclusively by an ODR platform without the intervention of a neutral third party.[86] In negotiations, the parties cooperate without the help of a third party who is neutral and instead communicate directly or through lawyers. They may therefore determine the structure or procedure for resolving disputes and resolving some or all of the problems.[87]Automated dispute resolution systems are very different from other conventional ADR procedures. When the problem does not require neutral human flexibility, algorithms may be designed and used in ODR software and tools to resolve disputes with the default ADR processes in full.

"Double-blind bidding is the most popular automated negotiation system."[88] It occurs when one party invites the other to negotiate the amount of money in dispute. If the other party agrees, they start a blind bidding process whereby

[82] Colin Rule, *supra* note 28, P286.
[83] *Ibid.*
[84] *Ibid.*
[85] *Ibid.*
[86] Pablo Cortes, *supra* note 3, P89
[87] Suzanne Van Arsdale, *supra* note 33, P113.
[88] *Id,* P114.

both parties make secret offers, which will only be disclosed if both offers match specific standards.[89] Such kind of method is used when parties have already agreed that monetary compensation is due but have not determined what amount.[90] Parties can usually submit up to three offers, and if the offer is more significant than the demand, the dispute is settled. However, if the demand and offer difference are less than a certain percentage or a given amount of money, the settlement will be the mid-point of the two offers.[91] This type of automated negotiation is limited to dealing with numerical interests only, such as distributing funds in insurance disputes.[92] "Smart settle is a program that provides a multivariate blind bidding system, which can resolve disputes among any number of negotiators and involving any number of numerical or binary interests."[93]

4.4. MED-ARB

Med-Arb allows parties to use a tiered process in which the parties are given a chance to negotiate on their own or with the assistance of a mediator. If the parties are incapable of reaching an agreement, then they may ask the online mediator to act as an arbitrator and to render a decision on the unresolved issues, which can be binding or not binding, as the case may be.[94]

4.5. NEUTRAL EVALUATION AND MINI-TRIALS

Both evaluation and mini-trials combine elements of other dispute resolution processes to advise parties on the likely outcome (s) of a trial, should the parties resort to litigation.[95] In evaluation, a neutral third party makes a decision based on the written submissions and evidence provided by the parties. However, the decision takes the form of a non-binding recommendation.[96] This feature may make participation more attractive for the parties, but it cannot ensure the resolution of the dispute.[97] Square Trade offered these types of services when the mediator suggested settlements.

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[89] Pablo Cortes, *supra* note 3, P89
[90] Suzanne Van Arsdale, *supra* note 33, P114.
[91] *Id.*
[92] Pablo Cortes, S*upra* note 3, P64
[93] *Id,* P65
[94] Lucille M Point & Thomas D Cavenagh, *supra* note 55, P98
[95] Suzanne Van Arsdale, supra note 33, P114.
[96] Lucille M Point & Thomas D Cavenagh, *supra* note 52, P98.
[97] *Ibid.*

Kaufmann-Kohler and Schultz believe that there is clear potential for the development of neutral evaluation.[98] In mini-trials, also called summary jury trials, a jury of peers renders a non-binding determination of issues based on documents and other allowed submissions. Volunteers acting as if they were a jury take the place of the neutral third-party evaluator.[99]

5. GLOBAL INITIATIVES TOWARD THE ADOPTION OF ONLINE DISPUTE RESOLUTION (ODR)

As mentioned in other parts of the paper, the advent of the internet has eventually led to the origination of many cross-border disputes and, consequently, innovative techniques for resolving such complex disputes.[100] As the traditional dispute settlement mechanism was unsuitable for online commercial disputes, various attempts were towards the adoption of ODR. "In 1999, the OECD published "Guidelines for Consumer Protection in the Context of Electronic Commerce."[101] These guidelines encourage businesses, consumer representatives, and governments to work together to provide consumers with reasonable access to alternative dispute resolution and redress without unnecessary expense or liability. Special attention is given to cross-border sales. Special emphasis is placed on the new use of information technology in the implementation of ADR programs.[102]

In 2010, the United Nations Commission on International Trade Law (UNCITRAL) established a working group dedicated to online dispute resolution.[103] Since 2010, Working Group III of UNCITRAL has started its work on ODR. After six years of analysis and discussion, Technical Notes on Online Dispute Resolution (TNODR) was adopted in 2016.[104] Technical Notes on Online Dispute Resolution (TNODR) is to establish guidance in the field of ODR relating to cross-border electronic commerce transactions, which includes low-value sales or service contracts (including B2C transactions)

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[98] Gabrielle Kaufmann-Kohler & Thomas Schultz, Online Dispute Resolution: Challenges for Contemporary Justice (Kluwer law international Schulthess, 2004).
[99] Suzanne Van Arsdale, supra note 33, P115.
[100] Deepika Kinhal, Tarika Jain, Vaidehi Misra &Aditya Ranjan, *supra* note 35.
[101]OECD Guidelines for Consumer Protection in the Context of E-Commerce, https://www.oecd.org/digital/consumer/1878940.pdf <(last visited Jun 5, 2021>
[102]*Ibid.*
[103] Robin Cupido, *supra* note 5
[104] General Assembly of UN, Resolution Adopted by the General Assembly on 13 December 2016 https://undocs.org/pdf?symbol=en/a/res/71/258 <last visited Jul 24, 2021>

concluded using electronic communications.[105] TNODR has no binding, and the content is the consensus of its member countries.[106]

The International Standards Organization is currently leading an effort to make ODR available for all global E-Commerce purchases. ODR is now the default resolution process for global E-Commerce, but widespread adoption within individual countries is in development.[107] The United States is arguably the world leader in the law relating to online dispute resolution[108], with the most operational online dispute resolution providers (both government-run and private).[109] Regarding consumer contracts specifically, eBay (an American company) was one of the first E-commerce companies to develop its system of online dispute resolution, the Resolution Center.[110] The European Union has also contributed to the development of the law relating to ODR.[111] Online dispute resolution was first addressed in the EU Directive on alternative dispute resolution for consumer disputes in 2013. It was explicitly legislated for the regulation of online dispute resolution for consumer disputes in the same year.[112]

Again, some institution has adopted the framework for online dispute resolution. Prominently, in late 2001, the Hong Kong International Arbitration Centre and the China International Economic and Trade Arbitration Commission jointly launched the Asian Domain Name Dispute Resolution Centre (ADNDRC), which became the only ICANN approved domain name dispute resolution provider in Asia.[113] ADNDRC was the first project in Asia to offer online filing of disputes and technology-facilitated case evaluations, all according to the established rules of the Uniform Domain-Name Dispute

[105] Zhang Juan Juan, Cross-border Online Dispute Settlement Mechanism in China-Following UNCITRAL Tnodr and Alibaba Experience, https://www.wgtn. ac.nz/data/assets/pdf_file/0004/1642594/10-juanjuan.pdf
[106] *Ibid.*
[107] Colin Rule, supra note 28, P282.
[108] Lan Q. Hang, *supra* note 49.
[109] Robin Cupido, *supra* note 5, P186.
[110] *Ibid.*
[111] Lilian Edwards & Caroline Wilson, Redress and Alternative Dispute Resolution in Cross-border E-Commerce Transactions, http://www.europarl.europa.eu/document/ activities /cont/201406/20140602ATT84796/20140602ATT84796EN.pdf < Last visited Jul 17, 2021>
[112] Robin Cupido, *supra* note 5, P186.
[113] Colin Rule, The New Frontier for Online Dispute Resolution in Asia, available at https://www.mediate.com/Integrating/docs/34worldviews.pdf <last visited May 5, 2021>

Resolution Policy (UDRP). ADNDRC's reach extended throughout Asia, and as such, it exposed many to ODR tools for the first time.[114]

6. THE PLACE OF ELECTRONIC COMMERCE AND ONLINE DISPUTE RESOLUTION UNDER ETHIOPIAN LAWS

6.1.THE PLACE OF ELECTRONIC COMMERCE IN ETHIOPIA

Internet use in Ethiopia dates back to 1993 when the UN Economic Commission for Africa (UNECA) launched an E-mail store and forwarding service called PADIS Net (Pan African Documentation and Information Service Network), which connected daily through a direct call to Green Net internet way London.[115] As there was no other way, the centre was widely used by international organizations and NGOs, certain academics, individuals, and private companies.[116] The absence of laws dealing with E-Commerce and E-signature was causing uncertainty as to the legal nature and validity of the information presented in a form other than a traditional paper document.[117] In Ethiopia, those who transact in this way are doing the business without getting a guarantee or rights protection as a consumer. This undermines the prospects for the successful development of E-Commerce.[118]

Currently, electronic commerce is proliferating as the governments take various steps. The first step is the adoption of an electronic signature proclamation in 2018.[119] Further, in 2020, Ethiopia has taken two significant measures that legalize and promote E-Commerce. The first measure is that the Ethiopian House of Peoples' Representative has approved the Electronic Transaction Proclamation in its session on May 29, 2020.[120] The second measure is that the Ethiopian Ministry of Innovation and Technology has developed a digital economy strategy entitled "Digital Strategy for Inclusive

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[114] *Ibid.*
[115] International Telecommunication Union , Internet from the Horn of Africa: Ethiopia Case Study, http://www.itu.int/osg/spu/casestudies/ETH-cs1 <last visited May 5, 2021>
[116] Meron Eresso, *Sacralising Cyberspace: Online Religious Activism in Ethiopia.*, 3 Modern Africa: Politics, History and Society (2015), Pp127-154 https://edu.uhk.cz/africa/index.php /ModAfr/article/view/99 <last visited Jul 3, 2020>
[117] *Ibid*.
[118] Tigist Ashenafi, The Legality of E-Commerce and E-Signature under Ethiopian Law (2017), P32.
[119] Federal Electronic Signature Proclamation No. 1072/2018.
[120] Federal Electronic Signature Proclamation No.1205/2020.

Prosperity 2025".[121] The Council of Ministers has approved the Digital Ethiopia Strategy 2025 designed to be aligned with the country's national development vision, policy objectives, and priorities.[122] The Digital Transformation Strategy is a plan that helps to transform the dominantly analog economy into a digital economy, which is an economy mainly supported by the applications of digital technologies.[123] As indicated in the strategy document, the Ethiopian Digital Transformation Strategy is an avenue through which Ethiopia will move to a digitally enabled society as technology will allow for more efficient and inclusive interactions between citizens, governments, and businesses, thereby catalyzing its progress towards its national priorities.[124] Hence, electronic commerce has given sufficient coverage under the Ethiopian legal framework.

6.2.THE PLACE OF ONLINE DISPUTE RESOLUTION UNDER THE ETHIOPIAN LAWS

6.2.1. The Constitutionality of Online Dispute Resolution under FDRE constitution

Online dispute resolution (ODR) is a form of online settlement that uses alternative methods for dispute resolution (alternative dispute resolution).[125] As the ODR is alternative dispute resolution assisted by the internet, the constitutionality of online dispute resolution is traced to the constitutionality of alternative dispute resolution under the FDRE constitution. It is crystal true that the FDRE constitution has an explicit provision for alternative dispute resolution. One of the prominent rights recognized by the FDRE constitution is access to justice. This is clear from Article 37 of the FDRE constitution. It provides that: "Everyone has the right to bring a justifiable matter to and to obtain a decision or judgment by, a court of law or *any other competent body with judicial power*."[126] From this provision, it is clear that though the court is the primary institution empowered to settle disputes, it is not the only

[121] Ethiopian Digital Strategy, 2025, *supra* note 19
[122] Capital newspaper, *supra* note 21.
[123]Abiot Bayou, Interview with Capital Ethiopia,https://www.capitalethiopia.com/ interview/ digital-ethiopia/ <last visited Jul 3, 2020>
[124] Ethiopian Digital Strategy, *supra* note 19
[125] Karolina Mania, supra note 25, P78
[126] FDRE Constitution, Art.37.

institution with such power. Though the article fails to specify them, it tells us that there might be other organs with judicial powers other than courts of law as long as it did not take away from the court of law.[127]

Further, as long as we have not prohibited citizens from taking their cases to the court of law and do not prohibit appeals from going to ordinary courts, the government has the right to establish specific courts. This can be witnessed in Art. 78 (5) of the FDRE constitution. It provides that: "According to sub-Article 5 of Art. 34 the House of Peoples' Representatives and State Councils *can establish or give official recognition to religious and customary courts*".[128] This article empowered the House of Peoples Representative, as the case may be, State Councils to establish or be obliged to give recognition to the established customary and religious courts. The existing Sharia court is an example of a religious court established in the nation under state recognition.[129] In the same talking, the House of Peoples Representative can establish other institutions with judicial power or give recognition if private individuals have established them.[130] In line with this, arbitration, conciliation, and compromise have been given due recognition via incorporation of domestic laws like civil code, family code, civil procedure code, new arbitration and conciliation working procedure, and other subsidiary legislation. Further, the establishment of Addis Ababa chambers of commerce and sectoral association as the private platforms for Alternative dispute resolution has a prominent role in promoting constitutional access to justice principles.[131]

From the facts mentioned above, it is clear that the FDRE constitution has recognized alternative dispute resolution irrespective of the avenue by which it may be implemented. Accordingly, as online dispute resolution is a part of ADR conducted online, it has a constitutional backup. That means, since online dispute resolution is part of alternative dispute resolution, which is

[127] Tefera Eshetu & Mulugeta Geta, Alternative Disute Resolution, (Justice and Legal System Research Institute, 2009), P 81
[128] The FDRE Constitution, Art. 78 (5)
[129] Tefera Eshetu & Mulugeta Geta,*supra* note 127
[130] *Ibid.*
[131] *Ibid.*

recognized by the FDRE constitution, it is the author's position that online dispute resolution has a constitutional base.

6.2.2. Online Dispute Resolution under Electronic Transaction Proclamation

In 2020, the Ethiopian House of Peoples' Representative approved the Electronic Transaction Proclamation in its session on May 29, 2020.[132] This proclamation has 46 provisions that give legal recognition to E-Commerce. As per the provision of Articles 7 and 8 of the Proclamation, information in electronic form has the same legal validity as the information in the written document. It also gives legal recognition to the electronic signature of the signatories, electronic stamps, and electronic signatures of witnesses as long as the requirements stated under Articles 9 to 11 are fulfilled.[133]

The electronic transaction proclamation has a provision entitled "dispute resolution mechanism."[134] Accordingly, the primary solution for the electronic commercial dispute is in the hands of Electronic commerce platform operators as the proclamation imposes an obligation on them to establish a dispute settlement mechanism.[135] Though the proclamation imposes an obligation on electronic commerce platform operators to establish dispute settlement mechanisms, it is not clear on the nature of dispute settlement mechanisms that should be used. That means nothing is provided about whether the electronic commerce platform operator should use the traditional dispute resolution mechanism or the currently emerging dispute resolution mechanism for electronic commerce (online dispute resolution). If the electronic commerce platform operator resorted to a traditional dispute settlement mechanism, the traditional dispute settlement mechanism is not feasible for online or electronic commercial disputes. Further, if we claim that the electronic commerce platform operator can resort to online dispute resolution,

[132] Federal Electronic Transaction Proclamation No.1205/2020.
[133] Federal Electronic Transaction Proclamation No.1205/2020, Arts. 9-11.
[134] Federal Electronic Transaction Proclamation No.1205/2020, Art. 42.
[135] Federal Electronic Transaction Proclamation No1205/2020, Art.42 (1). For the purpose of electronic transactions, electronic commerce platform operator" means legal entities who, in electronic commerce, provide two or multiple parties with online sites for business operations, match-making, information release, and other services, for the latter to carry out trading activities independently. See, Article 2(14) of electronic transaction proclamation.

its implementation would be complex as no rule is provided under the proclamation. Let alone rules; the proclamation has not mentioned online dispute resolution.

Besides, it is not feasible to give the electronic commerce platform operator complete discretion to establish a dispute settlement mechanism. A dispute settlement is a systematic approach, and sometimes it requires special expertise. As the expertise on the parts of such operators matters, the functionality of such schemes is in a quotation. What makes things worse is that sub-article 3 of the same provision provides that "Any unresolved disagreement between parties which fall within the *ambit of Sub-Articles (1) and (2)* of this Article shall be submitted to arbitration per the *rules of arbitration of a dispute settlement mechanism established* under this Proclamation and the regulations and directives thereunder."[136] This is a default rule when the dispute settlement mechanism established by the electronic commerce platform operator is unsuccessful. Accordingly, arbitration, the prominent alternative dispute settlement mechanism, is there to solve any unresolved disagreement that may not be solved by the dispute settlement mechanism established by the electronic commerce platform operator. From this, it seems that the dispute settlement mechanism to be used by an electronic commerce platform operator is another dispute settlement mechanism other than alternative dispute resolution like arbitration, negotiation, and mediation.

Furthermore, though the proclamation provides arbitration as a default rule when the dispute settlement mechanism established by the electronic commerce platform operator is unsuccessful, the nature of arbitration to be used is not specified, as the traditional arbitral rules may not work for online commercial disputes. As mentioned, online dispute resolution has emerged as the best dispute resolution scheme for online commercial disputes since the traditional alternative dispute resolution is not suitable for such kinds of disputes. In line with this, various initiatives are taken to develop legal and institutional frameworks for online dispute resolution. In short, though the electronic transaction proclamation incorporates the provision on the issues of

[136] Federal Electronic Transaction Proclamation No.1205/2020, Art.42 (3).

dispute resolution mechanism, nothing is provided on the online dispute resolution.

6.2.3. Online Dispute Resolution under the Federal Arbitration and Conciliation Working Procedure Proclamation

Ethiopia has no independent and comprehensive legislation that regulates alternative dispute resolution. The existing laws on alternative dispute resolution, which were used to regulate arbitration and conciliation for a long period in Ethiopia, are scattered in the Ethiopian Civil Procedure Code, Civil Code, Revised family code, and other laws. The existing rules are scanty and highly incompatible with the internationally recognized principles of commercial arbitration. To modernize and make its laws compatible with international trends, Ethiopia has reformed and adopted the new Arbitration and Conciliation Proclamation No.1237/2021.[137] This proclamation has amended various civil procedures and civil code provisions that talk about arbitration and conciliation. Accordingly, Articles 3318-3324 of the Civil Code, which governed conciliation, and Articles 3325 to 3346 of the Civil Code, which governed arbitration, are repealed.[138] Further, provisions of the Civil Procedure Code from Articles 315 to 319 and Articles 350, 352, 355-357, and 461, which deal with the arbitration, have also been repealed by the proclamation.[139]

The new proclamation has incorporated various principles and rules compatible with international principles and practices by amending the existing laws. The incorporation of the Kompetenz-Kompetenz Principle can be taken as the best example.[140] As the promise of the paper is on online dispute resolution, addressing all amendments made by the new proclamation is beyond the scope of the study. In short, the new proclamation has made

[137] Federal Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021.

[138] Federal Arbitration and Conciliation Working Procedure Proclamation No.1237/2021, Art.78 (1).

[139] Federal Arbitration and Conciliation Working Procedure Proclamation No. 1237/ 2021,Art. 78 (2).

[140] Federal Arbitration and Conciliation Working Procedure Proc. No.1237/2021, Art.19 (2). The principle of competency-competency allows the arbitrator to decide on their jurisdiction. Accordingly, this article provides that" The tribunal shall have the power to determine the existence or non-existence of a valid arbitration agreement between the contracting parties including as to whether it has jurisdiction to hear the case or not"

many changes to the existing arbitration and conciliation working rules. However, the issue of online dispute resolution, which is an emerging issue concerning online commercial disputes, is not addressed. In line with the Electronic Transaction Proclamation No.1205/2020, electronic signature proclamation, and other laws that recognize electronic communications as a valid means of creating a contract, the electronic arbitration agreement is recognized by the new proclamation.[141]

Beyond this, the new proclamation has no single provision that deals with online dispute resolution. It is optimistic that the proclamation has referenced the electronic transaction proclamation, which would facilitate electronic commerce. However, the reference should extend up to providing an avenue for online arbitration and conciliation. The mere recognition of an electronic arbitration agreement is not sufficient. As dispute is inevitable, there should be a Proper Avenue to settle online disputes to encourage the development of the E-commerce industry and enhance consumers' confidence in E-commerce. The new proclamation needed to offer complete packages for online dispute resolution.

6.2.4. Online Dispute Resolution under Addis Ababa Chamber of Commerce and Sectorial Association Arbitral Rules

Addis Ababa Chambers of Commerce and Sectorial Association (AACCSA) was established, by General Notice Number 90/ 1947, in April 1947 as an autonomous, non-governmental, non-political, and non-profit organization to act on behalf of its members.[142] The chamber re-establishment with the Proclamation Number 341/2003 further provides the legal framework for establishing Chambers of Commerce and Sectoral Associations.[143] Since its establishment, it has served its members in promoting socio-economic development and commercial relations with the rest of the world, and its primary objective is to encourage the establishment of conditions in which business in general and in Addis Ababa, in particular, can prosper.

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[141] Federal Arbitration and Conciliation Working Procedure Proclamation No.1237/2021, Art. 6 (2) (3).
[142] Addis Ababa Chamber of Commerce Sectoral Association, Brief Profile, http:// addis chamber.com/wp-content/uploads/2016/08/AACCSA-Profile.pdf <last visited Jul 3, 2020>.
[143] *Ibid.*

Today, the AACCSA is one of the most dynamic civil society organizations representing business in Ethiopia and is active in matters of importance extending beyond its regional geographic base.[144] Addis Ababa chamber of commerce and the sectorial association has their own arbitration rules.[145] The rule has articles, which are put into different categories. Accordingly, the components of the subject matter regulated by the arbitral rule comprise initiation of the proceeding, composition of the tribunal, the arbitral proceeding, nature of the award, and the cost of arbitration.

Despite this, nothing is provided on the currently emerging dispute resolution mechanism related to an online commercial dispute. In fact, at the time when ACCSA adopted its arbitral rules, electronic commerce was not recognized under the Ethiopian legal framework. Hence, the institution may not be blamed for not adopting online dispute resolution. Yet, as a leading institution that works on commercial disputes, and to cope with the international practices, the institution should take an initiative to incorporate online dispute resolution to arbitral rules and extend its service to those concerned stakeholders that brought online commercial disputes to their institution. This would serve a pivotal role in enhancing electronic commerce as the existence of a proper dispute resolution mechanism increases the confidence of businesspeople and consumers.

7. THE NEED FOR ONLINE DISPUTE RESOLUTION UNDER THE ETHIOPIAN FRAMEWORK

As it has been mentioned, Ethiopia has taken a prominent measure that facilitates electronic commerce. The adoption of electronic signature proclamation, digital strategy 2025, and electronic transaction proclamation would significantly enhance electronic commerce as it increases the confidence of businesspeople and consumers. Further, the Covid-19 pandemic has necessitated online transactions (electronic commerce) as it paves the way for tackling the pandemic. Again, Ethiopia has taken its journey towards the

[144]Tefera Eshetu & Mulgugeta Getu, Addis Ababa Chamber of Commerce and Sectoral Association Arbitration Centre, https://www.abyssinialaw.com/study-on-line/item/339-addis-ababa-chamber-commerce-and-sectorial-association-arbitration-center <last visited Jun 4, 2021>

[145]Addis Ababa Chamber of Commerce and Sectoral Association http://www.addis chamberr.com/file/ARBITRATION/20131126/Arbitration Rules (English Version).pdf <last visited Apr 25, 2021>

partial privatization of public enterprise under the government monopoly. Not only this, Ethiopia has taken a strong position toward its accession to the world trade organization. All this would inevitably increase cross-border commercial transactions.

With the advent of the internet, there is a paradigm shift from physical to virtual environments whereby a commercial transaction is accelerated by information communication and technology. If there is a commercial transaction, the dispute is inevitable, as it is part of life. As mentioned above, online dispute resolution is introduced to redress online commercial disputes as the traditional dispute resolution mechanism may not apply to solving online commercial disputes. The resolution of online commercial disputes in court is often impractical because it is necessary to participate in complicated, expensive, and lengthy offline procedures.[146] This constraint contributes to the lack of trust that deters many potential consumers from purchasing online, as the judicial forum for enforcing their legal entitlements is unreachable. Consequently, the ability of the internet to support and expand international commerce may be curtailed to some extent by the lack of effective methods for simply resolving international disputes, quickly, and at a low cost.[147] Accordingly, it is believed that efficient mechanisms to resolve online disputes will impact the development of E-commerce. The tools with the potential for achieving this are ADR and ICT.[148]

The development and adoption of ODR platforms may result in several other legal and policy challenges.[149] These challenges may include adhering to existing legal structure, building public trust in ODR mechanisms, and developing a system, which can improve and evolve with changes in technology and society.[150] To develop a robust ODR ecosystem, ODR frameworks should be based on certain key principles that will mitigate these challenges and steer the dispute resolution ecosystem into the future. This is equally true for both court-annexed and private platforms. Accordingly, the international experiences show a need for a legal and institutional framework

[146] Pablo Cortés, *supra* note 3, P74.
[147] *Ibid.*
[148] *Ibid.*
[149] Deepika Kinhal, Tarika Jain, Vaidehi Misra &Aditya Ranjan, *supra* note 35, P29
[150] *Ibid.*

for online commercial disputes as traditional dispute resolution is not feasible. Though online dispute resolution has emerged with electronic commerce, world communities have started to use online dispute resolution for family, employment, tax, and other related disputes.[151] Further, the COVID-19 pandemic has necessitated online dispute resolution for all types of disputes as it plays a prominent role in tackling the pandemic.

Coming back to Ethiopia, the paper pleads for the adoption of online dispute resolution for electronic commerce disputes, as the electronic infrastructure may not allow for using online disputes for all types of disputes. The existing legal framework of Ethiopia is devoid of the concepts of online dispute resolution, which is the best and sometimes only option to resolve online commercial disputes. Besides, the existing reality shows that approaching online commercial disputes is challenging as traditional dispute settlement is not suitable for such disputes.[152] Accordingly, there is a pressing need for Ethiopia to adopt the legal and institutional framework for online dispute resolution.

First, the mere adoption of the legal framework that regulates electronic commerce may not promote electronic commerce. In default of dispute resolution mechanism, the real potential of electronic commerce may not be realized.[153] To ensure that all parties concerned will feel they can safely participate in E-commerce transactions; E-disputes must be resolved adequately as uncertainty over the legal framework may inhibit both consumers from purchasing products or services over the internet and companies from entering the electronic marketplace.[154] As ODR developed alongside E-commerce, it seemed natural that related disputes would be resolved online for transactions originating in cyberspace.[155] As dispute is inevitable, there should be a Proper Avenue to settle online disputes to

[151] *Id,* Pp 23-25.
[152] Interview with Ebba Abebe, Federal Public Prosecutor Working on the Online Transaction and Financial Crime Investigation, on June 24, 2021.
[153] Pablo Cortés, *supra* note 3, P74.
[154] Marc Wilikens, Around Vahrenwald & Philip Morris, Out-of-court Dispute Settlement Systems for E-commerce (European Communities) (2000), http://vahrenwald.eu/wp-content/uploads/2017/01/98.2000.JRC_.EUR-19644-EN.pdf <last visited Apr 25, 2021>
[155] Henry H. Perritt, *Dispute Resolution in Electronic Network Communities*, 38 Villanova Law Review (1993), P 349

promote the development of the E-commerce industry and enhance consumers' confidence in E-commerce. If there is a proper legal and institutional framework for online disputes, it would increase the confidence of the businessperson and consumers that in turn enhances the implementation of electronic commerce.

In default of legal and institutional framework for redressing online commercial disputes, conducting electronic commerce would be meaningless as the traditional dispute resolution that requires the physical presence of the disputants is the only option for resolving such disputes. This would defeat the very purpose of legalizing electronic commerce, and it may not hit its targets in tackling the Covid-19 pandemic. In a nutshell, the need for an appropriate legal framework that is supportive of and conducive to E-commerce practice has been identified as a prerequisite for the growth of E-commerce in general and ODR in particular.[156] The proliferation of ICT applications and services, especially ODR schemes, requires the existence of a solid matrix of supporting laws and regulations.[157]

Furthermore, the mere existence of a legal framework may not guarantee the implementation of online dispute resolution. The presence of a robust institution that supervises and works towards the implementation of online dispute resolution is mandatory. This may be either through integrating the online dispute resolution scheme into the court structure, establishing an independent tribunal, or establishing an independent institution that delivers online dispute resolution services. The only institution that works on the commercial dispute is the Addis Ababa chamber of commerce and sectoral association. This institution can extend its service to online dispute resolution. Hence, the institution must integrate rules that govern online commercial disputes and deliver its normal services and online dispute resolution. Therefore, under the auspices of this institution, it is easy to facilitate the avenue for handling online disputes.

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[156] UNCTAD, 'E-commerce and Development Report 2003' 'Online Dispute Resolution : E-commerce and Beyond'' www.unctad.org/en/docs/ecdr2003_en.pdf <last visited June 15, 2021>

[157] Mohamed S. Abdel Wahab, Online Dispute Resolution for Africa https://www. mediate .com/pdf/wahab1.pdf <last visited May 20, 2021>

Second, it is clear that the African continent in general and Ethiopia are still in the initial stages of accepting online dispute resolution as a viable model for resolving disputes that arise online. It is becoming increasingly clear that such a system's development is necessary for us to compete at a global level.[158] It is also essential for facilitating cross-border trade, which is necessary for the further economic growth of Ethiopia.[159]

Third, access to justice is a constitutionally recognized right in Ethiopia. Access to justice is related to the growth of consumer protection and is noted in the United Nations Guidelines for Consumer Protection as Governments should establish or maintain legal and administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.[160] Hence since Ethiopia has recognized electronic transactions, there must be easy access for everyone involved in any dispute and redress mechanisms to provide effective remedies at a reasonable cost.[161] One of the main advantages of ODR is access to justice for all small disputes, especially when the parties are away from each other and over long distances, or even in different countries. As a country, once we recognize the electronic transaction, we should deliver online justice. We need to have a legal and institutional framework that works on online dispute resolution to this effect.

Finally, United Nations Conference on Trade and Development **(**UNCTAD) has provided some recommendations for Developing countries on the usefulness of ODR.[162] Although ODR is still in its infancy or non-existent in most developing countries, it has the potential to grow and provide fair and inexpensive adjudication of disputes arising out of online transactions. UNCTAD provides that developing countries wishing to promote and facilitate ODR as an alternative to national litigation can consider the following recommendations. First, developing countries should ensure that

[158] Robin Cupido, *supra* note 5, P 187
[159] *Ibid.*
[160] Fahimeh Abedi, *Legal Issues Arising in Online Dispute Resolution Systems*, Journal of Organizational Behaviour Research (2019), Vol.4,p206
[161] *Ibid.*
[162] E-commerce and Development Report (United Nations Conference on Trade and Development) (2003), https://unctad.org/system/files/official-document/ecdr2003_en.pdf <last visited Jun 3, 2021>

national legislation recognizes the validity and enforceability of electronic transactions.[163] Second, developing countries should ensure that national legislation facilitates the use of out-of-court dispute settlement schemes. Third, developing countries should consider acceding to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[164], which allows the enforcement of foreign arbitral awards.[165] In light of UNCATD recommendations, Ethiopia has already recognized electronic transactions' validity and enforceability in 2020.[166] Besides, Ethiopia ratified the New York Convention on February 13, 2020.[167] Further, Ethiopia has already recognized the use of out-of-court dispute settlement schemes. Hence, it is the right time for Ethiopia to adopt ODR as all necessary recommendations that promote and facilitate ODR as an alternative to national litigation are fulfilled.

8. CONCLUDING REMARKS

With the advent of the internet, the traditional business trend that requires the physical presence of the businessperson is replaced with electronic commerce. These change the way we interact with each other, which in turn is changing the way we resolve our disputes. To this effect, online dispute resolution is emerged as the best option to resolve online commercial disputes. Online dispute resolution (ODR) is the study of how to use technology to help parties resolve their disputes effectively. ODR is understood to be any dispute resolution process, mainly carried out with the assistance of the internet and ICT. It is a solution that can assist the parties in resolving the dispute in a simple, fast, flexible, and secure manner, without the need for physical presence at a meeting or hearing, which includes but is not limited to online

[163] *Ibid.*

[164] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York , 1958),https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york- convention-e.pdf <last visited Jun 6, 2021>

[165]E-commerce and Development Report (United Nations Conference on Trade and Development) (2003), https://unctad.org/system/files/official-document/ecdr2003_en.pdf (last visited Jun 3, 2021)

[166] *Ibid.*

[167]Ethiopia Ratifies the New York Convention, https://mehrteableul.com/ index.php /insights/news-and-updates/item/32-ethiopia-ratifies-the-new-york-convention#:~:text <last visited Jun 5, 2021 >

negotiation, online mediation, online arbitration, Med-Arb, neutral evaluation mini-trials, and others.

ODR has several advantages. Cost-effective, time saving, the procedure's convenience, appropriateness, and control over the outcomes are the most significant advantages of ODR. That means ODR is timely, inexpensive, confidential, transparent, accessible, and more flexible than ADR and traditional court systems. As a result, ODR has essential potential to increase consumer access to justice. In this regard, ODR may be an alternative to lack of access to justice rather than an alternative to courts. However, ODR also has several pitfalls, such as the lack of face-to-face communications, technological burdens, legal restrictions, and so on. To release the full potential of ODR, a system must be designed in the best possible manner to reduce the number of difficulties and exploit all the advantages of ODR. Accordingly, various initiatives have been made to adopt ODR in a way that compromises such challenges. The steps taken by UNICITRLAL, UNCTAD, European Union, and counties like America could be mentioned as an example.

Further, various international arbitral rules were reformed to accommodate the issues of online dispute resolution. The steps taken by the Hong Kong International Arbitration Centre and the China International Economic and Trade Arbitration Commission can be mentioned as an example. Overall, ODR has been accepted by the world communities as the best and only option for resolving online commercial disputes as the traditional dispute settlement mechanism is unsuitable for such disputes.

Coming to the context of Ethiopia, many attempts are made to facilitate electronic commerce. The adoption of electronic signature proclamation, electronic transaction proclamation, and digital strategy 2025 are prominent measures toward recognizing online commercial transactions or electronic commerce. One of the challenges that the world community faces with the adoption of electronic commerce is dispute settlement, as the traditional dispute settlement mechanism is appropriate for online commercial disputes. That is why online dispute resolution has emerged.

The existing legal framework of Ethiopia has no proper room for online dispute resolution. Although ODR has constitutional backup, the prominent legal frameworks like Electronic transaction proclamation, Federal arbitration, and conciliation working procedure proclamation have no online dispute resolution rules. Further, the Addis Ababa chamber of commerce and sectorial arbitration, the only institution working on commercial arbitration, has no rules for online dispute resolution. Hence, as traditional dispute resolution is unsuitable for online commercial disputes, there is a pressing need for Ethiopia to ODR. First, the mere adoption of the legal framework that regulates electronic commerce may not promote electronic commerce. As dispute is inevitable, there should be a Proper Avenue to settle online disputes to encourage the development of the E-commerce industry and enhance consumers' confidence in E-commerce. Second, the adoption of ODR is necessary for competing at a global level and the facilitation of cross-border trade. Finally, ODR has the potential to ensure access to justice, which is a constitutionally guaranteed right under the FDRE constitution. Based on the conclusion mentioned above, the followings are my recommendations:

- The Ethiopian government should revisit its legal framework and adopt public and private platforms for online dispute resolution. This could either be via incorporation into the existing framework or separate legislation.

- Addis Ababa chamber of commerce and sectorial association should adopt online dispute resolution schemes by integrating them into its arbitral rules.
- Awareness should be created on the usefulness of ODR in resolving online commercial disputes so that other private organizations or institutions would facilitate the private platforms for online dispute resolution.

SUB-NATIONAL CONSTITUTION-MAKING IN ETHIOPIA: SPECIAL EMPHASIS ON THE CONSTITUTIONS OF OROMIA AND SOUTHERN, NATIONS AND NATIONALITIES AND PEOPLES REGIONS

Dagim Wondimu*

ABSTRACT

The nine regional states, constituting the Ethiopian federation had their own constitutions starting from the time of transition and have previously been revised multiple times in the last two decades. Oromia and Southern Nations, Nationalities, and Peoples' (SNNPR) regions enacted their first constitution in 1995. As to how the constitutions were made is the question of many researchers. Some writers put that making process as unclear. Some others opine that the constitutions were simply legislated as ordinary legislation without observing the constitution-making principles. This study seeks to explore the making process of the constitutions of Oromia and SNNP regions. It aims to identify the guiding principles and methodology employed in the making process. It also aims to find out the major challenges encountered in the process. In doing so, a qualitative data collections method was employed. The findings of the study reveal that it is hard to say that the regional states made their own efforts to give themselves home grown constitutions, although they have the right to do so. This paper concludes that the regional state has not employed a special procedure in the making process. The public was not given the chance to give their say on the content and procedure of making. The constitution-making process of the two regions was highly dominated by the federal government. Finally, this piece recommends that the constitutions of Oromia and SNNPR should be revised to make them more adaptable to the socio-economic and cultural situation of the respective regions.

***Key Words**: Constitution, Constitution-making, Council of nationalities Sub-national units, Regional states, Oromia, SNNPR, State council*

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1. INTRODUCTION

Ethiopia's long years of autocratic and dictatorial government systems have shaped its constitutional history in its own image. The pre-constitution laws have the feature of regulating both religious and legal matters. The notable legal documents in this regard are Fetha-Negest and Sereat mengist. Fetha-Negest has the purpose of regulating both religious and legal matters and the later is a politico-legal document, which has a significant relationship with the king's coronation.[1] Even the modern constitutions are not free from such critics. It is not a surprise that in the constitution-making process among others public participation has not been employed during their preparation. Traditionally negotiating the constitution was the province of political leaders who held power and claimed it.[2] Only those who are in power determine everything and anything as to the substance of the constitution.

This fact holds true in the Ethiopian constitution-making history as well. An inference could be made from the former four constitutions of Ethiopia, which clearly shows the dominations of the leaders on the making process and affected the substance of the documents to be in favor of their political interest. It is often said that the key sources of legitimacy in Ethiopia's past were force (conquest, military expansion), religion (i.e. Orthodox Christianity), and tradition (i.e. 'right' genealogy).[3] Due to this reason, there was no room for the public to have their say in the constitution-making process. In general, the makings of Ethiopian constitutions come into the picture under the domination of political leaders who held power.[4]

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[1]Getachew Ayeferam, *Constitution, Constitutionalism and Foundation of Democracy in Ethiopia,* International Journal of Research (2015),Vol (2). Pp.586-596

[2] Viven Hart, Constitutional making and the Right to Take Part in Public Affair, Framing the State in times of Transition: Case Studies in Constitutional making, (US institute of Peace Press 2010).

[3] Tsegaye Regassa, *The Making and Legitimacy of Ethiopian Constitution: Towards Bridging the Gap between Constitutional Design and Constitutional Practice*, Afrika Focus (23) 2010, Pp.85-110

[4] There are groups who argue that even the current 1995 constitution is not the result of public discussion rather the imposition of the EPRDF. Peoples who still argue on

This same pressure is anticipated to be in the making of a sub-national constitution. Ethiopia being a federal state, each regional state within the federation is required to have and come up with a constitution. This is one way in which regional states exercise the right of self-determination that they are given by the FDRE Constitution.

The focus of this study is the constitution-making of Oromia and Southern Nations, Nationalities and Peoples regions in the Ethiopian federation. Ethiopian Subnational constitutions in addition to their creation (constituting) of state governments and regulating state affairs, guarantee the protection of fundamental rights and freedoms of state citizens.[5] Even if they have all these multifaceted advantages, state constitutions (particularly their making process) have been overlooked in Ethiopia. The reason for choosing only the two among the eleven regional states is constitution-making process employed almost the same approach and SNNPR has a unique state structure and ethnic composition compared to the others.

The structure of this article goes in the following manner. Being this is the first part, the second part of this article focuses on the fundamental concerns of regional constitution-making in the Ethiopian federation. The third part gives coverage of the guiding principles of the constitution-making process. Next, the general picture of sub-national constitution-making in Ethiopia has been discussed. In the fifth part, the new perspective that sub-national constitution-makers should consider has been discussed. The sixth part addresses how constitutions making are made in Oromia and SNNPR regional states. Finally, conclusions are drawn.

illegitimacy of the constitution forward that the result of the discussion and the final document imposed is totally different.

[5]Tsegaye Regassa, *Sub-national Constitutionalism in Ethiopia, Towards Entrenching constitutionalism at State Level*, Mizan Law Review (2009) Vol (3), Pp.33-69

2. MAJOR CONCERNS OF THE REGIONAL CONSTITUTION-MAKING PROCESS IN ETHIOPIA

Federalism is defined as a system in which the self-rule of central and regional government and shared rule among these governments is exercised. [6] Sub-national constitution-making is one way in which regional states' right of self-rule is manifested. That is why all regional states of the federal republic of Ethiopia came up with their own constitutions.

2.1. NO CONCRETE EVIDENCE AS TO THE MAKING PROCESS OF REGIONAL CONSTITUTIONS

There is no clear thing as to the constitution-making process at a state level. Unlike other subordinate legal norms, which follow a relatively simple process in their making, the enactment of a constitution should employ complex steps guided by several principles. Some of the common guiding principles in constitution-making are public participation, inclusiveness and transparency.[7] But, it is unclear whether or not such guiding principles were employed in the making of the constitutions of Oromia and SNNPR regions.

2.2. REGIONAL STATE CONSTITUTIONS ARE VERBATIM COPIES OF THE FEDERAL CONSTITUTION

The usual critic forwarded against Ethiopian regional state constitutions is the fact they are the verbatim copy of the federal constitution.[8] Copying a better and high-standard legal document could not be problematic by itself. Nonetheless, regional distinctiveness showing the existing realities of the regions should be taken into account in designing regional states constitutions. This objective could not be achieved by merely copying the federal government constitution, which is a broadly formulated document. Moreover, regional constitution should be considered as an opportunity for

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[6] Arthur Benz, Self-rule and Shared Rule? Bicameralism, Power sharing and Joint Decision Trap, Perspective on Federalism,(12018), Vol.10, Pp.30-48

[7]Michelle Brandt & et al, Constitutional making and Reform: Option for the Process(2011),https://www.interpeace.org/resource/constitution-making-and-reform-options -for-the-process-2/ <accessed on January 25, 2020>

[8] Tsegaye, *supra* note 3.

giving better protection (compared to the federal constitution) for the people living in the region if it is designed by taking into account the socio-economic and political situation of the place and time.

2.3. NO PUBLIC PARTICIPATION

The other issue worth consideration is that even if all regional states have enacted their constitutions as per article 50 (5) of the federal constitution, the public doesn't even have awareness as to the existence of the same. What are the causes for the lack of awareness of regional states constitutions? Tsegaye argues that state constitution, in addition to governing state behavior; is also a good means of entrenching constitutionalism by protecting human rights and limiting the power of sub-national government.[9] Furthermore, sub-national constitutions also allow the formulation of region-specific social and political goals and organize institutions for the achievement of such goals. Regardless of all these determinant roles that the regional constitution plays, the public has not been given the chance to have their say on the process.

3. GUIDING PRINCIPLES OF A CONSTITUTION-MAKING PROCESS

Before starting the tasks of constitution drafting and deliberation on the content of the constitution, consensus should be made on the principles or standards to employ in the making process.[10] The Constitution-making process may have specific or/and general guiding rules. The specific guiding rules are those principles anchored by a certain country and applied to that specific country. For example in South Africa parties negotiating on the constitution-making process were agreed on 34 principles of constitution-making and incorporated such principles in the 1996 transitional constitution of South Africa.[11] Such types of constitution-making principles are agreed

[9] Tsegaye, *supra* note 5, P64.
[10] Michele Brandt, Constitutional Assistance in Post Conflict Countries, The UN Experience: Cambodia, East Timor, and Afghanistan, (United Nation Development Program, 2005).
[11] Gincilini Yitirmessi, *South African Federalism: Constitutional making Process and the Decline of Federalism debates*, Journal of Yasar University (2018), Vol. 4, Pp.165-175.

rule by several stakeholders including competitive political parties. One among the 34 principles is that the constitution should incorporate a bill of rights and failure shall result in non-certification by a constitutional court. As there should be terms of reference for the drafters, these specific principles serve as guiding frameworks in drafting stage of the making process. Beyond that, the constitutional court certifies or reject drafted document taking into consideration such principles.

In Ethiopia, the federal constitution does say nothing as to the principles to be employed in the making process. The federal constitution simply empowers regional states to enact their constitution.[12] Unlike other jurisdictions, there is no express provision intentionally proclaimed to guide constitution-makers in the process of making. I argue that article 9 of the FDRE constitution could be used as a guiding rule in the absence of a developed guiding rule. It provides that the constitution is the supreme law of the land and any law that goes against this constitution shall be of no effect. This provision, which is one of the five fundamental principles of the constitution, could be taken as a general guiding principle. So, lawmakers including sub-national constitution-makers should be conscious enough of this provision of the federal constitution. Nonetheless, unlike other jurisdiction, regional states have no developed principles guiding the process. The federal (dominantly) and regional governments were the ones' who were guiding and directing the making process as they thinks appropriate. There are no agreed guiding principles like that of South Africa.

In addition to specific guiding rules, there are also general guiding rules, which are employed commonly in most jurisdictions. These general rules are discussed herein below.

[12] FDRE Constitution, Arts 50(5) and 52 (2) (b)

4. OTHER CONSIDERATIONS IN SUB-NATIONAL CONSTITUTION-MAKING

4.1. PUBLIC PARTICIPATION

People's participation in matters affecting their public interest is not a recent phenomenon. In the past public gathering were made for dealing with societal issues.[13] Currently, people's right to participate in public affairs has been incorporated in several international human rights documents. The notable documents in this regard are the international Covenant for Civil and Political Rights[14] and the African Charter on People and Human Rights.[15] These documents entitle people to take part in public affairs and more importantly the latter requires public participation with strict equality. An opportunity to take part in issues affecting societal interest should be given to every member of the community. Anchoring the content of the constitution or deliberating on a draft constitutional document is one of those matters affecting societal interest. So, provided that this prominent legal instrument entrusts people with a right to engage in public affairs and the constitution building process is one of the determinant issues affecting the public tremendously, makes us conclude that partaking in the constitution making process is a right guaranteed under international human right instruments. In addition, the United Nation committee on human rights in its general comment 25 interpreted the "conduct of public affair" of article 25 of ICCPR. It is interpreted that the conduct of public affairs goes to the extent of entitling people to participate in the constitution-making process. [16] From this, a deduction could be made that public participation in the

[13] For instance in Ethiopian traditional criminal procedure Awuchachign was a common phenomenon. It is form of criminal investigation in which public gathering is called to identify criminals.

[14] International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession on 19 December 1966 by General Assembly resolution 2200 A (XXI)and entered into force on 23 May (1976), Art 25.

[15] Adopted in June 1981 and came into force in October 1986. Ethiopia acceded to the Charter on 15 June (1998), Art 13(1).

[16] United nation human right committee general comment no.25: The right to participate in public affairs, Voting rights and the right of equal access to public service, July 12/1996.

constitution-making process is not a mere procedural matter, but rather a legal entitlement.

Being that as it is, in a multi-ethnic and religious state like Ethiopia, allowing the public to be heard in the constitution building process has a lot to do with its legitimacy. To avoid the possibility of illegitimacy the public should be allowed to be heard. The recent constitution-making approach internationally is towards the participatory making process, which has the objective of making the public on the outcome of the process. [17] An equal note should be made that the outcome of the process cannot be controlled (predicted) unless the process is guided by principles and rules. Putting that in simple terms i.e. the constitution-making process is equally important as the final legal document.[18]

Otherwise, a constitutional document may be considered a simple imposition by the government. The government may use it as a political tool to materialize its interest. This could be the reason why Tsegaye regards participatory and inclusive constitution-making as the values, which works for all constitution commonly.[19]

Public Participation gives people the opportunity to involve in the political decision-making of the country. And this in turn has a multifaceted advantage. Its impact on increasing the democracy level, creating trust in the legal document, and more importantly responding to issues of legitimacy are some of the advantages of public participation.[20] In addition to these, it has also the potential of increasing the awareness of citizens about the constitutional right they have. So, organizing public participation is a

[17] Noha Ibrahim, International law and constitutional making process: The right to public participation in the constitution making process in post referendum Sudan, Law and politics in Africa, Asia and Latin America, Verfassung Und Recht in Ubersee, (46) 2013, Pp.131-151.
[18] Tom Ginsburg and et al, Does the Process of Constitution Making Matter, Annual Review of Law and Social Science (2009), Vol.5, Pp.201-223.
[19] Tsegaye, *Supra* note 3.
[20] Abrak Saati, Public Participation in Constitution Building Process; an Effective Strategy to Build Democracy (Dissertation Brief Series, 2015).

determinant step, which should be employed in the constitution-making process.

Public participation may take different forms. What comes to people**'s** minds in connection with public participation is the direct engagement of the public in the decision-making process. Nonetheless, that is not the right way to understand the term. Public participation may take different forms. It could be through constitution assembly, constitutional convention, referendums, public consultation, and other similar ways. So, the basic thing is that the public should be allowed to decide on the matters affecting their interest in any of those ways.

4.2. INCLUSIVENESS

A mere giving of the chance to participate does not suffice; rather the process should be representative of all possible stakeholders. Due care should be made in inviting stakeholders to the process. To be more explicit public participation should be backed by inclusiveness. Once again, inclusiveness should also be to get a certain outcome from the participant and discussion. If this is the case the process should consider many factors such as illiteracy, poverty, cultural biases, language development, and other situation, which possibly limit the full involvement of the public.[21] The deliberation on the issues and decision-making on the same should be presented in a way it can accommodate all these diversities. In addition to that, the makers should also be serious enough about the transparency of the process. At the end of the day, the public should not be challenged by the ready-made and strange constitutional document they did not know about its making process. Each decision-making stage should be open to the public. Inclusiveness may apply both at the drafting and deliberation stage provided that the latter stage should be more transparent than the former.

[21] Jason Gluck and Michele Brandt, Participatory and inclusive constitutional making: Giving choice to the demand of citizens in the wake of Arab spring, (United state institute of peace 2015)

So in general adherence to such values will positively impact the making process in bringing a good outcome. Adherence to them lets the drafters come up with a constitution capable of addressing existing societal issues.

4.3. THE ROLE OF THE INTERNATIONAL COMMUNITY

Inviting international communities who have experience in the constitution-making process could be a good input. The role they play in the process, design, and explaining constitutional space available to them is paramount.[22] Experts coming from other jurisdiction with the same experience knows the possible challenges and way out of the hurdles. They play a determinant role in setting up a good methodological approach for the constitution-making process respecting local culture and traditions.[23] Specifically, in the sub-national constitution-making these groups should be conscious enough of the local values and beliefs. In addition to that, international communities provide advice on the design and application of substantive international human rights norms.[24] Somalia, Bougainville, and Bosnia and Herzegovina are some of the states in which international communities have impacted the constitution-making process. In the Ethiopian sub-national constitution-making nothing is known about whether international communities are consulted or not.

5. SUB-NATIONAL CONSTITUTIONAL SPACE AS A GUIDING RULE

One basic thing to discuss in dealing with sub-national constitution-making is the issue of sub-national constitution space. What is sub-national constitution space? It is a space to be filled by constituent units within a federal system constitutional architecture by observing predetermined rules.[25] The space varies as one goes from one federal system to another. The space could be wider or narrower depending on many factors. The

[22] Michelle Brandt & et al, *supra* note 7
[23] Lous Aucoin, *The Role of International Experts in Constitution Making: Myth and Reality,* George Town Journal of International Affairs, 2004 (5), Pp.89-95
[24] *Ibid*
[25] G.Allan Tarr, *Explaining Sub-national Constitution Space,* Penn State Law Review, (115) 2011, Pp.1133-1248

system in which the federation is formed (aggregative or devolution), whether the federation is symmetrical or asymmetrical and the purpose for which the federation is formed are some of the factors which determine sub-national constitutional space. Aggregative federations in which independent states with their own established institutions come together and form a federation enable the states to have a wider constitution space than devolutionary. When the type of federation is asymmetrical, some states have more constitutional space than others. And lastly, the purpose for which the federation is formed is decisive in determining the space. Some federation is formed to accommodate the diversity of the people, which provides a wider constitutional space on its way to guaranteeing regional distinctiveness.[26]

The other thing worth considering in dealing with constitutional space is identifying to which organ residual power is given. If residual power is left to the units of federation the sub-national constitutional space could be wider, provided that the extent to which the national constitution is incomplete matters. Some federation gives residual power to the central government and others to constituent units. Some jurisdictions leave residual power for the joint determination by the two tiers of government. Countries like Canada, India, and South Africa give residual power to the central government. Some other countries like USA, Nigeria, Germany, Australia, Mexico, and Russia gives residual power to constituent units.[27] In Ethiopia residual power is given to regional states' (sub-national units). Drafter knows the ground within which they can play in designing regional state institutional frameworks after identifying the available constitutional space. As the approach followed in dividing power between the two tiers of government varies as one goes from one federation to that of the other, the constitutional space also varies which the former affects the latter. In some federations, some constituent units have a wider constitution space whereas in other jurisdictions narrower which make their institutional framework

[26] *Ibid.*
[27] John Kincaid, *Comparative Observation of Federation*, Journal of federalism, Center for Federal Studies (2005), 46, Pp.233-365

strictly anchored by the central constitution. Bosnia and Herzegovinian, Somalia, Russia, and Ethiopia are notable examples of those countries with significant constitutional space. [28]

One basic purpose that the regional constitution serves is structuring and institutionalizing the power of organs of state. In incorporating this fundamental purpose of the constitution, the drafters should take due care not to go out of the space provided for states.

6. SUB-NATIONAL CONSTITUTION-MAKING IN ETHIOPIA

The drafting, adoption, and enactment procedure of regional constitutions in Ethiopia did not apply the process that was employed during the making of the FDRE Constitution. The making and revision process has been initiated by the ruling party, which later directed the issue to the drafter which has incorporated it into the document.[29] This could be one of the reasons for the existing substantial similarity among Ethiopian regional constitutions.

In structuring the constitution-making process the issue that who should take the responsibility for adopting the draft is regularly a point of contention among the key stakeholders.[30] Different jurisdiction has entrusted the duty for different organs. The state constitution could be adopted by the state legislature or by constituent assembly or it could be adopted by popular referendum. [31] The sub-national constitutions in Ethiopia were adopted through the state legislature and this makes state constitution-making require easier procedure than the federal constitution. [32] There is no evidence showing that several stakeholders were consulted in the process.

Except for the constitution of Oromia and Tigray which came before the coming of the federal constitution, most sub-national constitutions in

[28] *Supra* note 7; See also the FDRE Constitution, Art. 52 (1).
[29] Christophe Van der Beken, Completing the Constitutional Architecture: A Comparative Analysis of sub-national Constitution in Ethiopia (Addis Ababa University press 2017).
[30] Jemal Benomor, Constitution making and Peace building: Lesson Learned from the Constitution making Process of Post Conflict Countries, (2003).
[31] *Ibid.*
[32] Tsegaye, *supra* note 5.

Ethiopia were adopted during the same period. The first constitution of Oromia was adopted in 1993. And Tigray regional state constitution was adopted in 1995 (slightly earlier than the federal constitution). The remaining seven states adopted their constitutions following the coming into being of the federal constitution in 1995 and were revised after 2001(except the constitution of Oromia which was revised in 1995 and again in 2001). The Federal constitution also expressly authorizes regions to draft and adopt their constitution.[33] And it is based on this authorization that constituent units in Ethiopia came up with their constitutions.

In the Ethiopian regional constitution-making, the common guiding principles of constitution-making were not considered. The public did not take part in the process. There is no evidence showing whether several stakeholders such as international experts, political parties, and interested groups and individuals were invited to the process.

7. A NEED FOR A NEW PERSPECTIVE

Some jurisdictions have a good experience and could be a model in sub-national constitution-making in several aspects. One among many points to ponder as a good experience is setting of minimum standard from which going down is not allowed. The constituent unit can only come up with a higher standard, which can realize better protection than the central constitution does. A notable example in this regard is Switzerland and South Africa. The Swiss national constitution strictly requires cantons to come with only a democratic constitution.[34] Unlike other jurisdictions, in the sub-national constitution-making of Swiss, there is no certification process. And there is no institutionalized means of screening whether the draft constitution is democratic or not. But this does not mean that the requirement of coming up with a democratic constitution is mere lip service. Rather the people of the region approve the upcoming draft before adoption. Another interesting experience in this regard is, the approach employed by South Africa. In South Africa, there are so-called thirty-four (34) principles. They

[33] Gincilini Yitirmessi, *supra* note 11, Art 52 (2) b.
[34] Switzerland's constitution of 1999 through amendments 2014.

are mandatory rules that have to be observed by any constitution. The thirty-four principles have been contained in the interim constitution of South Africa.[35] These principles include a bill of rights and other principles that ensure the protection of human and democratic order. One pre-condition that the provincial constitution should observe is being consistent with the interim constitution of South Africa.[36] Observance of such principles incorporated in the interim constitution is a red line that drafters should be conscious of as the non-observance results in non-certification. If a bill of rights was not included, or any of the other principles were not complied with, the Constitutional Court could send back the draft constitution.[37] A notable example of this in South Africa is the Kwa Zulu Natal provincial constitution, which was rejected by the constitutional court of South Africa.[38] From the experience of the two countries, a clear inference could be made that a minimum condition has been set as a red line in framing the cantonal constitution in the case of the Swiss and provincial constitution in South Africa.

In Ethiopia, there is no such mechanism for overseeing the constitution of the regional states before adoption. The federal constitution authorizes constituent units to come up with their constitution and there are no further means of checking their democratic nature. Coming up with that stand ensures democratic order by challenging the usurpation of power by the regional government. Hence, it will be good if the stand was taken by the constitutional system of the two above countries adopted in Ethiopia. But a note should be made that to do the same; requires the amendment of the

[35] Jeremey Sarkin,The Drafting of South Africa's Final Constitution from Human Right Perspective, American Journal of Comparative Law(1999),Vol, 47, Pp.67-87

[36] Republic of South African Constitution Act of 2000 of 1993 (interim constitution), Section 160

[37] Principles and Process of Constitution Building, Charter Change Issues Brief No.1(Learning session conducted in Philippines House of Peoples Representative and House of Senate, 16 and 17 may 2018)

[38] Christina Murray, *Provincial Constitution making in South Africa: The (non) example of Western-Cape*, Jahrbuch des offentichen recht (2001), Vol.49, Pp.481-512

federal constitution (as it is a stand to be taken by the constitutional system of the country).

The other big issue that makers of the sub-national constitution should take into account is the role of people in the making process. In the making of all the nine Ethiopian sub-national constitutions, the public has not been given the chance to take part. The experience differs and it is outstanding in Switzerland and Germany, which gives the public ultimate power in the making process. In Germany, the constitutional assembly or the lander parliament adopts the lander constitution but the final power of approval is given to the public.[39] The same thing holds in Swiss in which the people of the canton give the final blessing to the draft constitutional document before enactment. [40] The reality in Ethiopia is that there was no stage at which people were given the chance to have their say on what should the regional state constitution look like and contain. Public participation has a multifaceted advantage beyond entitling people to their right of taking part in the public affairs of the region. The people have not been consulted and given the chance to forward their say on the draft before promulgation. The preamble of all regional state constitutions stipulates that the constitution has been adopted after the people's representative of the region has made a detailed discussion.[41] Nonetheless, a note should be made that these representatives might not represent the interests of the people. Hence, the other fundamental thing that sub-national making in Ethiopia should consider is the role that peoples of the region play in the process.

The other good perspective that regional constitution-making in Ethiopia should look into account is the process of certification experienced in South Africa and South Sudan. Provincial constitution-making in the two countries has a stage of certification, in which an established organ evaluates the draft document. This task has a tremendous vitality in controlling constitution-

[39] Arthur B. Gunlicks, *Lander Constitution in Germany*, Journal of Federalism (1998),Vol.24, Pp.105-125.
[40] Swiss Constitution, *supra* note 33.
[41] Look at the preambles of all Ethiopian regional state constitution.

makers not to abuse their power. In the case of South Africa, it is the constitutional court of South Africa, which evaluates and certifies the provincial constitution without which it cannot get force.[42] This experience is also there in South Sudan in which the national ministry of justice is empowered to certify states' constitutions before adoption.[43] This trend will ensure the protection of the peoples of the regions and balance the federal system in good conditions. In our country Ethiopia, there is no such trend of reviewing regional states' constitutions before adoption. As things stand now, there is no regional state constitution, which goes against the values of the people and becomes a plight for the protection of human rights. But this could not be a guarantee as it is impossible to be predictive of the content of future regional state constitutions. So, independent organ should be established for the task of certification.

Ethiopia is a highly diverse nation with more than 80 ethnic groups having their own culture and values. This has something to tell about the expected distinctiveness of the sub-national constitution. If the making process is left for the constituent units autonomously, regional distinctness could be well ensured. The people of the region may make their culture and traditions part and parcel of the constitution, which has a great impact on enabling the constitution to address societal issues. The experience in South Sudan is a notable example in this regard. Sources of the state constitution in South Sudan are the custom and traditions and popular consensus of the people of Southern Sudan.[44] In Ethiopia let alone considering the people's customs and traditions, even the people have not made a part of the making process. The perusal of the preambles of regional states' constitutions provides that it intended to respond to region-specific values and beliefs.[45] But that is far from reality. So, sub-national constitution-making in Ethiopia should involve investigation of customs and traditions of the public and incorporate

[42] Vivien hart, *Constitution making and the Right to Take Part in Public Affair,* International Law Review (2018), Vol.7, Pp.235-333.
[43] Christian Murray, *supra* note 38.
[44] Christian Murray, *supra* note 38.
[45] Tsegaye, *supra* note 5, P.47

the same, which have varied advantages including making the constitutions legitimate documents.

8. THE MAKING OF THE OROMIA REGIONAL STATE CONSTITUTION

As was mentioned in the previous topic Oromia regional state has three constitutions in its history excluding the two subsequent amendments made to the constitution of 2001. The first constitution was enacted during the time of transition based on Transitional Period Charter. That is the Oromia regional state constitution of 1993. The actual objective of this document is to proclaim the right of self-determination that the Oromo people have in the transitional charter. It has also the objective of regulating the newly formed transitional government's powers and function and the right and duties of the public.[46]

Several writers forward different ideas as to the procedure through which such a document came into being. Some argue that the constitution is a document prepared by the federal government and principles of the constitution-making process has not been employed.[47] Regional states did not play any role in designing their constitution at all. And others suggest that nothing is known as to its making process.[48] Both views do not clearly show the existing reality on the ground. Hereunder the procedure involved in the constitution-making process has been provided section by section.

8.1. DRAFT PREPARATION

It is commonly known that in the law-making process, draft preparation is normally carried out by a body of experts incorporating several professional groups. In the making of the first Oromia regional state constitution, the

[46] Getachew Disasa, The Role and Relevance of Sub-national Constitution in Ethiopian Federation in Promoting Effective Self rule and Regional autonomy, The case of Oromia regional state constitution (Master thesis submitted for center for federalism and governance studies, Addis Ababa University, 2018)

[47] Zemelak Aytenew and Yonathan Tesfaye, *The Constitutional Status of Local Government in Federal System: The Case of Ethiopia,* Indiana University Law Journal, (2012), Vol. 4, Pp. 88-109.

[48] Tsegaye, *supra* note 5.

region neither organized a group for draft preparation nor prepared the draft in some other way. Rather it was a ready-made draft document, which was sent from the federal government.[49] My informant further forwarded that the draft prepared by the federal government was anchored in the Amharic language. This shows the fact that the regional council was not autonomous in the making process. At the regional level attempt was made to discuss the draft. The group of people who have deliberated on the constitution made the discussion in the Amharic language. It was Oromia regional state justice bureau, which translate it later into Afaan Oromo.[50] This act of the federal government is incorrect not only as a matter of procedure but also goes against the federal constitution. The federal constitution in its article 50 (5) gives the power of drafting, adopting, and amending the state constitution to the state council. Some may argue that the provision should not be invoked as the Oromia region precedes the federal constitution. Nonetheless, the same procedure has been involved in revising the regional constitution. So, the fact that draft preparation carried out by the federal government not only affects distinct realities of the region but also goes against the power that Oromia regional council has been entrusted with by the federal constitution.

8.2. PUBLIC PARTICIPATION

In preparing a fundamental document (which has the purpose of limiting the power of the government) like a constitution public participation is a determinant. Otherwise, it will be a mere imposition of the government interest, which enables the government to take to itself uncontrolled power. In the making process of the regional state constitution, it is rarely possible to say people were allowed to have their say directly or indirectly.[51] At the same time, this does not mean that discussion has not been made on the draft at the regional level at all. The perusal of the preambles of all constitutions

[49] Interview with Ato Demoze Mame, President of Oromia Supreme Court during Transitional Period, Currently he is chairman of Oromia Regional State Constitutional Interpretation Commission,(Caffe Oromia office at Addis Ababa Sar Bet, Jan 18/2012)
[50] Interview with Ato Addisu Melaku, Advisor of Caffe Speaker (Caffe Oromia office, Addis Ababa, Sar Bet, Jan 19/2012)
[51] Tsegaye, *supra* note 5

of the regions forward that the constitution is enacted after a detailed discussion has been made by the elected representative (state council) of the region. Nevertheless, the facts on the ground do not show that.

> *Regional judges selected systematically are political affiliates of the governing party, political institutions in one way or another were controlled by EPRDF, and Politician's holding higher governmental positions are the stakeholders who have been given a chance to reflect on the draft constitutional document. Opposition political parties, religious institutions, cultural institutions such as Aba Gadda's, NGO, international communities, and other relevant stakeholders were not given the chance to take part in the deliberation made.*[52]

Discussion by a few groups of individuals selected based on convenience is not tantamount to allowing the public to reflect their views on the matter. The failure of giving the chance to the public has multifaceted risks. Because people do not know the when and how of the process, the visibility of the constitution of the region has been affected. My respondent said that let alone ordinary citizens, there are even officials at the local administrative level who don't know about the regional constitution.[53] Hence, it would have been better if the public had been given the chance to partake which can contribute to the good of the constitution.

8.3. ADOPTION

The selected groups of individuals mentioned above made discussion from the start of May 1992 to the end of June 1992 (doing their regular official duty) on the issues of compatibility of the draft constitutional document with the existing realities of the region.[54] In a constitution-making process, time

[52] Sibhat Kefyalew, Constitutional Complaint Expert at Caffe Oromia (Addis Ababa, Sar bet, Jan 19, 2012)
[53] Interview with Ato Demoze, *supra* note 49, Jan 18, 2012
[54] Interview with Ato Isa Boru, Chairperson of Administrative and Legal Affairs Committee at Caffe Oromia (Addis Ababa, Sar Bet, Jan 19,212)

is a determinant element. The time framework should neither unnecessary be long nor short which could affect the quality of the outcome. To evaluate the content and compatibility of the draft to the existing realities of the region within two months is not reasonable. It was within such a time framework that the selection of stakeholders has made.[55] The result of the deliberation was nominal which did not serve later as an input for modifying the gaps in the draft. Regardless of some basic critics of the content, the original draft document was presented to the state council for approval.[56] Finally, it was the regional state council, which finally adopts the constitution as per Art 50 (5) of the FDRE Constitution.

8.4. SOURCES OF THE REGIONAL CONSTITUTION

In the constitution-making process, one basic thing to consider is the place from which the document is anchored. Particularly, in designing a sub-national constitution, the lawmaker should take due care to come up with a legal document, which shows the existing realities of the region. This approach is known as sub-national identity constitutionalism. It is the incorporation of important identity markers such as religion, cultural institutions, and language in the constitution. For example, in South Africa, the Kwan-Zulu natal constitution tried to incorporate the Zulu monarchy into the constitution. [57] Hence, using the region-specific values and traditions as far as it does not go against the federal constitution is a good approach to resort to designing a sub-national constitution.

The fact in most jurisdictions is that the source of the sub-national constitution is a national constitution. South Africa is a notable example of this approach. Ethiopia's sub-national constitution is not an exception to that. There is a substantial resemblance between the national and regional constitutions. Specifically, the bill of rights section of the Ethiopian sub-national constitution is considered as if they are a verbatim copy of the

[55] Tsegaye, supra note 5.
[56] Interview with Ato Adisu, *supra* note 50, June 19, 2012.
[57]Christophe Van der Beken,Sub-national Constitutional Autonomy and Accommodation of Diversity in Ethiopia, (68) 2006 , Pp.1535-1571

national constitution. From this, we can reach the deduction that the federal constitution is a major contributor to the regional constitution as a source.

The author expects that the Gada system (the traditional democratic ruling system of the Oromo people) might be the source of the Oromia regional constitution.[58] But the result after an investigation is negative. The first constitution of the region mention Oromo ethnic group was ruling itself through the Gada system (traditional administrative system) until it finally dominated and was set aside by the then feudal ruling. It only mentions that the Oromo ethnic group used to rule itself through an institution that made it based on the Gada system.[59] Other than mentioning Gada as customary rules of the Oromo ethnic group and experience of the ethnic ruling itself through the same, no values of the system have been incorporated in the constitution. Like the state constitutions of South Sudan, which employ customary rules of constituent units as a source, Oromia regional state should make a formal investigation on the Gada system whether or not it affects the fundamental rights of citizens and give a place for it in the constitutions.

8.5. CHALLENGES FACED IN THE MAKING PROCESS

The fact that the draft preparation was done by the federal government was the major setback that makes the whole process challenging. Persons and entities, which sit for discussion were unable to openly and freely comment on the ready-made constitution prepared by EPRDF under the strong leadership of TPLF. In addition to that, the participants reportedly showed reservations about active engagement due to the reason that their words may be politicized and bad things might follow.[60] The environment was not open enough to have a constructive debate on issues constitutional issues. The

[58] The provincial constitutions of South Africa and Sudan used custom and traditions as a source. I expected the same in the making of regional states constitutions in Ethiopia.
[59] Oromia Region Transitional Self-government Constitution, Proclamation No. 2 /1993, The Preamble
[60] Interview with anonymous key informant working in Caffe Oromia, (Caffe Oromia, Addis Ababa, Jan 18, 2018).

discussion was not the kind of discussion capable of evaluating the compatibility of the draft with the existing realities of the region.[61]

The other challenge of the making process is that the slight debate and the discussion made and the stand taken to alter were not considered as an input and finally the raw draft presented for discussion was brought back for adoption.[62] So, the discussion was nominal and only for formality purposes. The attempt of the federal government is the act of legitimizing the document by fulfilling some procedural steps of constitution-making.

The composition of the participant was the other point, which could be put as a setback in the constitution-making process. Inviting judges, public prosecutors, politicians of higher governmental positions, individuals, and entities that have political affiliation with the governing body will not suffice to come up with a good outcome. It is crystal clear that they don't come up with ideas, which go against the interests of the government. So, the composition should have been inclusive of all stakeholders such as opposition political parties, and religious and cultural institutions of the region. However, the fact that participation was limited to the person and entities loyal to the government made the discussion with no positive outcome.

9. CONSTITUTION-MAKING PROCESS IN THE SNNPR

Like other Ethiopian regional states, SNNPR enacted its first constitution in 1995. This constitution was revised when revision is made in all other regional states' constitutions in 2001. The SNNPR constitution has many distinctive features, save the existence of similarities among regional state constitutions, particularly in the bill of rights sections. That is due to the reason that the region is the total of several ethnic groups having their administration. Unlike other regions, SNNPR has two houses, i.e, state

[61] *Ibid.*

[62] Christophe van der Beken, Federalism in Context of Extreme Ethnic Pluralism, The case of SNNPR, Journal of Law and Politics in Asia, Africa and Latin America, (2013), Vol.46, Pp.1-17.

council and council of nationalities.[63] The latter has been entrusted with the duty of interpreting the regional constitution to balance the power entrusted to the former, which is mandated to enact regional laws.[64] The Council of Nationalities is structured like the House of Federation of the federal government. The composition and mandate given for the council of nationalities make it the regional counterpart of the House of Federation.

One may expect that due to the different ethnic composition, the SNNPR might have involved a sophisticated constitution-making process. Nonetheless, the reality is different from what it ought to be. A no different approach has been employed in making the process of the SNNPR constitution.

9.1. DRAFT PREPARATION

Unlike the Oromia region, in SNNP regional state the task of preparing the draft was carried out by a committee formed for such purpose under the direct control and supervision of Abate Kisho (the then president of the region) and Bitew Ayele.[65] The latter was formally appointed person to support party organization in the SNNPR, which later took many of the administrative tasks of the region and was considered the *de facto* head of the region.[66] Higher officials of the region prefer to get the blessing of Bitew before taking action on any crucial issues. So, even if a committee has been formed to draft the constitution, it has been prepared under direct control and supervision of these two persons, which are loyal officials of the federal government.

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[63] Constitution of SNNPR of Ethiopia Proclamation No.1/1995,

[64] Constitution of SNNPR of Ethiopia Procl. No1/1995, Arts.51 and 52

[65] Interview with Anonymous informant, The constitution drafting committee member and currently working as an expert in the Council of Nationalities (SNNPR capital Awasa, Jan 25, 2012). Bitew Ayele mentioned in the text was central committee member of TPLF and advisor of the then Prime Minister Meles Zenawi.

[66] *Ibid,* See also Lovise Allen, *The Politics of Ethnicity in Ethiopia: Actors, Powers and Mobilization under Ethnic Federalism*,African Social Science Series (2011), Vol.25, P 342

9.2. PUBLIC PARTICIPATION

SNNPR is a region, which is composed of multi-ethnic and linguistic societies. In such diversified societies, the constitution is expected to be representative of all existing interests to the extent possible. Unfortunately, the public was not allowed to reflect on the making process. A slight discussion has only been made among higher government officials, which started and completed within a very short period. [67] The wording of the preamble of the constitution that detail and a wide discussion have made by people representative of the region is not real.

9.3. ADOPTION

The federal constitution in art 50(5) gives the power of adopting a state constitution for a regional state council. SNNPR constitution was approved by the state council of the region. Simultaneously, a note should be made that the council was not free from the influence of the federal government. In addition to that SEDM, which was the dominant party in the regional parliament, is the affiliate party of the federal government. In one way or another even if the legal document has adopted by the state council, it was not free from the influence of the federal government.

9.4. SOURCES OF THE CONSTITUTION

A closer look at the constitution of SNNPR and the federal constitution gives an inference that the latter is the source for the former. This same approach holds for other constitutions also except that they regulate a local administrative structure, which does not get coverage in the federal constitution. This approach affects the competency of the regional constitution in serving the unique interest of the region.

[67] Interview with Aynekulu Gowatsuba, Supervision and Control Expert of SNNPR State Council, (SNNPR Council of State Office, Awasa, Jan 26/2012)

9.5. CHALLENGES FACED IN THE MAKING PROCESS

The discussion made on the draft constitutional document was not free and open. It didn't have the potential of evaluating the appropriateness of the content of the document. Persons who were representative of the federal government who didn't have any connection with the making process (have any expertise on the matter) took part in the discussion. And this makes other participants be reserved from giving comments on the draft.[68]

The time element was the other challenge. The committee was mandated to complete the discussion within a very short period by informing that other regions has already completed their part.[69] This was a surprising aspect of the process, which makes someone question how the status of other regions urges the making process to be completed so fast.

The approach employed in the discussion was problematic by itself. The chairman of the discussion was not chairing the deliberation with aim of getting new comments on the content. Rather, an explanation was given on everything to convince the participant to accept what has already been anchored.[70] So, the so-called deliberation on the draft was nominal.

10. REVISION PROCESS OF THE CONSTITUTION OF OROMIA AND SNNPR

All Ethiopian sub-national constitutions were amended after 2001. Oromia, Amhara, SNNPR, and Tigrai regional state revised their constitution in 2001 with a difference of days. And constitutions of Afar, Gambella, Benishangul Gumuz, and Somalia regional states made changes to their constitutions in 2002. Harar was the last regional state to revise its constitution in 2004. The perusal of the preambles gives an inference that the driving force pushing

[68] Interview with Mekonin Mergia, Legal and Administrative Affairs Directorate Director, SNNPR Council of Nationalities (SNNPR Council of Nationalities, Awasa, Jan 25, 2012)
[69] Ibid
[70] Tesfalem W/mikael, Legal Advisor of SNNPR State Council, Participated on the discussion made to enact the SNNPR Constitution of 1995(SNNPR State Council , Awasa, Jan 26, 2012)

the revision is similar. The need to realize good governance within the region and make the constitution adaptable to regional realities are the reason for which regional state constitutions are revised.[71] How regional states in such diversified societies could have a similar objective of making a change to their constitutions? Who should and who take the initiative of revising regional state constitutions? Do the requirements of the federal and regional constitutions for drafting; adopting and revising regional constitutions observed are some of the questions, which are going to be answered.

11. REVISION OF OROMIA CONSTITUTION

Constitutional revision/amendment/ starts from initiation and every constitution give the right of initiating the process to a specific organ/s. Members of Caffe, regional government administrative council, district councils, and kebele councils are entities who can initiate a revision. [72] Does this organ initiate the revision made to the ORS constitution on 27th October 2001 is the issue to consider here? The reality is that none of these organs have submitted initiating proposals for the state council. The revision process was rather initiated and set in motion by the federal government.[73] The perusal of the preambles of all regional state constitutions shows that the reasons for amending are similar which is a good indication of the fact that the federal government was the one that initiated the process. It means all regional states may not have a similar mindset (i.e. plan, budget, and initiation) to do that at the same time. And this makes us reach the deduction that there exist external factors (federal government), which made the ball rolling.

The task of preparing a draft document was entrusted to a committee composed of experts of different specializations. Judges, public prosecutors,

[71] Christophe Van der Beken, Sub-national Constitutional Autonomy in Ethiopia: on the road to distinctive regional constitution (Paper submitted to workshop, Sub-national constitution in federal and quasi-federal states, 2006). Read also the preambles that of all the nine regional states, which reads the same objective has induced the revision.

[72] A Proclamation to Enforce Oromia Regional State Constitution of 2001, Proclamation no. 46/2001, Art. 111

[73] Getachew, *supra* note 46.

and some other officials recruited from several sectors by the president of the region were mandated to prepare a draft. [74]

From this, it is simple to make an inference that the revision process was carried out under the direct control and supervision of the president. Only those individuals and groups who support the cause of the governing party were given the chance of taking part in the revision. Political convenience has taken into consideration when the selection is made among experts.[75] Other relevant entities and persons who can make positive contributions did not participate. From this, it is possible to make a good inference that the process made due care to safeguard the political objectives of the governing party rather than trying to address societal issues. Final approval to be made on amendment after discussion, the majority vote of the district council and the three-fourth majority vote of the chafe should be secured.[76] These are the only and exhaustive stakeholders to take part and vote in the process and other persons/entities/ cannot interfere in the process. Now the issue is whether such a requirement has been observed or not in the process.

The interference of the central government that has made during the making process has not changed during revision save the extent of intervention is limited. The perusal of the preambles of the constitutions gives an inference that they have the purpose of achieving the objectives of the federal government. The need to constitutionalize the separation of power among branches of regional government and the incorporation of accountability and transparency among the branch of government are some of the reasons for revision as one read the preambles of all regional state constitutions. This is one indication of the interference of the central government.[77] Even if the

[74] *Ibid.*
[75] Anonymous Informant, in *supra* note 60, Jan 26.
[76] Oromia Regional State Constitution, Art. 112 (2) (a) and (b).
[77] It seems that central government has terrified that the regional government may go powerful than before. It just wants to control what is going on behind the door. Nonetheless, that is not a good approach as far as power is given for region to enact and execute their constitution. Even if there is possibility of going beyond what has given (ultra virus), there should be other means of screening. Certification process in South Africa and South Sudan is a notable example.

regions enjoyed relative freedom in the revision compared to the making of the original constitution, it could not be possible to say those constituent units were autonomous in revising their constitutions.

12. REVISION OF SNNPR CONSTITUTION

As true for the constitution of Oromia and other regional states, the revision process of the SNNPR constitution is not an exception. As it is mentioned above, it was the federal government that took the lion's share in putting on the engine for the process. The SNNPR constitution provides that councils of state, the Council of Nationalities, Zones, and Special Woredas should initiate a revision to be made in the constitution.[78] Unlike the federations of Germany, Switzerland, and the USA that permits the people of the landers, states, and cantons respectively to make initiation of constitutional change, Ethiopia's sub-national constitutions do not empower the public to make initiation. So, who initiate the revision of the SNNPR constitution is the issue here?

> What we knew was that other regions have revised their constitutions. And our region's president announced in a meeting that we have been mandated to amend the constitution to make the constitution adaptable to the existing reality of the region.[79]

This is hilarious the reason that the president of the region cannot make initiation personally as he is not one among the list given under Article 124 of the regional state constitution. Only those exhaustive lists of persons can make initiation. It seems that the president took an order to do the same from the federal government.

The same organs given the duty of initiating the amendment process are given the power of approving (adopting) the revision after discussion. The difference is that the approval should be made by the cumulative vote of all

[78] The 1995 SNNPR Constitution, Art 125(1) (a) (b).
[79] Interview with Mekonin, *supra* note 68.

organs. The major setback at the stage of approving the revised SNNPR constitution was that the stakeholders do not clearly (with sufficient detail) know the content of the revised document.[80] It seems that they were allowed to participate to skip away from the possible critique that would arise if the task were carried out without their involvement. Their participation was nominal and for formality purposes and to meet the constitutional requirement of popular involvement.[81] The requirements of the law were not observed and people were not consulted in the amendment of the SNNPR constitution.

In closing, it is helpful and interesting to raise the remark made by Mr. Tesfaye Daba Wakjira (from ODP) who is a member of the Ethiopian House of People Representative (HPR) member at the meeting held on the issue of (non) extension of election in the parliament. The remark was made as a response to Dr. Addis Alem Balema (TPLF) on his stand that the election should not be postponed and by doing so the government takes unconstitutional measures.

> **ኢህድግ ባለፉት ግዝያት እንዴት ህግ እንደሚያወጣ ና እንደሚያሻሽል እኮ በደንብ እናዉቃለን:: ለምሳሌ የክልሎች ሕገ-መንግስቶች እንዴት ነዉ የተሻሻሉት! የክልሎች ፕረዚዳንቶችንና ም/ፕረዚዳንቶችን ጠቅላይ ሚኒስቴር ጽ/ቤት ድረስ በመጥራትና ቀጭን ትዛዝ በማስተላለፍ እንደተሻሻሉ የምናዉቀዉ ጉዳይ ነዉ::** [82]

From this point of debate at a parliamentary level, a good deduction could be that the sub-national constitution in general and the revision of the two regional state constitutions were made under direct control and supervision of the federal government.

[80] Interview with Anonymous informant, The constitution drafting committee member and currently working as an expert in council of nationalities, (Awasa, Jan 25, 2012).
[81] *Ibid.*
[82] Ethiopian Television Broadcast, Parliament debate on the extension of election Ethiopian 2012, May 5, 2020

13. CONCLUSIONS

Ethiopia is one among many countries following a federal system of government. The perusal of Art.1 of the federal constitution dictates this same fact. The existence of shared-rules and self-rule is one of the characteristics of federations. One of the means through which the self-rule of the constituent units within the federation manifested is through a sub-national constitution. Accordingly, many states within the federation have promulgated their constitutions. It is not necessarily a requirement for them to have their constitutions, as many constituent units within the federation don't have a constitution. There are even federations that expressly prohibited sub-national constitutions. These are Belgium, India, Nepal, Nigeria, and Pakistan. Save this exception many states within federations have their respective constitutions, which best advance self-rule. South Sudan, South Africa, Argentina, Australia, Germany, Switzerland, and the USA are some of those countries, which require states to have their constitutions.

In Ethiopia, the FDRE constitution under its articles 50(5) and 52 (2) (b) proclaims that regional states have the power of drafting, adopting, enacting, and executing state constitutions. Accordingly, all nine regional states enacted their constitutions in the 1990s and revised them after 2001. The Constitution of Oromia and SNNPR, which are the two regional states that are the center of this study, enacted their constitutions during this time. The reading of the preamble of the two constitutions gives us an inference that they have the same rationality for revision. The need to constitutionalize the principle of separation of power and establish accountability and transparency in the functions of government institutions are the two objectives, which are the reason for revising both constitutions.

Be that as it may, how those constitutions come into being are the center of this study. What were the processes involved? Who prepared the draft? What was the procedure for the same? What was the role of the public in the making process? Who adopted it are some of the questions tried to answer in this paper. Unlike the making process of ordinary laws, constitution-

making requires a long process and involves several stakeholders in due course. Particularly, when it comes to the making of a sub-national constitution, public involvement is crucial to realize its compatibility with the region's socio-economic and cultural circumstances.

The making process of the two constitutions involved several steps provided that it was there with its shortcomings. The first constitution of Oromia was drafted at the federal level, which was later sent to the region for discussion.[83] Although Afan Oromo is the regional working language, the draft prepared by the federal government /in Amharic/ was later translated into Afaan Oromo by the Justice Bureau of the region. Critiques, comments, and corrections given during the draft discussion were not considered as input. What was raised, as a suggestion to be corrected was later incorporated as they were before the discussion. All the deliberation made for two weeks was nominal. No significant difference was made in the making of the constitution of the SNNPR. It was a committee under the superior leadership of the then regional president Ato Abate Kisho and Ato Bitew Ayele who was TPLF supervisor of the Southern region political organization prepared the draft. No strong debate was made on the content of the document due to several reasons. The modes of the discussion take a form of imposition rather than giving the chance for the participant to evaluate their compatibility with the regional situation. Only higher officials of the government were participants in the discussion. Finally, the constitution approved by the state council was SNNPR with no other additional comment.

So, in general, the making process of the two regional states' constitutions did not pass through a special procedure. The perusal of the preamble of the two constitutions is a good indication of the fact that they are simple impositions from the federal government.

[83] Demoze Mame, Supra note 49.

14. RECOMMENDATIONS

- Regional states should utilize their constitutional power of drafting, adopting, enacting and executing constitution without federal government interference.
- To properly serve the purpose for which they are there, regional states should refrain from copying the federal constitution.
- There should be nationally agreed basic principles and standards, which each regional state consider in designing its constitution.
- The fact that the sub-national constitution-making process is participatory does not suffice. Rather, it should also be inclusive of all relevant stakeholders including opposition political parties.
- An independent and neutral organ such as the international community and NGOs should be part and parcel of the sub-national constitution-making process.
- State councils should take into account regional customary rules (if there is any to be considered) in enacting and executing the state constitution provided that does not go against basic principles of the federal constitution and international human rights principles.
- The two regional states' constitutions should be revised with due care observing constitutional-making methods and principles, and also by giving a hearing to the says of the public.

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HOJIIRRA OOLMAA QORANNOOWWAN ILQSO BARA 2001-2012*

Geetaachoo Fayyisaa**
Kadiir Qaasoo***

ABSTRACT

Research is instrumental in the effort to attain multifaceted development. These days one can witness the proliferation of research engagement in Ethiopia. However, critics have it that translation of these research works into meaningful community use is less common. Oromia Legal Training and Research Institute is one of the organs engaging in legal and justice research. From its commencement in 1999 until 2012 EC alone, the Institute has produced some 54 research works. However, some criticize the Institute for the lack of translating the outcome of its research into action. Therefore, this research is conducted to identify and explain how much of the research findings are implemented and what factors impacted its implementations. To this end, the research employed mainly qualitative methodology. Interview and focus group discussions were conducted with experts and leaders of research user organs. Relevant documents were analyzed. Additionally, a quantitative methodology like questionnaires is also used to supplement qualitative methodology. The research has revealed that despite many bottlenecks the Institute's research findings are translated into actions that have substantially influenced the legal and justice system in the region. Figuratively speaking, some 76% of the Institute's research has gone through the implementation process. This can be hailed as a massive achievement. However, the Institute has to adopt a relevant research implementation policy and other research stakeholders need to cooperate to scale up the research implementation for better impacts.

Keywords: Cooperation, Research implementation, Research policy, Research user

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* Barruun kun qorannoowwaan Inistiitiyuutiin Leenjiifi Qorannoo Seeraa Oromiyaa bara baajata 2013'tti qorachiise keessaa tokko yoo ta'u, maxxansa joornaaliif akka tolutti gabaabbatee kan dhiyaate dha. Ob. Tasfaayee Booressaa, Ob. Tafarii Baqqalaa fi Ob. Milkii Makuriyaa wixinee duraa qorannichaa gulaaluun yaada waan nuuf kennaniif, galateeffachuu feena. Dabalataan, qorannichi yaada hirmaattota woorkishooppiin gabbatee kan dhiyaate dha.

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1. SEENSA

Saayinsiin jireenya ilma namaa bu'uraan jijjireera. Bu'aawwan saayinsiin argaman kunneen hedduun hojii qorannoo kan bu'ureeffataniidha. Kanaaf, qorannoo fi saayinsiin seenaan isaanii walitti hidhataadha. Gaheen qorannoon guddina ykn badhaadhina roga hundaa keessatti qabu baroota 1950'*ootaa* kaasee sirritti hubatamuu jalqabe. Ergasii, hojiiwwan qorannoo hedduun tarsimoowwan guddinaa fi nageenya hawaasa addunyaa keessatti galtee ta'uu danda'aniiru.[1] Qorannoo fi qo'annoon leecalloon hedduun itti bahee gaggeefamu qaama fayyadamu (end user) bira gahee bu'aa buusuu ykn dhiibbaa gaarii uumuu qaba. Qorannoon gaggeeffame tokko bu'aa barbaadame akka buusu hojirra oolmaa isaa irratti hojjechuun barbaachisaadha. Hojirra oolmaan qorannoo immoo sirnaa fi tarsiimoo barbaada. Sirnii fi tarsiimoon hojiirra oolmaa qorannoo haala qabatamaa dhaabbilee qorannoo gaggeessan, qaamolee qorannoo fayyadaman, qaamolee imaammata bocan, dhaabbilee gaggeessaa fi hojiirra oolmaa qorannoo deeggaran ilaalcha keessa galchee kan hin qophoofnee fi sirnaan yoo hojiirra hin oolle qorannoo hojiirra oolchuun hin danda'amu.

Akka Itoophiyaattis ta'ee, akka naannoo Oromiyaatti, dhaabbilee barnoota olaanoo fi dhaabbileen qorannoo fi qo'annoo gaggeessan babal'ataa jiru. Haa ta'umalee, qorannoowwan dhaabbilee barnoota olaanoo fi dhaabbilee qorannootiin gaggeeffaman baay'een isaanii hojiirra oolaa akka hin jirree komii fi yaadni yeroo adda addaatti ni dhiyaata.[2] Qorannoon hojiirra oolaa hin jiru jechuun immoo, qabeenyi gaggeessa qorannoo irratti bahe akka qisaasamaatti kan ilaalamu ta'uu caalaa: dhaabbileen kunneen ergama dhaabbataniif galmaan gahaa akka hin jirre agarsiisa. Kun immoo, hojirra ooluu dhabuun qorannoo yeroo ammaa rakkoo cimaa furmaata argachuu qabu ta'uu nama hubachiisa.

Sirni haqaa akka biyyaas ta'ee naannoo Oromiyaa rakkoo cimaa keessa akka ture ni beekama. Fakkeenyaaf, qorannoon Baankiin Addunyaa ALA bara 2004

[1] William K. Holstein, Research and Development, Britannica, http://www. Britannica .com/ topic/research-and-development, < gaafa 1/25/2021 kan ilaalame>.
[2] Ethiopian Press Agency, Time for Applied Research to Bring about Solutions, March 21, 2019

gaggeesse, tajaajilli haqaa sadarkaa federalaas ta'ee, naannootti kennamu rakkoowwan akka dhaqqabummaa, qulqullinaa, harkifannaa, malaammaltummaa, bilisummaa qaamolee haqaatin kan danqame ta'uu addeessee ture.[3] Haaluma walfakkaatuun, qo'annoon ka'uumsaa (baseline study) sirna haqaa biyyattii irratti gaggeeffame rakkoolee sirna haqaa kanneenii fi hanqinoota mul'atan hubachiisuun furmaata adda addaas kaa'ee ture. Furmaatilee akeekaman kanneen keessaa tokko qorannoo seeraa bal'inaan gaggeessuu fi argannoo isaatti fayyadamuudha.[4] Hojii qorannoo kana akka gaggeessuuf Inistiitiyuutii Qorannoo Haqaa fi Sirna Haqaa Federaalaa akka biyyaatti hundeeffameera. Inistiitiyuutichi qorannoowwan seeraa addaa addaa gaggeessuun seeraa fi sirna haqaa biyyattii fooyyeessuu keessatti gahee akka qabaatu aangeffameera.[5]

Akka naannoo Oromiyaatti, rakkoolee sirna haqaa naannichaa keessatti mul'atan furuu fi sirna haqaa naannichaa cimsuuf Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qo'annoo Seeraa Oromiyaa *(kanaan booda,Inistiitiyuuticha ykn ILQSO jedhu fayyadamna)* hundeeffameera.[6] ILQSO'n ALI bara 1999 erga hundeeffamee eegalee: hojii leenjii fi qorannoo seeraa raawwateen sirna haqaa naannichaa cimsuu keessatti gahee olaanaa bahatee jira, bahataas jira.[7] Gama qorannoo seeraatiin, Inistiitiyuutichi hanga bara 2012tti qorannoo keessoo Inistiitiyuutichaa ilaallatan osoo hin dabalatin qorannoowwan baay'inni isaanii 54 ta'an gaggeessuun qaamolee bu'aa qorannoo fayyadamaniin gahuu danda'eera.

[3] Ethiopia, Legal and Justice Sector Assessment, World Bank, 2004.

[4] Federal Democratic Republic of Ethiopia *Comprehensive Justice System Reform Program* Baseline Study Report (Ministry of Capacity Building Justice System Reform Program Office, February, 2005).

[5] Justice and Legal System Research Institute Establishment Council of Ministers, Regulations No. 22/1997

[6] Dambii Hundeeffama Inistitiyuutii Leenjii Qaamolee Haqaa fi Qorannoo Seeraa Oromiyaa hundeessuuf bahe, Dambii lak 77/1999.

[7] Sakata'iinsi bu'aa leenjii fi qorannoo Inistitiiyuutichaa ALI bara 2010 fi isa dura gaggeefamaa ture Inistitiiyuutichi hojiilee leenjii fi qorannootiin bu'aa gaarii galmeessisaa ni hubatama. Inistitiiyuutichi gamaggama raawwii hojii gaggeefamaa turee fi waltajjiiwaan adda addaa irrattis raawwii hojii gaarii agarsiisuu fi sirna haqaa Naannoofis ta'ee biyyaaf tumsa guddaa gochuun leellifamaa tureera. Dabalataan, Joornaaliin Seeraa Oromiyaa Inistitiiyuutichi maxxansiisu dhimmoota seeraa fi haqaa irratti barreefamoota adda addaa maxxansuun sirna haqaa Naannoo fi biyyaaf gumaachaa taasisuun alattis fayyadamtoota idil-addunyaa horachuu danda'ee jira.

Hojii qorannoo Inistiitiyuutichi raawwatuun walqabatee, komiin yeroo hedduu dhiyaatu qorannoowwan Inistiitiyuutichaan gaggeeffaman hojirra oolaa hin jiran kan jedhudha. Komii kana furuuf, Inistiitiyuutichi sadarkaa hojiirra oolmaa qorannoo isaa irratti sakatta'a gaggeessaa turera. Sakatta'iinsi qorannoo kun qorannoowwan Inistiitiyuutichaan gaggeeffaman kanneen hojiirra oolan akkuma jiran kanneen hojiirra hin oolles kan jiran ta'uu mul'isee jira.[8] Komii fi duub-deebiin hojiirra ooluu dhabuu qorannoowwan Inistiitiyuuticha irratti dhiyaatu garuu xiqqaachuu hin dandeenye. Komii kana xiinxallanii fala kaa'uun barbaachisaa dha.

Qorannoo hojiirra oolchuuf sirnaa fi tarsiimoon hojiirra oolmaa qorannoo ni barbaachisa. Sirnii fi tarsiimoon kun akkaataa argannoowwan qorannoo irraa maddan gara qabatamaatti naanneffamanii bu'aa hawaasatiif oolan kan qajeelchudha. Sirnii fi tarsiimoon hojiirra oolmaa qorannoo bocamee hojiirra hin oolle taanaan qorannoon hojiirra oole ykn hin oolle jechuu ykn bu'aa isaa sakatta'uun ulfaataadha. Gama ILQSOtiin sirni fi tarsiimoon hojirra oolmaa qorannoo jiraachuu fi dhiisuu adda baasuu fi yoo kan jiraatu ta'e, bu'a qabeessa ta'uu madaaluun barbaachisaadha. Gama biraatin, argannoon qorannoo hojirra kan oolu atoomina qaamolee adda addaatini. Qaamoleen kunneen qaama qorannoo qoratu, qaamolee qorannoo fayyadamanii fi dhaabbilee hojiirra oolmaa qorannoo irratti deeggarsa kennanidha. Inistiitiyuutiin qaamolee kana waliin qindoomina cimaa hin qabu taanaan qorannoo hojirra oolchuun hin danda'amu. Haa ta'u malee, sadarkaan ILQSO'n qaamolee kana waliin atoomina itti horatee fi dhiibbaan inni hojiirra oolmaa qorannoo irratti uume maal akka ta'e adda hin baane.

Kana malees, qulqullinni qorannoo dhimmoota hojirra oolmaa qorannoo irratti dhiibbaa uuman keessaa tokkoodha. Qorannoon gaggeeffamu gaaffii qorannoo ifa ta'ee, mala qorannoo cimaa ta'ee fi argannoo ifaa fi hojirra ooluu danda'u kan hammate ta'uu qaba. Inistiitiyuutichi qorannoo qulqullinaa qabu, saayinsaawaa ta'ee fi rakkoo qabatamaa hiikuu danda'u gaggeessuuf: qajeelfamaa fi imaammata baafatee jira. Gama biraan immoo, qorannoo Inistiitiyuutichaa qulqullina hanga barbaadamu hin qabu komiin jedhus, fayyadamtoota irraa ni ka'a. Haata'u malee, sadarkaan qulqullina qorannoo Inistiitiyuutichaa fi dhiibban inni hojirra oolmaa irratti fide hin beekamne.

[8] Azzanaa Indaalammaa, Qorannoo Sakata'iinsa Hojiirra Oolmaa Qorannoo ILQSO bara 2006 gaggeefame

Kanaaf, dhimmoota kanneen xiinxalluu fi yaada furmaataa akeekuuf qorannoo kana gaggeessuun barbaachisaa ta'ee jira.

Kaayyoon qorannoo kanaa sadarkaa hojiirra oolmaa qorannoowwan ILQSO'n gaggeeffamaa turanii fi jiran xinxaluudhaan yaada furmaataa sirnaa fi tarsiimoo hojiirra oolmaa qorannoo bu'a qabeessa ta'e bocuu fi hojiirra oolchu dandeessisu dhiyeessuudha. Akkasumas, sadarkaan hojirra oolmaa qorannoo ILQSO yeroo ammaa irra jiru maal akka fakkaatu, qorannoo ILQSO hojirra oolchuuf haaldureewwan barbaachisan, haaldureewwan kanneen guutamuu qaban guutamuu ykn guutamuu dhabuu isaanii adda baasuu fi qorannoo hojirra oolchuuf qaamolee gahee qabaniifi atoomina isaan jidduu jiru xiinxalluus ni dabalata.

Qorannoon kun kaayyoo kana galmaan gahuuf, maloota qorannoo akkamtaa fi hammamtaa wal faana fayyadamee jira. Malli akkamtaa mala isa ijoo yoo ta'u, dhimmoota hojiirra oolmaa qorannoo irratti dhiibbaa qaban fi sirna jiru hubachuuf kan hojiirra ooledha. Haaluma kanaan daataan bifa Af-gaaffii fi marii gareetiin funaanamee jira. Gabaasa qorannoowwan ILQSO fi gabaasa raawwii qaamolee qorannoo fayyadamanii irratti xiinxalli qabiyyee/sanadaas gaggeeffamee jira. Af-gaaffiin gariin caaseffama haalota HOQ keessatti murteessoo ta'an tarsiimoo HOQ irratti jiruu fi rakkoowwan mudatan addaa baasuuf faayidaa irra ooleera. Haala kanaan qorannoo ILQSO'n gaggeesse fudhatanii hojiirra oolchuufi dhiisuu isaanii, tarkaanfilee fudhatan, yaadaa fi ilaalcha qaamoleen qorannoo fayyadaman hojirra oolmaa qorannoo ILQSO irratti qabanii fi atoomina isaan ILQSO waliin qaban irratti yaadaa fi hubannaa jiru adda baasuuf hoggantootaa fi ogeessota qaamolee qorannoo fayyadamanii waliin Afgaaffiin taasifamee jira. Haaluma kanaan, qaamoleen haqaa naannichaa jechuunis; Mana Murtii Waliigala Oromiyaa, Mana Hojii Abbaa Alangaa Waliigala Naannoo Oromiyaa, Komishinii Poolisii Oromiyaa fi Komishiinii Manneen Sirreessaa Oromiyaa irraa daataan sassaabbameera. Haaluma walfakkaatuun qaamolee haqaan alaa argannoo qorannoowwan ILQSO'n isaan ilaalu kan akka Biiroo Dhimma Dubartootaa, Daa'immanii fi Dargaggoota Oromiyaa, Waajjira Caffee Oromiyaa, Biiroo Dhimma Hojjataa fi Hawaasummaa Oromiyaa, Biiroo Bulchiinsaa fi Itti Fayyadama Lafaa Oromiyaa, Biiroo Aadaa fi Turizimii Oromiyaa, Biiroo Galiiwwanii Oromiyaa, Biiroo Daldalaa Oromiyaa, Abbaa Taayitaa Eegumsa Naannoo, Bosonaa fi Jijjiirama Qilleensaa Oromiyaa, Abbaa Taayitaa Misooma

Albuudaa Oromiyaa, Biiroo Misooma Qabeenya Bishaanii fi Inarjii Oromiyaa, ILQSO, Ejansii Galmeessa Ragaalee Bu'uuraa Hawaasummaa Oromiyaa, Komishini Naamusaa fi Farra Malaammaltummaa Oromiyaa, Komishiinii Investimentii Oromiyaa, Waajjira Qindeessituu Sagantaa Fooyya'iinsa Sirna Haqaa Oromiyaa, Biiroo Paabliksarvisii fi Qabeenya Humna Namaa Oromiyaa irraa haala hojirra oolmaa argannoo qorannoowwan qaamolee kanaaf ergaman hubachuuf daataan bifa afgaaffii fi marii gareetiin funaanameera. Daataa afgaaffii fi marii gareetiin gaggeefame kana deeggaruuf bargaaffiin ogeessota qaamolee hirtaa kanneen irraa sassabbamee jira.

Muuxannoo hojirra oolmaa qorannoo irratti jiru hubachuuf qaamolee qorannoo gaggeessan biroo kanneen akka Inistiitiyuutii Leenjii Qaamolee Haqaa fi Qorannoo Seeraa Federaalaa, Inistiitiyuutii Manaajimantii Itoophiyaa fi Inistiitiyuutii Qorannoo Qonnaa Oromiyaa irraa daataan afgaaffiin fudhatamee jira. Dabalataan qulqullina qorannoo ILQSO, hoj-maata fi tarsiimoo gaggeessaa fi hojirraa oolmaa qorannoo, atoomina qaamolee alaa waliin jiru hubachuuf gabaasni qorannoo, fedhiin qorannoo fi duub-deebiin gulaallii qorannoo ILQSO bara 2001 hanga bara 2012 gaggeefaman ilaalamaniiru. Bu'uura kanaan, qorannoo kana gaggeessuuf daataan Afgaffii 55, marii Garee 5 fi bargaaffiin 66 walitti qabamuun xinxaalamaniiru.

2. YAADDAMA, YAADRIMEE, CAASEFFAMA FI FAKKAATTIIWWAN HOQ MILKEESSUUF FAYYADAN: SAKATTA'A HOGBARRUU

Qorannoon tokko hojiirra oole ykn hin oolle jechuuf yaadrimee saayinsii hojirra oolmaa qorannoo hubachuun barbaachisaa dha. Yaaddamni (theory), yaadrimeen(concept), caaseffamni (framework) fi fakkaattiin (model) hojirra oolmaa qorannoo qajeelchuu, bu'a qabeessa taasisuu fi sakatta'uu keessatti gahee olaanaa qabu.

2.1 . HOJIIRRA OOLMAA QORANNOO (HOQ)

Hojirra oolmaan qorannoo saayinsii hojirra oolmaa (*implementational science*) jalatti hammatama. Yaadrimeen qorannoo hojirra oolchuu jedhu bu'uraan saayinsii fayyaa irraa kan fudhatamee dha.[9] Jechi hojirra oolmaa

[9] Celia Almeida, and Ernesto Báscolo, Use of Research Results in Policy Decision-making, Formulation, and Implementation: a Review of the Literature, Cad. Saúde Pública, Rio de

qorannoo (*research implementation*) jedhu, jechoota kanneen biroo kan akka qorannoo hojiitti hiikuu (*translation of research*), beekumsa dabarsuu (*transfer of knowledge*) fi kkf jedhamuunis ni beekama. Akka saayinsii fayyaa hawaasaatti, hojirra oolmaan qorannoo malaa fi sirna ragaawwan qorannoo fayyaa irratti argaman (*research-based evidences*) gara gochaa fi sirna qabatamaan fayyaa hawaasaa gargaarutti itti jijjiiranidha.[10] Gosootni beekumsaa (discipline) kanneen biroos, hiika hojirra oolmaa qorannoo kana haala isaanii faana madaqsanii itti fayyadamu. Kanaaf, hojirra oolmaa qorannoo jechuun akkaataa ragaan qorannoo saayinsaawaan argame gara hojimaataa fi gochawwan qabatamaan hawaasa fayyadanitti itti jijjiiramu jechuudha.

Argannoon qorannoo tokko ykn beekumsi haaraa argame tokko faayidaa Sadi qabaachuu danda'a. Kunis; kallattiidhaan dhimma furuuf yaadame sana hiikuu (instrumental use), hubannoo dabaluu (conceptual use) fi faayidaa fakkeessaaf (symbolic use) ooluu danda'a. Faayidaan fakkeessaa murtee dursee darbe ittiin mirkaneeffachuuf yommuu yaadameedha.[11] Hojirra oolmaa qorannoo yommuu sakattaanu beekumsa qorannoo irraa argame haala itti fayyadama olitti ibsaman sadan keessattuu madaaluun ni barbaachisa.

2.2 . YAADDAMAA FI CAASEFFAMA HOJIRRA OOLMAA QORANNOO KEESSATTI GAHEE QABAN

Adeemsa qorannoo hojiirra oolchuu ifaa fi bu'aa qabeessa taasisuuf yaaddamootni fi caaseffamoonni adda addaa hojirra ni oolu. Yaaddamoonni fi caaseffamoonni kunneen baay'ina kan qabanii fi haala qindaa'aa ta'een kan hin gurmaa'iin waan ta'eef, akkaataan fayyadama isaaniis fedhii fi hubannaa qaama fayyadamuu irratti kan hundaa'edha. Yaaddamoonni qorannoo hojirra oolchuu keessatti gahee qaban, yaaddamoota ogummaa xiinsammuu,

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Janeiro, 22 Sup:S7-S33, 2006, http:// www.scielo.br /pdf/csp/ v22s0/02.pdf < gaafa 1/29/2021 kan ilaalame>

[10] Schillinger, D., An Introduction to Effectiveness, Dissemination and Implementation Research. P. Fleisher and E. Goldstein, eds, From the Series: UCSF Clinical and Translational Science Institute (CTSI) Resource Manuals and Guides to Community-Engaged Research, P. Fleisher, ed. Published by Clinical Translational Science Institute Community Engagement Program, University of California San Francisco (2010) http:// ctsi. ucsf. edu/files/CE/edi _introguide.pdf

[11] Sudsawad, P., Knowledge Translation: Introduction to Models, Strategies, and Measures. Austin, TX: Southwest Educational Development Laboratory, National Center for the Dissemination of Disability Research (2007), F.21

yaaddama haala jaarmiyaa (organizational theory), yaaddama haala hawaasaa (sociological theory) fi kkf irraa kan fudhatamanidha. Yaaddamotaa fi caaseffamootni kunis gaditti xiinxallamaniiru.

Caaseffama qindaa'aa hojirra oolmaa qorannoo (consolidated framework for implementation of research (CFIR) - dhimmoota haala qorannoon hojirra itti oolu keessatti dhiibbaa uuman beekuu fi itti qophaa'uf kan gargaarudha. Caaseffama kana keessatti dhimmoonni hojirra oolmaa qorannoo keessatti gahee qabanii fi ibsamni isaanii kan itti xinxaalamu. Dhimmoonni kunneenis: tarkaanfiiwwan fudhataman, haala qaama qorannoo hojirra oolchuu, haala qaama qorannoo fayyadamuu, haala qaamota qorannoon ala jiranii, haala namoota hojirra oolmaa qorannoo keessatti hirmaatanii fi adeemsa qorannoo hojirra oolchuuf tolfame dha. Haalonni dhimmoota kanneen ibsan immo: qulqullina, rogummaa, faayidaa, madaqfamuu fi dhaqqabummaa qorannoo, imaammata, haala qabatama naannoo qorannoon hojirra itti ooluu fi sadarkaa qophii fi raawwii hojirra oolmaati.[12]

Yaaddama Tamsa'ina Kalaqaa (Diffusion of Innovation Theory) - akkaataa kalaqni tokko fayyadamtoota bira itti gahu, amaloota fi dandeettii itti madaquu fayyadamtootni kalaqa irratti qaban kan ibsudha. Dhimmoonni tamsa'ina kalaqaa/qorannoo irratti dhiibbaa taasisan, faayidaa kalaqichaa/ qorannichaa (relative advantage), walsimannaa kalaqichi/qorannichi haala qaama fayyadamuu waliin qabu (compatability), kalaqichi salphaattii kan hubatamu/fayyadamamu ta'uu fi dhabuu isaa (complexity), kalaqichi guutummaatti osoo hojiirra hin oolchin yaalamuu kan danda'u ta'uu isaa (triability) fi bu'aa mul'atu kan argamsiisu (observability) ta'uu isaati.[13]

Yaaddama dhaqqabuu, bu'a qabeessummaa, fudhannaa, hojirra oolchuu, sirnaa'uu ykn DhBFHS (RE-AIM - Reach, Effectiveness, Adoption, Implementation, Maintenance) keessatti xiyyeeffannoon guddaan hammatummaa ragaan qorannoo qaamota daataan qorannoo irraa hin funaanamne irratti qabu (external validity) adda baasuudha. Akka yaaddama kanaatti, qorannoo tokko hojiirra oolchuuf gulantaa shan (5) keessa darbuu

[12] Damschroder LJ and et al, Fostering Implementation of Health Services Research Finding into Practice: Consolidated Framework for Advancing Implementation Science, Implement Sci.2009 (1), F50

[13] Behavioral Change Models, Diffusion of Innovation Theory, http:// sphweb. bumc. bu. edu/otlt/MPH-Modules//SB, <gaafa 1/28/2021 kan ilaalame >

gaafata. Kunis yaada qorannoo qaama akka fayyadamu barbaadame biraan gahuu, bu'a qabeessummaa tarkaanfiiwwanii madaaluu, ofitti fudhannaa fayyadamtootaa madaaluu, hojiirra oolchuu fi hojiirra oolmaa sirna taasisuun akka itti fufiinsa qabu taasisuu dha.[14]

Caaseffama hojiirra oolmaa qulqullina (Quality Implementation Framework) immoo qorannoo haala qulqullina qabuun hojirra oolchuu irratti kan xiyyeeffatedha. Kunis adeemsa qorannoo hojii irra oolchuu keessatti tarkaanfiiwwan gulantaa adda addaatti fudhataman kan qajeelchuu dha. Haaluma kanaan, argannoo qorannoo tokko gara hojiitti jijjiiruun dura qophiilee barbaachisan (bu'aa qorannoo madaaluu, hojirra oolmaa karoorfachuu, sirna hojirra oolmaa diriirsuu, qaama fayydamu waliin walta'uu fi hubannoorra ga'uu, atoomina qaamolee hojirra oolmaa qorannoo argachuu fi kkf) raawwatamuu qabu. Itti aansuun, haala qaama bu'aa qorannoo fayyadamuu madaaluun barbaachisaadha. Haalli qaama qorannoo fayyadamuu erga adda ba'eefii qorannicha hojirra oolchuu irratti erga waliigalamee booda qaama ykn garee qorannicha hojirra oolchu ramaduun gara sochii hojirra oolmatti seenuu dha. Adeemsa hojirra oolmaa keessatti hojiiwwan raawwatamaniif deeggarsa kennuu, hordofuu fi yaadota fooyya'iinsaa fudhachuun dhimmoota barbaachisoo dha.[15]

Caaseffama hirmaachisaa (Interactive System Framework) - adeemsaa fi sirna qorannoo gaggeeffamee fi bu'a qabeessummaan isaa madaalame gara faayidaa bal'aatti ceesisuuf gargaaruudha. Xiyyeeffannoon isaas haalota mijataa qorannoo hojirra oolchuuf dandeessisan (infrastructure), dandeettii kalaqaa fi sirnoota qorannoo hojiitti naanneessuuf fayyadan (kan akka sirna kurfeessa fi hojirra oolmaa, sirna deeggarsaa fi sirna dhiyeessi) irrattidha. Sadarkaa qorannoo kurfeessuu fi sirna hojirra oolmaa diriirsuu keessatti ragaa qorannoon argame calaluun haala qaama fayyadamuuf ta'utti (user-friendly) gara meeshaa ykn yaada ykn hojimaata qaamni fayyadamu barbaadutti jijjiruun ni hojjetama. Haala fayyadama bu'aa qorannoo mijeessuudhaaf maanuwaalii, qajeelchituu, wixinee ykn tooftaa biraa fayyadamummaa cimsu qopheessuun barbaachisaadha. Bu'aan qorannoo haala kanaan kurfaa'ee

[14] What is RE-AIM, https://www.re-aim.0rg/about <gaafa 1/27/2021 kan ilaalame>

[15] Duncan C. Meyers, Joseph A. Durlak and Abraham Wandersman, The Quality Implementation Framework: A Synthesis of Critical Steps in the Implementation Process, American Journal of Community Psychology · May 2012, DOI: 10.1007/s10464-012-9522-x · Source: PubMed, F8.

qophaa'e, qaama fayyadamuuf kennamuu qaba. Kenniinsi bu'aa qorannoo (delivery) namoota, dhaabbilee ykn hawaasa hojirra oolmaa qorannoo keessatti hirmaatu hirmaachisuu danda'a. Sadarkaa kanatti, bu'aan qorannoo sun hojirra ooluu kan jalqabuu fi faayidaan isaa yommuu itti hubatamudha. Kenniinsi bu'aa qorannoo immoo sirna deeggarsaatiin (support system) utubamuu qaba. Kana jechuun qabeenyaa fi haala mijataa qorannoo hojirra oolchuu fi bu'a qabeessummaa isaa dabaluuf ooluun deggaramudha. Sirna kana keessatti leenjii humna raawwattoota qooda fudhattootaa cimsu, gargaarsa teekinikaa kennuu ykn jijjiirama jiru madaaluun ta'uu danda'a.[16]

Qaamolee hojiirra oolmaa qorannoo keessatti hirmaatanii fi gahee isaanii akkasumas, tarkaanfiiwwan hojiirra oolmaa qorannoo keessatti murteessoo ta'an adda baasuun akkaataa tarsiimoon hojirra oolmaa qorannoo itti qophaa'uu fi hojiirra itti oolu danda'u kan qajeelchan fakkaattiin ykn moodelli hojiirra oolmaa qorannoo adda addaa ni jiru. Fakkeenyaaf akka *fakkaattii Inistiitiyuutii Qorannoo Fayyaa Biyya Kanaadaa (Canadian Institute of Health Research Model)* beekumsi qorannoo irraa argame walitti dhufeenya qaamni qorannoo gaggeessuu fi qaamni qorannoo fayyadamu adeemsa ykn maroo qorannoo (research cycle) keessatti taasisuun darbuu akka danda'u agarsiisa. Kunis; adeemsa hima rakkoo baasuu fi mala qorannoo tolfachuu, atoomuun qorannoo gaggeessuu, argannoo qorannoo afaan ifa ta'een maxxansuufi dhaqqabamaa taasisuu, argannoo qorannoo haala beekumsa kanneen biroo fi aadaa hawaasaa ilaalcha keessa galcheen kaa'uu, argannoo qorannoo bu'ureeffachuun murtii fi tarkaanfii fudhachuu fi beekumsa qorannoo irraa argame irratti hundaa'uun hojii qorannoo biroo hubachuufaa dha.[17]

Fakkaattiin (Moodeelli) hariiroo irratti xiyyeeffatu (Interaction-focused model) immoo fedhii qaama qorannoo fayyadamuu beekuu fi walitti dhufeenya adeemsa beekkumsa dabarsuu keessatti taasifamu qajeelchuuf kan gargaarudha. As keessatti dhimmoonni xiyyeeffannoon ilaalamuu qaban; haala fayyadamaa qorannoo, dhimma (rakkoo) qorannoo, hariiroo qaama qorannoo gaggeessee fi fayyadamu gidduu jiruu fi tarsiimoo raabsa qorannooti. Haalota fayyadamtoota qorannoo (user group) kan akka haala hundeeffamaa, haala hojii itti gaggeessu, adeemsa murtii dabarsu, muuxannoo

[16] Akkumasa olii, F.3
[17] Sudsawad,P,Olitti yaadannoo lak.11ffaa

qorannoo irratti qabu, ilaalcha qorannicha irratti qabu fa'a beekuun barbaachisaa dha. Dhimmi rakkoo adeemsa dabarsa beekumsaa ykn hojiirra oolmaa qorannootiin furamuudha.Qorannoon walqabatee qulqullinaa fi rogummaa qorannichi rakkoo qaama fayyadamuu waliin qabu adda baasuudha. Dhimmoota kanneen gaaffilee adda addaa gaafachuun sadarkaa fi haala fayyadamaan qorannoo irra jiru adda baasuun hojiirra oolmaa qorannoo bu'a qabeeessa taasisa.

Qorattootni fakkaattiiwwan kana iddoo afuritti qoodanis jiru. Isaanis; fakkaattii kallattii (linear or knowledge driven model), fakkaattii rakkoo hiikuu ykn fedhii imaammataa irratti hundaa'u (problem solving or policy driven), fakkaattiin walatoommii (interaction model) fi suutee (sedimentation model) dha.[18]

Fakkaattin kallattii (linear or knowledge driven model) - beekumsi qorannoon argame kallattiin gara hojii ykn imaammataa akka jijjiiramu tilmaama kan fudhatudha. Kunis qaamni qorannoo gaggeessu qorannoo qulqullina qabuu fi argannoo iftoomina qabu kan qopheesse yoo ta'e, qaamni imaammata baasu kallattiin argannoo qoranichaa gara imaammataatti ni jijjiira yaada jedhu qaba. Fakkattiin kun, haala qabatamaa qaamni qorannoo fayyadamu keessa jiruuf xiyyeefannoo kennuu dhabuudhaan ni qeeqama.

Fakkaattiin rakkoo hiikuu ykn fedhii imaammataa irratti hundaa'uu (problem solving or policy driven model) keessatti qaamni qorannoo gaggeessu haala qabatamaa qaama qorannoo fayyadamuu ilaalcha keessa galchee filannoo qaama fayyadamuu irratti hundaa'uudhaan furmaata dhiyeessa. Akkaataa dabarsa beekkumsaa irratti qaamoleen lamaan mala itti walqunnaman qabaachuu isaan gaafata.

Fakkaattiin walatoommii (interaction model) immoo qaamni qorannoo gaggeessuu fi qorannoo raawwatu qorannoo gaggeessuufi hojiirra oolchuu irratti haala walfaana itti hojjetani dha. Fakkattiin biraa suutee (sedimentation

[18] Abate Kassaw and Selamawit Weldselassie, Research-Policy Linkage in Ethiopia: A Focus on Selected Ministries/Government Agencies and Research Institutions (Ethiopian Civil Service University, Paper on Public Policy and Administration Research, 2015), Vol.5, No.9, F89.

model) jedhamu immoo, dhiibbaan qorannoon qaama imaammata baasu irratti qabu kan alkallattii ta'ee fi altokkoon kan hin mul'anne, inumaayyuu jijjiirama hubannaa fi beekumsa suuta dhufuun qorannoon hojiirra akka oolu amana. Akka fakkaattii kanaatti qorannoon tokko rakkoo jedhame kallattiin, altokkooni fi guutummaatti hiikuu caala hubannoo argameen suuta furuu danda'a amantaa jedhu qaba. Fakkaattii kana jalattii qorannoo hojiirra oolchuuf qaamoleen biroo hubannoo fi dadammaqiinsa irratti hojjetan ni barbaachisu.

Qorannoon tokko hojiirraa akka oolu madda kaka'umsaa ykn fedhii irratti hundaa'uun fakkaattii hojiirra oolmaa qorannoo iddoo sadiitti hiruun ni danda'ama. Isaanis; kan qaama qorannoo gaggeesse irraa madduu (push/supply model), kan qaama qorannoo fayyadamu irraa madduu (pull/demand model) fi walhubannaa qaamolee kanneenii irraa kan madduu (interaction/engagement model) dha. Hojiirraa oolmaa qorannoo bu'a qabeessa taasisuuf fakkaattii walatoommii (interaction/engagement model) fayyadamuun ni gorfama.[19]

Fakkaattiin HOQ wantoota adeemsa hojiirra oolmaa qorannoo keessatti murteessoo ta'an afur of keessatti hammata. Isaanis; madda, ergaa, qaama fayyadamu (audience) fi mala (channel) dha. Maddi qaama qorannoo raawwatu ykn qorattoota yoo ta'an, ergaan immoo ragaa bu'aa qorannoo argamedha. Fayyadamtootni kanneen bu'aa qorannootti dhimma bahanidha. Malli akkaataa bu'aan qorannoo qaama qorate irraa gara isa fayyadamuutti ittiin darbudha. Kutaaleen adeemsa hojiirra oolmaa qorannoo kunneen walqabatanii kan hojiirra oolanidha. Muuxannoowwan argaman irraa akka hubatamutti, hojirra oolmaa ergaa ykn argannoo qorannoo bu'a qabeessa gochuuf taatota imaammata (policy actors/makers) gaggeessa qorannoo keessatti dursanii hirmaachisuun baay'ee fayyada. Hirmaannan kunis, odeeffannoo wal jijjiruu hanga qorannoo waliin gaggeessuu bal'achuu danda'a.Taatotni imaammata gaggeessa qorannoo keessatti yommuu hirmaatan, qorattootni haala hojimaata imaammataa, akkasumas taatotni imaammataa immoo akkaataa gaggeessa qorannoo waan hubataniif, bu'aan qorannichaa dhiibbaa tokko malee salphaatti hojirra ooluu danda'a. Qabxiin

[19] Jim Parsons, Indicators of Inputs, Activities, Outputs, Outcomes and Impacts in Security and Justice Programming, Department of International Development, 2013, F.8.

biraa akka muuxannootti ka'u, bu'aa qorannoo yeroo haala dhaqqabamaa ta'eefi hubatamuu danda'uun fayyadamtootan gahuun hojirra oolmaa qorannoo ni mijeessa. Haaluma kanaan, bu'aan qorannoo maxxansaan, marsariitiin, sab-qunnamtii hawaasaa, suur-sagalee fi haala biraa mijataa ta'etti fayyadamuun qaama fayyadamuu danda'u hunda biraan ga'uun barbaachisaadha. Bu'aan qorannoo kunis haala fayyadamtootaaf galuu danda'uun ta'uu qaba.

Walumaagalatti, hogbarruu armaan olii irraa kan hubatamu HOQ keessatti dhimmoonni xiyyeeffannoo argatanii fi sakatta'amuu qaban: Qulqullinaa fi dhaqqabummaa qorannoo, haala qaama qorannoo gaggeessee, tarsimoo fi sirna HOQ, haala qaama qorannoo fayyadamuu fi Atoomina qaamolee qooda qaban waliin taasifamu dha.

2.3 SIRNA HOJIIRRA OOLMAA QORANNOO ILQSO

Inistiitiyuutichi hojimaata bittinnaa'aa fi rakkoolee sirna haqaa keessa jiran irratti qorannoon yaada furmaataa akka burqisiisu aangeffamee jira.[20] Hojii kana immoo yommuu raawwatu qaamolee rogummaa qaban biroo waliin atoomuu akka danda'u dambiin ni akeeka.[21] Haa ta'u malee, dambiin kun waa'ee hojiirra oolmaa qorannoo irratti kallattii hin keenye. Dambii kana bu'ureeffachuun qajeelfamni gaggeessa qorannoo irratti bahe[22] waa'ee gaggeessa qorannoo fi hojiirra oolmaa qorannoo qabxiilee hedduu kaa'ee jira. Akkaataa jalqaba gaggeessa qorannoo irraa kaasee haala qaamolee Inistiitiyuutichaan ala jiran waliin atooman, qorannoon gaggeeffamu kan rakkoo qabatamaa hiikuu danda'uu fi qulqullina kan qabu akka ta'u ni kaa'a. Dabalataan, bu'aawwan qorannoo Inistiitiyuutichaa dhaqqabamaa akka ta'anis qajeelfamichi kallattii kaa'ee jira. Haaluma kanaan, qorannoowwan erga gaggeeffamanii booda workishooppiif dhiyaatanii kan raggaasifaman yoo ta'u, itti aansuun argannoowwan qorannichaa akka hojiirra oolchaniif qaamolee dhimmi ilaallatuuf argannoo fi yaadni furmaataa akka ergamu ni taasifama. Qajeelfamni qorannoo kun akkaataa qorannoon Inistiitiyuutichaa hojiirra itti ooluu fi deeggarsa Inistiitiyuutichi qaamolee qorannoo fayyadamaniif taasisuu qabus hammatee jira. Dabalataan, Inistiitiyuutichi

[20] Danbii Hundeeffama ILQSO Lak.77/1999, kwt.7(3)
[21] Akkuma 20[ffaa], kwt.7(4)
[22] Qajeelfama Qorannoo Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qorannoo Seeraa Oromiyaa Lakk.3/2004

qulqullina qorannoo gaggeessuu dabaluu fi hariiroo qaamolee alaa waliin uumuuf imaammata qorannoo baasee jira. Haaluma kanaan, imaammata qorannoo fi qo'annoo Inistiitiyuutichaa kutaa 6 jalatti akkasumas, qajeelfama qorannoo[23] keessatti waa'een hojirra oolmaa qorannoo kaa'ameera. Haaluma kanaan, Inistiitiyuutichi qorannoo hojirra oolchuuf wantootni itti aanan raawwachuu akka qabu ni akeeka:

- Seminaarota fi workishooppota adda addaa irratti dhiyeessu
- Konfirensoota sadarkaa biyyaatti qooda fudhattoota, hoggantoota, ogeessota dhuunfaa fi kkf hirmaachise irratti dhiyeessuu
- Meeshalee Sab-qunnamtiitti fayyadamuu
- Daata beezii adda addaa keessatti bu'aa qo'annichaa fi qorannichaa galmeesanii qabaachuu
- Bu'aa qo'annoo fi qorannoo bifa kitaabaan maxxansuu
- Joornaalota adda addaa irratti yaada waliigalaa qorannoo fi qo'annoo ibsuu
- Qaama dhimmi isaa ilaalu waliin ta'uun fayyadamtootaaf bu'aa qorannichaa raabsu
- Weeb saayitii/marsariitii/adda addaa irratti lakkisuu
- Qaamolee qorannoo fayyadamaniif deeggarsa ogummaa taasisuu kan jedhanidha.

2.4 TOORA XIYYEEFFANNOO QORANNOOWWAN ILQSO FI YAADOTA FURMAATAA KENNAMAN

Akkuma dambii hundeeffama Inistitiyuutichaa keessatti ibsame qorannoon seeraa Inistitiyuutichi gaggeessu dhimmoota gurguddoo lama irratti xiyeeffata. Isaaniis: fooyyessa qaamolee haqaa fi sirna seeraati. Gama kanaan, qorannoowwan ILQSO yoo ilaallaman dhimmoota kanneen lamaan haala giddu-galeessa godhateen kan gaggeeffaman ta'uu ni hubatama. Akka waliigalaatti, qorannoo hanga ammaa gaggeffamaa ture dhimmoota ijoo itti aanan irratti kan xiyyeeffatanii dha.

- Sirna keessoo Qaamolee Haqaa gama naamusa- gaafatamummaa sirna madaallii hojii fi ogeessaa cimsuu
- Iftoominaa fi bu'a qabeessummaa kenniinsa tajaajilaa qaamolee haqaa dabaluu

[23] Qajeelfama Qorannoo Lak.3/2004, kwt.16 (2).

- Bulchiinsa haqa yakkaa haqa-qabeessaa taasisuu
- Bu'a qabeessuummaa adabbii fi haaromsa sirreeffamtoota seeraa dabaluu
- Bulchiinsa haqaa keessatti maatii, daa'immanii fi dubartootaaf eegumsa gochuu
- Sirna qabiinsaa fi itti fayyadama ragaa fooyyessuun ragaa sobaa to'achuu
- Qulqullina fi to'annoo seerotaa cimsuu
- Sirna itti-fayyadama lafaa cimsuu
- Sirna seeraa aadaadhaan utubuu
- Sirna hariiroo hojii haqa qabeessa gochuu
- Tajaajila abbaa seerummaa qaamolee haqaan alaa jiran haqa qabeessa taasisuu
- Mirga diinagdee fi fayyaa hawaasaa eegsisuu
- Sirna federaalizimii fi mirga ofiin of bulchuu cimsuu irratti kan xiyyeeffatanidha.

3. GABAASAA FI XIINXALA DAATAA HOJIIRRA OOLMAA QORANNOOWWAN ILQSO

3.1 GABAASA DAATAA AFGAAFFII FI MARII GAREETIIN FUNAANNAMEE

Qorannoowwan ILQSO'n gaggeeffamaa turan argannoofi yaadota furmaataa hedduu qaamolee hojiirra oolchuu danda'an adda addaatiif akeekanii jiru. Bu'aan qorannoo fi yaadotni furmaataa kunneen qaamolee kanneeniif ergamanii hojii irra oolchun tajaajila kenniinsa haqaa naannichaa haqa-qabeessa, dhaqqabamaa, si'ataa fi tilmaamawaa akka ta'u taasisuun sirna haqaa naannichaaf faaydaa akka buusan taasisuun barbaachisaadha. Kana ilaalchisee, qaamoleen hojiirra oolchan bu'aa qorannoo kanneenii haala kamiin hojiirra oolchaa jiru kan jedhu hubachuuf qaamolee yaadotni furmaataa ilaallatu irraa daataan bifa af-gaaffii fi marii gareetiin funaannerra. Gabaasni daataa sassaabbaman kanaas akka itti aanutti dhiyaateera.

3.1.1.1.Mana Murtii Waliigala Oromiyaa

Argannoon qorannoowwan mana murtii ilaallatanii gurmaa'insa, bilisummaa, itti gaafatamummaa, iftoomina, si'oominaa fi bu'a-qabeessummaa tajaajila

Abbaa seerummaa akka cimsan kanneen akeekamanii dha. Hojirra oolmaa Yaadota furmaataa mana murtiif laatamaniin walqabatee tarkaanfilee fudhatamanii fi sadarkaa hojiirra oolmaa qorannoowaan kanaa irratti ogeessotaa fi hooggantoota MMWO waliin[24] marii garee xiqqaa taasifnee yaadota itti aanu nuuf kennanii jiru.

Hirmaattotni marii garee kunneen akka waliigalaatti qorannoon ILQSO sirna haqaa ijaaruu keessatti ka'uumsa cimaa ta'ee jira yaada jedhuun jalqaban. Qorannoowwan hanga barbaadame hojiirra ooluu baatanis yaadotni furmaataa kaa'aman haala adda addaan yommuu hojiirra oolan ni mul'ata jedhu. Tokkoon tokkoo qorannoo mana murtiif gaggeeffamee ilaalchisees, hojiirra oolmaa isaaf tarkaanfilee fudhataman ibsuuf yaalaniiru. Fakkeenyaaf, qorannoo *Itti gaafatamummaa fi Naamusa Abbootii seeraa* akkasumas *Naamusa Ogeessota Qaamolee Haqaa* jedhu xiyyeeffannoo argatee irratti hojjetamuu ibsan. Yaada furmaataa ijoo qorannoowwan kanneeniin akeekame dhimmi dagaagina naamusaa irratti hojjetamaa jira. Waajjirri Inspeekshinii dhimma naamusaas dabalatee, waajjira Inispeekshinii fi naamusaa jedhamuun gurmaa'eera jedhan. Itti gaafatamummaa waliin walqabatee yaadonni kennaman guutummaatti hojiirra oolus hubachiisaniiru. Inispeekshiniin sadarkaa Godinaatti gadi bu'ee akka gurmaa'u taasifamee jira. Haaluma walfakkaatuun, dambiin gurmaa'insa fi hooggansa Dhaddachaa bu'aa qorannoo ILQSO akka ta'e agarsiisan. Qorannoo *kanfaltii Abbaa seerummaa* irratti gaggeeffame bu'ureeffachuun seerri MMWOtiin wixineeffamee qaama dhimmi ilaaluuf dhiyaatee jira. Ragga'ee seera akka ta'u eegaa akka jiran hubachiisan.

Kenninsaa fi Barreessa Murtii irratti qorannoon gaggeeffame bu'aa gaarii buusuu hirmaattotni marii kun dubbataniiru. Akkaataan Abbaan Seeraa murtii itti kennuu fi barreessuu irratti leenjiin kennamee fooyya'iinsi gaariin dhufe jedhan. Qorannoo *Sababoota Heddumina Dhimmoota Manneen Murtii* keessatti yaadotni akeekaman hojiirra akka oolanis agarsiistuu waliin kaasaniiru. Fakkeenyaaf, yaada furmaataa waldhabbii mala aadaan akka hiikamu manni murtii jajjabeessuu qaba jedhu bu'ureeffachuun labsii mana murtii naannoo Oromiyaa irra deebiin gurmeessuuf bahe labsii lakk.216/11

[24] Marii Garee ogeessotaa fi hooggantoota MMWO waliin gaafa 03/09/2013 gaggeefame. Hirmaattotni:Tacaan Margaa, Daarektara Daarektoreetii Qorannoo MMWO; Milkii Makuriyaa, Qindeessaa Tajaajila gorsaa fi Atoominaa, MMWO; Rattaa, Qorataa seeraa MMWO

keessatti manneen murtii jaarsummaa jajjabeessuu akka qaban tumee jira. Gahee barreessitootni ummataa falmii mana murtii baay'isuu keessatti qaban too'achuuf tumaan labsii abukaatoo haaraa keessatti hammatame yaadni furmaataa kun hojiirra ooluu agarsiisa jedhaniiru. Haaluma walfakkaatuun, tarsiimoon xiqqeessa dhimmaa mana murtiitti qophaa'ee leenjiin irratti kennamuun hojiirra oolaa akka jiru hubachiisan.

Qorannoo *Raawwannaa Tooftaa Saffisa Adeemsa Falmii Yakka (RTD)* jedhu keessatti yaada furmaataa taa'e JBAH keessatti hammachiisuuf yaalameera jedhan. Manni murtii waajjiraa fi meeshaalee tajaajila kennuuf oolan akka guuttatu yaadotni kennamanis hojiirra ooluu ibsan. Fakkeenyaaf, itti fayyadamni teeknoolojii akka cimu fi kan akka viidiyoo konfaransiifaatiin tajaajila kennuun babal'atee jira. Manneen murtii dhaddachaa fi waajjiira hojiif oolan haala hammayyaa'aa ta'een ijaarratanii itti fayyadamaa jiru. Qorannoo *Walitti Dhufeenya Sab-qunnamtii fi Manneen murtii* irratti gaggeeffame ilaalchisee, qajeelfamni manni murtii dhimma kana irratti baase jiraachuu baatus, tarsiimoo kominikeeshinii bocame dhimma kana akka haguugu kaasan. Qorannoo *Diiggaa gaa'ilaa fi Dantaa Olaanaa Daa'immanii kabachiisuu* irratti gaggeffaman ilaalchisee, maanuwaalii dhaddacha maatii qajeelchu akka baasan ibsanii jiru. Yaadota furmaataa hojimaataan akka sirreeffaman akeekaman leenjiin irratti kennamee hojiirra akka oolan ibsanii jiru. Haata'u malee, yaadotni furmaataa qorannoo *Hojiirra oolmaa adabbii hidhaan alaa* jedhuun kennaman baay'een isaanii hojiirra akka hin oolle ibsan.

Gara fuulduraatti, bu'aan qorannoo haala fooyya'aa ta'een, akkaataa hojiirra itti oolu danda'u irrattis hirmaattotni marii garee kun yaada kennanii jiru. Haaluma kanaan, qorannoo qaama hirtaa waliin qorachuun yaada hojiirra ooluu danda'an maddisiisuun bu'aa qorannoo haala salphaa ta'een hojiirra oolchuuf akka gargaaru ibsanii jiru. Marii adda addaa kan akka araddaa marii fayyadamuun tamsaasa qorannoo babal'isuu fi qaamoleen akka hojiirra oolchaan malaan amansiisuu (soft power) fayyadamuu, kanneen hojiirra hin oolchine haala itti ummataaf ibsamu (naming and shaming) irratti miidiyaa waliin hojjechuun hojiirraa oolmaa qorannnoo jajjabeessuu akka danda'u ibsan. Hirmaattotni marii kun hojiirra oolmaa qorannoo mirkaneessuuf, seera baasuun garuu bu'aa hin fidu yaada jedhu qabu. Kunis, qaamoleen qorannoo ILQSO irraa fayyadaman hundi isaanii of danda'anii ILQSO'n olitti warra gurmaa'anii dha. Kanaaf, to'achuu ykn tarkaanfii fudhachuun ILQSO akka

rakkisu hubachiisan. Garaa koree fooyya'iinsa sirna haqaas dhiibbaan akka uumamu taasisuun barbaachisaadha jedhan. Dabalataan, ILQSO'n akkuma amma taasisu kana bu'aan qorannoo maal irra akka jiru yeroo, yeroon hordoffii fi deeggarsa yoo godhe irra caala hojiirra oolu danda'a yaada jedhu kaasani. Gama biraan, qorannoon haalaa fi yeroo qaamni fedhii qorannoo ibsate barbaadu keessatti gaggeessuun barbaachisaa ta'uu kaasan. Kunis qaamni fedhii ibsate bu'aan qorannoo yeroo inni barbaadu keessatti hin geenye taanaan fedhiin irra darba. Booda bu'aa isaas hojiirra oolchuun rakkisaa ta'a jedhan. Dabalataan, ILQSO'n maanuwaalii hojiirra oolmaa qorannoo baafachuun akka isa barbaachisu ibsamee jira. ILQSO'n qorannoo tokko gaggeessee sana bu'aa isaa osoo hin argin ykn galmaan hin ga'in kan biraatti ce'uun waan jiruuf kana sirreessuu qaba jedhan. Kanaaf, sirna HOQ tolchuun hanga dhumaatti itti deemuun barbaachisaa ta'uu hubachiisan. Walumaagalatti ogeessotaa fi hoggansa MMWO waliin marii gaggeefame irraa qorannoowaan tajaajila manichi kennu ilaalchisuun gaggeefamaniin yaadotni furmaataa akeekaman hedduun hojiitti kan hiikaman ta'uu fi kanneen hojiitti hin hiikamne muraasnis akka jiran hubachuun danda'ameera.

3.1.2. Mana Hojii Abbaa Alangaa Waliigalaa

Yaadota furmaataa qorannoo ILQSOtiin mana hojichaatiif kennaman hojiirra oolchuu irratti maal akka hojjetame hubachuuf hooggansaa fi ogeessota mana hojichaa faana afgaaffiin taasifamee jira. Hoogganaan[25] mana hojichaa qorannoowwan mana hojichaa ilaalchisee, gaggeeffaman duubattii deebi'anii sakatta'uun qorannoo akkamiitu yaada furmaataa akkamii akeeke, kamtu hojiirra oole kamtu hojiirra hin oolle kan jedhu adda baasanii itti fayyadamuuf sochiirra kan jiran ta'uu nuuf ibsaniiru. Ogeessota[26] mana hojichaa waliin marii taasifneen qorannoon ILQSO manicha keessatti haala itti hojiirra oole nuuf qoodaniiru. Qorannoon ILQSO'n mata duree *Dhimmoota Hariiroo Hawaasaa Keessatti Mirgaa fi Dantaa Uummataa, Mootummaa fi Namoota Dhuunfaa Kabachiisuu: Aangoo Biiroo Haqaa Oromiyaa fi Raawwii Isaa-(2007)* gaggeesse guutummaatti hojiirra oole jechuun akka danda'amu nuuf kaasan. Kunis Abbaan alangaa dhimmoota hariiroo hawaasaa keessatti dantaa ummataa, mootummaa fi namoota dhuunfaa kabachiisuu haala kamiin gahee isaa bahuu qaba kan jedhu ifa kan hin turre yoo ta'u, qorannoo ILQSO booda

[25] Afgaaffii ob. Otokaanaa Odaa, Hoogganaa MHAAWO waliin gaafa 8/11/2013 taasifame
[26] Marii Gammachiis Leencaa, Wuddinash Tasfaayee, Gulummaa Lammuu Abbootii Alangaa MHAAWO, waliin gaafa 8/11/2013 taasifame.

labsiin fooyya'ee amma itti hojjetamaa jiraachuu nuuf ibsanii jiru. Seerichi aangoo manni hojii Abbaa Alangaa gama kanaan qabu ibsee jira. Gama biraan immoo, hojii kana haala bu'a-qabeessa ta'een hojjechuuf daarektoreetii of danda'e jalatti qindaa'ee hojjetamaa akka jiru nuuf ibsan. Sadarkaa biiroo fi godinaatti daarektoreetii, Aanatti immoo gareedhaan gurmaa'eera jedhan. Hariiroo mana hojichaaf qaamolee dhimma dhiyeeffatan gidduu jiru bulchuuf dambiin qophaa'ee jira jedhan. Hojii gama kanaan hojjetameen qabeenya hedduu qisaasama irraa oolchuu akka danda'an ibsaniiru. Gama biraan, bu'uura qorannoo ILQSO Adeemsa wixinee seeraa qopheessuu irratti gaggeesseen hojiin wixinee seeraa qopheessuu adda faffaca'aa ture mana hojichaa jalatti daarektoreetii of danda'e jalatti gurmaa'ee kan hojjetamaa jiru ta'uu ogeessi hubachiisee jira. Hojii wixinee seeraa qopheessuu kana raawwachuuf qajeelfama baafatanii itti hojjetaa akka jiranis nutti himan.

3.1.3. Komishinii Poolisii Oromiyaa

Akkaataa hojiirra oolmaa yaadota furmaataa KPOtiif akeekamanii ilaalchisee afgaaffii[27] taasifneen qorannoon ILQSO'n *dhimma naamusaa,* fi kanneen biroo irratti gaggeesse akka beekaniifii hojimaata komishinichaa fooyyeessuuf bifa adda addaatiin kan fayyadamaa turan ta'uu hubatamee jira. Qorannoo yakkaa ammayyeessuu fi qorannnoo teekinikaa cimsuu irratti yaada furmaataa kenname hordofuun meeshaalee ammayyaa kan akka qorannoo Ashaaraa fi foorensikii bitanii itti fayyadamaa kan jiran ta'uu nuuf ibsan. Eegumsa ragaaf godhamu irratti Biiroo Haqaa waliin ta'uun dambiin haaraa qophaa'ee, bu'uura kanaan eegumsa kennaa akka jiran dubbatu. Qorannoo *Yakka gudeedutiin* yaadota kennaman hojiirra oolchuu keessatti gareen yakka gudeeddii hordofu sadarkaa biiroo irraa eegalee hanga Aanatti dhaabbatee, qorattoonni poolisii dubartootaa 313 leenji'anii Aanota hunda irratti ramadamanii hojjetaa jiru jedhan.[28] Iddoon tursiisaa kan daa'immanii qophaa'eera, kan dubartootaa immoo yeroof hospitaalota akka Adaamaa waliin waliigalamee kutaan qophaa'ee itti hojjatamaa jira. Yakkoota tiraafikaatiif xiyyeeffannoon kennamee hojjetamaa akka jiru ibsan. *Tajaajila Poolisii hawaasaa* diriirsuu irratti caasaan isaa daarektoreeti of danda'e jalatti gurmaa'ee hanga Gandaatti itti hojjetamaa jira jedhan. Ta'us, erga bara 2008 sababa haala nageenyaatiif laafuu nuuf ibsan. *Naamusa ogeessaa* fooyyessuun

[27] Afagaaffii Komaandar Tsaggaayee Gazzahaany, Komishinii Poolisii Oromiyaatti Daarektera Qorannoo Foorensikii waliin gaafa 13/9/2013 taasifame.
[28] Afagaaffii Komaandar Tsaggaayee ,Akkuma 27ffaa.

walqabatee ammas rakkoon kan jiru akka ta'e leenjii adda addaa fi tarkaanfii naamusaa fudhachuun fooyyessuuf kan hojjetaa jiran ta'uu nuuf kaasaniiru. Gama kanaan, calallii poolisotaa irraa kaasee hanga leenjii kennamuutti hanqinni kan jiru ta'uu akka hubatan nutti himaniiru.

Ogeessota komishinichaa waliinis, afgaaffiin taasifamee jira. Ogeessonni[29] afgaffiin taasifameef kunneen qorannoo ILQSO'n gaggeessaa ture hanga ta'e kan beekan ta'uu ibsan. Hojiirra oolmaa qorannoo yakka gudeeddii dubartootaa ilaalchisee, daarektarrii[30] dhimma koorniyaa yaada itti aanu nuuf kennaniiru. Tajaajilli giddu-gala tokkotti dubartoota yakki gudeeddii irratti raawwatameef itti kennamu mijatee jira jedhan. Yakka gudeeddii dabartoota irratti raawwatu qoratanii haqa baasuus ta'ee miidhama dubartootaa bayyanachiisuuf qaamolee mootummaas ta'ee, mit-mootummaa gidduu qindoominni fooyya'aan jira jedhan. Yakkoota dubartootaa fi daa'imman irratti raawwataman jaarsummaan fixuuf jiddu-lixxummaa jiru irratti leenjiin ni kennama jedhan. Iddoon qorannoo yakkaa hanga ta'e fooyya'ee jira. Bakka tokko tokkootti immoo, of danda'ee akka gurmaa'u ta'ee jira jedhan. Qorannoon yakka daa'immanii fi dubartoota irratti godhamu ogeessota adda addaa kan akka ogeessa xiin-sammuu, hawaasummaa fi kkf deeggaramaa akka jiru ibsaniiru. Maanuwaaliin yakka saal-qunnamtii ittiin qoratamu akka Komishinii poolisii Oromiyaatti hin qophoofne, garuu kan federalaan fayyadamaa akka jiran ibsanii jiru.

3.1.4. Komishinii Bulchiinsa Manneen Sirreessaa Oromiyaa

Akkuma qaamolee haqaa biroo argannoo fi yaadotni furmaataa qorannoo ILQSOtiin KBMSOtiif akeekaman hedduu dha. Kanneen keessaa ijoon: Gahumsa Hojii Haaromsa Sirreeffamoota Manneen Amala Sirreessaa Oromiyaa-(2006), Juvenile Justice System in Oromia Region, The Law And The Practice- (2006), Naamusa Ogeessota Qaamolee Haqaa Sakatta'a Haala Qabatamaa Naannoo Oromiyaa Naamusa (2008), Kenniinsa Korooraa fi Dhiifama Sirreefamtoota Seeraa Naannoo Oromiyaa-Seeraa fi Hojmaata-(2010), Bulchiinsa Haqaa Yakkaa keessatti Qabiinsa Dhibamtoota Sammuu fi Namoota Dhagahuu fi Dubbachuu Hin dandeenyee-(2012) fi COVID-19' fi

[29] Afgaaffii Kom.Tashoomaa Indaalaa, Daarikteera Rifoormii, Insp/Ol Tigist Makuriyaa, Daarektara Dhi/Du/Da waliin gaafa 21/08/2013 taasifame.
[30] Afgaaffii Insp/Ol Tigist Makuriyaa, Daarektara Dhi/Du/Da waliin gaafa 21/08/2013 taasifame.

Kenniinsa Tajaajila Haqaa: Haala Qabatama Naannoo Oromiyaa-(2012) kanneen jedhaniidha.

Haala yaadotni furmaata qorannoowwan kanneeniin akeekaman hojiirra itti oolan hubachuuf afgaaffiin hoogganaa komishinichaa[31] fi mariin garee ogeessota[32] KBMSO waliin taasifamee jira. Haaluma kanaan, qorannoo ILQSO'n gaggeessaa ture kan argannoo fi yaada furmaataa isaa irraa fayyadaman yoo jiraate akka nuuf kaasan gaafannee, hoogganaan komishinichaa qorannoowwan olitti ibsaman gaggeefamuu akka beekan fi yaadotni achirraa argaman sirna keessoo komishinichaa fi tajaajila isaan kennan fooyyessuuf galtee olaanaa akka ta'eef ibsaniiru. Haala haaromsa sirreeffamtootaa irratti qorannoowwan gaggeeffaman yaada furmaataa isaanii baay'ee kan fayyadaman waan ta'eef, qorannicha hojiirra oolchuu isaanii hubachiisu. Manni sirreessaa iddoo jibbamaa ture irraa amma iddoo haaromsaa akka ta'u hojii hojjetame keessatti qorannoowwan kanatti fayyadamne jedhan. Haa ta'umalee, yaadota furmaataa tokko tokko sababa humnaatiin hojiirra hin oolchine jedhu. Fakkeenyaaf, haala sirreeffamtoota kunuunsa addaa barbaadan fooyyessuuf manni sirreessaa baajata hin qabu jedhan. *Kenninsa korooraa fi dhiifamaa* ilaalchisee, kenninsa korooraa keessatti rakkoon hojimaataa ture akka furame kaasanii jiru. Dhiifama ilaalchisee, garuu ammas rakkoon akka jiru ibsan. Keessumattuu, boordiin dhiifamaa MHAAWO jalatti gurmaa'uus hojii dhiifama waan hojjetaa hin jirreef yaadota furmaata kennaman hojiirra oolchuun rakkisaa ta'e jedhan. Namoota mana sirreessaa keessa haaromsarra turan hawaasatti makamuun dura kanneen miidhan waliin akka araaraman hojjetaa jiraachuu isaanis kaasaniru. Namoonni kunneen erga bahanii haalli itti hordofaman kan hin jirre ta'uu garuu ibsaniiru. Ogeessota adda addaa ramadatanii sirreefamaaf leenjii hubannoo fi tajaajila gorsa adda addaa kennaa akka jiranis himaniiru. Ittisa dhibee '*COVID-19'* ilaalchisees, manni sirreessaa qajeelfamoota bahan bu'uura godhachuun hojii hawaasa mana sirreessaa dhibee kana irraa ittisuu hojjeteera jedhan. Walumaagalatti, ILQSO'n gama qorannootiin hojii sirna

[31] Af- gaaffii Komishinara Qaasiim Galgaloo, Komishinara KBMSO waliin gaafa 8/11/2013 taasifame.

[32] Insp/Ol – Yeshiworq Tasammaa, Raawwattuu Barnoota fi Leenjii Ogummaa Teekinikaa, Insp.Alamuu Miratuu, I/A Barreessaa Komishinaraa, Saj. Burtukaan Baqqalaa, Raawwattuu Gurmaa'insa sirreeffamaa Seeraa, Insp. Seefuu Baatirii, Qindeessaa Eegumsaa fi Odeeffannoo Sirreefamaa, KBMSO waliin gaafa 9/08/2013 taasifame.

haqaa cimsuu keessatti gahee guddaa taphataa kan jiru ta'uu ibsuun hojiirra oolmaa qorannoos akkuma ammaa kana yeroo, yeroon hordofuun gaarii akka ta'e ibsan.

Gama biraatiin, ogeessonni komishinichaa qorannoowwan kanneen gaggeeffamuu akka hin beekne ibsanii, garuu ILQSO'n akkaataa qabiinsa sirreeffamaa irratti leenjii baay'ee mana hojii isaaniitiif kan kenne ta'uu, leenjii kana irraa waan baay'ees akka fayyadamanii fi hojmaata sirrii hin turre baay'ee isaanii akka jijjiran hubachiisanii jiru. Erga leenjii fudhatanii jijjiirama hojimaataa fi hubannoo argame jedhanis ibsaniiru. Ogeessota hojii sirreeffamaa deeggaruu danda'an gama guuttachuutiin hojiin fooyya'an hojjetameera. Kanaanis, ogeessa xiin-sammuu, hawaasummaa fi seeraa akka horatan ibsaniiru. Mana sirreessaa keessatti sirreeffamtootni IMX gurmaa'anii hojii galii argamsiisu irratti hirmaataa akka jiran ibsaniiru. Haala sirreessa ykn haaromsa sirreeffamtootaa fooyyessuuf hojii baay'een akka hojjetaman ibsaniiru. Gama fayyaan manneen sirreessaa keessatti kilinika dhaabuun itti fufeera. Mana sirreessaa keessatti mana barnootaa dhaabuu fi sirreeffamaan hedduun carraa barnoota akka fayyadamu, kanaanis hanga sadarkaa digriitti akka baratan ibsanii jiru. Akkaataan qabiinsa ragaa sirreefamaa fooyya'ee akka jiru ibsan. Qajeelfama jijjirraa sirreeffamaas akka baasanii fi jijjiirraan sirreeffamaan mana sirreessaa tokkoo kan biraatti taasisu kanaan akka taasifamu ibsaniiru. Dhiifamni sirnaan kennamaa akka hin jirre, kun immoo sirreeffamaa biratti komii olaanaa akka kaasaa jiruu fi mana sirreessaas dhiibbaa jala galche jiraachuu ibsanii jiru. Namoota dhibee sammuu qaban mana sirreessaa keessa jiran addaan baasuun to'annoo irratti rakkoo waan qabuuf, yaada kana hojiirra oolchuun hin danda'amne jedhan. Sirreeffamtoota seeraa fi namoota yakkaan shakkamanii mana sirreessaa dhufaniif qorannoo sammuu gaggeessuun ammas rakkoo guddaa akka ta'e ibsamee jira. Akka waliigalaatti, qorannoo ILQSO haala fooyya'een hojiirra oolchuuf leenjii fi hubannoo cimsuun osoo baay'inaan jiraatee jedhaniiru. Qorannoon baay'een qoratamee booda ni irraanfatama waan ta'eef, kun otoo irratti hojjetamee jedhaniiru.

3.1.5. Komishinii Naamusaa fi Farra Malaammaltummaa Oromiyaa

Haaluma walfakkaatuun yaadota furmaataa KNFM ilaallatan hojiirra oolchuufi hojiirra oolmaa qorannoo ILQSO irratti hoogganaa fi ogeessa

KNFM waliin afgaaffii taasifamee jira. Hoogganaan[33] komishinichaa yaadota itti aanan nuuf kennaniiru. ILQSO'n hojii qorannoo bu'aa guddaa buuse hojjetaa akka ture hooggansa kennaa turan irraa akka hubatan ibsani. Fakkeenyaaf, yommuu hooggannaa Ejansii Galmeessa Ragaalee Haalota bu'uuraa Oromiyaa turanitti qorannoo ILQSO'n dhimma galmeessa fi mirkaneessa ragaalee irratti gaggeesse tajaajila kennamu cimsuuf akka itti fayyadaman ibsanii jiru. Garuu, qorannoo sana hojiirra oolchina jennee ILQSO waliin dubbannee otoo hin taanee akkuma arganneen fayyadamne jedhan.

Rakkoo guddaan hojiirra oolmaa qorannoowwan ILQSO'n walqabatee jiru hojiilee qorannoo haala barbaadamuun qaama hojiirra oolchu ykn dhiibbaa uumu biraan gahuu (communicate) dhabuu akka ta'e kaasanii jiru. Keessumattuu, dhiyeessa qorannoo irratti qaamolee hirmaachuu qaban hunda hirmaachisuu dhabuuni fi qorannoo beeksisu irratti laafinni kan jiru ta'uus dubbatan. Qorannoo gaggeessinii dhiisuun qorannoo biraatti ce'uun kan amaleeffatame ta'uu ibsan. Qorannoo saayinsii qorannoo irratti xiyyeeffatu yoo ta'e, qaamolee fayyadamanis rakkisuu danda'a waan ta'eef ILQSO'n haala qabatamaa fayyadamtootas ilaalcha keessa galchuu qaba yaada jedhu kaasaniiru. Qaamoleen bu'aa qorannoo hojiirra oolchuu qaban atoomuu dhabuu ni mul'ata. ILQSO'n hojiirra oolmaa qorannoo dirqisiisuuf humna waan hin qabneef, qaamolee gaafatamummaa kana qaban kan akka Caffeefaa waliin hojjechuun barbaachisaa akka ta'e kaasanii jiru. Seerri Caffeen baase hojiirra sirnaan hin oolle taanan ILQSO'n kana qoratee Caffeess beeksisa. Kanaaf, Caffeen bu'aa qorannoo kanaa irratti hundaa'uun tarkaanfii adda addaa fudhachuutu irra jira. Kun immoo hojiirra oolmaa qorannoo ILQSO kan mirkaneessu ta'a jedhan. Haa ta'u malee, seera baasuun qaamoleen dhimmi ilaallatu bu'aan qorannoo akka hojiirra oolchan dirqisiisuun rakkisaadha. Qaamoleen haqaa kan akka Mana Murtii, Abbaa Alangaa, Komishinii Poolisii fi kkf caaseffamni isaanii fi gulantaan isaanii kan ILQSOtii ol waan ta'eef, dirqisiisuun rakkisaa akka ta'e ibsan. Seera baasuu caalaa bu'aa qorannoo ibsanii qaamolee hojiirra oolchuu didan kana maqaa kaasuu (naming and shaming) fayyadamuun gaaridha yaada jedhu kennaniiru. Hojiirra oolmaa qorannoo keessaatti yaadni furmaataa kaa'ame hundis haala barreeffameen

[33] Af-gaaffii ob. Tashoomaa Girmaa, Komishinara KNFMO waliin gaafa 23/08/2013 taasifame.

hojiirrra oola jedhanii eeguun akka hin danda'amne dubbatan. Qaamolee hirtaa sirnaan hirmaachisuun barbaachisaa dha. Fakkeenyaaf, haalli qorannoon Mana Murtii Aadaa ittiin gaggeefamee fi hojjiirra itti oolaa jiru baay'ee gaaridha. Faallaa kanaa immoo, qorannoon *dhimma galii* irratti gaggeefame jalqabuma warraa fayyadaman waliin waliigalteen kan gaggefame hin fakkatu. Bu'aan qorannoo yommuu dhiyaatuus akka malee falmaa turan. Hojiirra oolmaa isaa irrattis hojii ILQSO'n hojjeteef beekamtii kennuun akka hin turre kan hubatan ta'uu nuuf kaasani.

Ogeessi[34] komishinichaa afgaaffiin taasifameef qorannoo ILQSO'n *Bu'a qabeessummaa komishiinii Farra malaammaltummaa* irratti gaggeesse akka beeku, haa ta'u malee qorannichi woorkishooppiif akka hin dhiyaanne fi bu'aan qoranichaas akka hin ergamneef ibsee jira. Hanqina qulqullinaa irraa kan ka'e argannoowwan qorannoo ILQSO tokko tokko hojiirra oolchuun akka rakkisu dubbatan. Kanaaf, ILQSO'n qulqullina argannoowwanii fooyyessuu qaba. Qaamolee hojiirra oolchan waliin marii taasisuu qaba jedhani. Hojiirra oolmaa qorannootis yeroo yeroon sakata'aa deemuun gaaridha jechuun yaada isaanii nuuf kennaniiru. Qorannoo KNFM ilaallatuun walqabatee sakatta'a sanadaa taasifne irraa akka hubatamutti qorannichi erga xumurameen booda osoo workishooppiif hin dhiyaatin kan hafee fi komishiinichaafis kan hin ergamin waan ta'eef, hojirra oolmaan walqabatee hanqinni gama ILQSOtiin jiraachun adda baheera.

3.1.6. Waajjira Qindeessituu Koree Sagantaa Fooyya'iinsa Sirna Haqaa Oromiyaa

Yaadota furmaataa waajjiricha ilaallatan akkamitti hojiirra oolchaa jirtu jechuun afgaaffii hoogganaa waajjirichaa fi ogeessa gaafannee jirra. Hoogganaan[35] waajjirichaa yaada waliigalaa nuuf kennan. ILQSO qorannoo ciccimaa baasii mootummaa fi humna namaa baasuun akka gaggeessuu fi bu'aan isaas baay'ee gaarii akka ta'e hirmaannaa yeroo adda addaa hojii ILQSO'n hojjetu irratti godhaniin akka beekan ibsan. Haa ta'u malee, bu'aan qorannoo kun akka barbaadame hojiirra oolaa hin jiru kan jedhu yaada akka

[34] Afgaaffii Ob.Barreessaa Baqqalaa, Ogeessa Seeraa K/Farra malaammaltummaatti waliin gaafa 28/08/2013 taasifame

[35]Afgaaffii Komishinar Abbabaa Laggasaa, Hoogganaa W/ra QKFSH waliin gaafa 03/09/ 2013 taasifame.

qaban himani. Kanneen hojjiira oolanii bu'aa gaarii buusanis akka jiran ibsan. Fakkeenyaaf, Polisiin hawaasummaa iddoo adda addaatti babal'atee hawaasa akka tajaajilu kan godhame bu'aa qorannoo ILQSO irraa ka'uun akka ta'e ibsan. Qaamoleen qorannoo hojiirra oolchuu qaban hanqina akka qaban kaasanii jiru. Sababoonni qaamoleen adda addaa qorannoo hojiirra oolchuu irratti hanqina agarsiisaniif jechuun tarreessanii jiru. Akanaanis; hojiin hojjatamu sirna fi qorannoo irratti osoo hin taanee nama irratti kan hundaa'e ta'uu, maal na dhibdeen baay'inaan jiraachuu, jijjiramni hooggansaa baay'achuun tasgabbiin dhabamuu, hubannoon bu'aa qorannoo dhabuu faadha jedhanii akka amanan kaasanii jiru. Rakkoo kana furuuf, ILQSO'n qaamolee qorannoo fayyadaman waliin baay'ee walitti siqee hojjechuu akka qabu akeekani. Qaamolee bu'aa qorannoo hojiirra oolchuu didan illee haalli gaafatamummaa isaanii itti mirkaneessan jiraachuu qaba jedhan. Keessumattuu, dambii hundeeffama isaa irratti seerri kana isa dandeessisu otoo dabalamee jedhaniiru. Yoo kun hin danda'amne immoo, qaamolee to'annoo fi hordoffii gaggeessan keessumattuu caffee waliin sirnaan hojjechuu akka qabu ibsan. Koree sagantaa fooyya'iinsa haqaa kana laaffisuun yeroo ammaa kan mul'atu ta'uu hubachiisaniiru. Ogeessi[36] waajjirichaas dhimmoota waajjirichaa ilaalchisee akka irratti hojjetan qorannoon akeekaman irratti kan itti aanu nutti himanii jiru. Bu'aan qorannoo hedduun waajjiricha akka gahe ibsaniiru. Fakkeenyaaf, qorannoon dhimma bu'a-qabeessummaa waajjirichaa irratti gaggeeffame isaan ga'ee waajjirichis qorannicha hojiirra oolchuuf karooraa akka qabu ibsan. Haa ta'umalee, qorannoowwan ILQSO kana bu'ura godhachuun wixinee dambii fi qajeelfamoota adda addaa qopheessanii KSFH walitti qabamee akka mirkanaa'u gochuu hin dandeenye jedhan. Yeroo ammaa kana korichas ta'ee waajjirichi maqumaaf jira jedhan.

3.1.7. Waajjira Caffee Oromiyaa

Akkaataa yaadota furmaata Caffeef akeekaman hojiirra itti oolan irratti hooggansa Caffee waliin afgaaffii taasifnee jirra. Itti aantuun Afyaa'ii Caffee[37] yaada itti aanu nuuf kennan. ILQSO'n dhimmoota akka naannoo fi biyya keenyatti rakkoo ta'an qorachuun furmaata kaa'aa turuu akka hooggansaattis beeka jedhan. Qorannoo gahuumsa qabu gaggeeffamaa turus hanga barbaadamu hojiirra oolaa akka hin turre kaasan. Qaamoleen dhimmi ilaalatu

[36] Af- gaaffii ob Muluuqan, Ogeessa W/ra QKSFH, waliin gaafa 03/09/2013 taasifame.
[37] Afgaaffii Ad. Mayibuubaa Adam, Itti Aantuu Af-yaa'ii Caffee Oromiyaa waliin gaafa 14/ 09/2013 taasifame

fudhatanii itti fayyadamuu irratti rakkoo akka qaban beekuu ibsan. Qaamoleen dhimmi isaan ilaallatu jalqaba rakkoo kanan qaba naaf qoradhaa waan hin jenneef booda qorannoo akka qaama hanqinaa fi rakkoo qofa barbaadutti (fault finder) godhanii fudhatanii hojiirra oolmaa isaa irratti fedhii akka dhaban dubbatan. Qorannoo dhimma *seera wixineessuu fi qulqullina seerotaa eegsisuu* irratti gaggeeffame akka beekanii fi itti fayyadamuun seeraas akka baasan ibsaniiru. Qorannoo *akkaataa dambii fi qajeelfamni seerota Caffeen baase waliin wal simachuu* irratti gaggeffames akkanuma hojiirra oolchaa akka jiran ibsan.

Ogeessota[38] waajjira Caffee waliinis afgaaffii gaggeessinerra. Qorannoo ILQSO'n dhimmaa Caffee ilaallatu irratti gaggeesse kan akka *mana murtii Aadaa hundeessuuf* gaggeeffame fa'a akka beekan ibsaniiru. Qorannoo *sirna adeemsa wixinee seeraa baasuu* irratti gaggeefame immoo labsii dhimma kana qajeelchu baasuu keessatti fayyadamuu isaanii kaasuun labsichi bu'aa qorannoo ILQSO akka ta'e dubbatan. Seera bulchiinsaa qindaa'aa ta'e fi dhimma eegumsa shammatootaa irratti akka Caffeen seera baasu kan akeekame garuu dhimmichi aangoo Caffee osoo hin taanee kan mootummaa federaalaa akka ta'e waan amananiif, hojiirra akka hin oolchine ibsan. Dambii fi qajeelfamni yommuu ba'an, hirmaannaan ummataa akka jiraatu tattaaffiin godhamaa jira jedhan. Wixineen dambii hangi tokko dursee caffeef akka dhiyaatu yommuu godhamu jira. Garuu walfakkeenyaa fi itti fufiinsa akka hin qabne ibsaniiru. Qorannoon ILQSO akka hojiirra hin oolchine gabaasni qorannoo isaanii ergamu itti fayyadamuuf kan isaanitti bal'atu ta'uu ibsan. Fakkeenyaaf qorannoo tokko fayyadamuuf yaalanii cuunfaa isaa fudhachuuf yeroo dheeraa kan itti fudhate ta'uu kaasani. Osoo haala isaaniif ta'uun salphatee gaarii akka ta'e ibsan. Gama biraan bu'aa qorannoo xalayaa erguu qofaan otoo hin taanee ILQSO'n duuka bu'ee hordofuun akka irra ture kaasu. Bu'aa qorannoo maxxansuun qaamolee barbaachisu biraan osoo ga'amee caalmatti hojiirra ooluu danda'a jedhan. Miseensi[39] koree dhaabbii dhimma bulchiinsaa fi seeraa hojiirra oolmaa qorannoo irratti dubbisnes qorannoo ILQSO hojii

[38] Afgaaffiiwwan ob. Abdii kadir fi Addisuu Malaakuu, Gorsitoota Seeraa, Waajjira Caffee Oromiyaa waliin gaafa 09/09/2013 taasifame.

[39] Afgaaffii Ad. Misraa Juneeydii, Caffee Oromiyaatti Miseensa Koree Dhaabbii Seera Baastuu Oromiyaa waliin gaafa 27/09/2013 taasifame.

Caffeen hojjetu hedduu keessatti galtee akka ta'e yaadota olitti ka'an cimsuun hubachiisaniiru.

3.1.8. Biiroo Dhimma Dubartoota, Daa'immanii fi Dargaggootaa Oromiyaa

Sirna haqaa keessatti rakkoowwan eegumsa mirga dubartootaa fi daa'immanii mul'atu ilaalchisee qorannoowwan gaggeefamaniin yaadotni furmaataa BDhDDDO ilaallatan qorannoo sadiin adda bahan hojiirra oolmaan isaanii ilaalameera. Qorannoowwan kunis *Murtii Dhimma Maatii Keessatti Eegumsa Dantaa Daa'immanii Isa Olaanaaf Taasifamuu Qabu:Haala Qabatamaa Naannoo Oromiyaa- (2005), Gahee Mana Murtii fi Maanguddoon Araaraa Baay'achuu Diiggaa Gaa'ilaa Furuu Keessatti Qaban- (2005) fi Yakka Dirqisiisanii Gudeedu Rakkoowwan Qoranno Yakkaa Irraa Hanga Murtii Kennisiisutti Mul'atan - (2007)* kanneen jedhanidha. Haala hojiirra oolmaa yaadota furmaata qorannoo kanneenii ilaalchisee mariin garee ogeessotaa fi hooggantoota biirichaa[40] waliin gaggeeffamee jira. Gaaffiin duraa hirmaattota marii garee kana gaafanne qorannoo ILQSO'n dhimma daa'immanii fi dubartootaa irratti gaggeesse beekuu fi dhiisuu isaanii ture. Hirmaattota marii garichaa keessaa lama hin beeknu yoo jedhan, tokko immoo dhimma gudeeddii irratti qorannoon Inistiitiyuutichaan gaggeeffame bu'aan isaa biiricha dhufuu akka beeku, qabiyyee isaa garuu akka hin beekne ibsanii jiru. Itti aansuun yaadota furmaata qorannichaan kaa'aman maal irra akka jiran gaafatamaniiru. Marii garee kana keessatti hirmaattotni qabiyyee qorannoo ILQSO akka hin beekne ibsaniiru. Itti aansuun yaadota furmaataa qorannichaan akeekaman ofii keenya hirmaatota marii kanaa yaadachiisuun haalli hojiirra oolmaa isaanii maal akka fakkaatu gaafannee jirra. Hirmaattotni kunneenis yaadotni furmaataa kunneen rakkoolee biiroo isaanii mudataa tureef furmaata akka ta'anii fi isaaniis akka mana hojii tokkootti hojii hojjetaniin kan wal simu ta'uu nuuf ibsanii jiru. Fakkeenyaaf, walitti dhufeenyi qaamolee haqaa, caasaa biirichaa fi dhaabbilee fayyaa gidduu jiru baay'ee fooyya'uu fi qindoominaan hojjetaa akka jiran ibsanii jiru. Iddoo turmaata daa'immanii fi dubartoota yakki irratti raawwatee ykn giddu-gala

[40] Marii Garee ogeessota Biiroo Dhimma Dubartootaa Daa'immanii fi Dargaggoota Oromiyaa; Maarimaa Amaanoo, Daarekteera Daarektoreetii Mirkaneessa Mirgaa fi Nageenya Daa'immanii, Usmaan Ibraahiim, Daarekteera Daarektoreetii Hirmaannaa fi Sosochii Daa'imman, Dubartootaa fi Dargaggootaa, Darajjee Laggasaa Ogeessa Dhimma Daa'immanii waliin gaafa 11/08/2013 taasifame.

tajaajila qindaa'aa hospitaalota gara jahaa ta'an waliin ta'uun tajaajila laataa jiraachuu isaanii hubachiisaniiru. Kana babal'isaas akka jiran ibsan. Qorattootni poolisii dubartootaa sadarkaa Godinaattis ta'ee Aanaatti leenjiin kennameefii baay'inaan ramadamanii yakkoota daa'immanii fi dubartoota irratti raawwataman akka qoratan ibsanii jiru. Caasaa dhimma dubartootaa fi daa'immanii hanga sadarkaa Aanaatti fooyyessuun ogeessonni akka hawaasummaa, xiin-sammuu fi ogeessa seeraa akka qabaatu taasifamee jiras jedhan.

Hojiirra oolmaa qorannoo ILQSO akkamiin akka fooyyessuun danda'amu irrattis, yaada itti aanu nuuf kennaniiru. Qorannoon yommuu gaggeeffamu qaamolee fayyadaman faana wal hubannoon osoo jiraatee gaaridha. Qorannoon gaggeeffames bu'aan isaa sirnaan qaamolee hirtaaf beeksifamuu qaba. Keessumattuu, haalli qorannoon waraqaa irratti maxxanfamee itti kennamu akka sirritti hawwataa fi yeroo dheeraaf turuu danda'utti otoo qophaa'ee gaaridha. Qorannoon websaayitii irratti osoo gadhiifamees yaadota jedhan nuuf kaasaniiru.

3.1.9. Biiroo Dhimma Hojjetaa fi Hawaasummaa Oromiyaa

Hojiilee BDhHHO hojjetu ilaalchisee ILQSO'n qorannoowwan lama gaggeesseera. Isaanis, *Hariiroo Hojii fi Sirna Hiikkaa Waldhabbii Falmii Hojii Keessatti Rakkoolee Mul'atan- (2007) fi An Assessment on effectiveness of Oromia Labor Relation Board - (2008)* kan jedhaniidha. Akkaataa yaadonni furmaataa qorannoowwan kanneen lamaaniin kennaman biirichaan hojiitti hiikaman irratti ogeessota biirichaa waliin marii taasifnee jirra. Itti aansuun yaada isaanii akka itti aanutti dhiyeessina. Ogeessonni kunneen ILQSO'n dhimmoota kanneen lamaan irratti qorannoo gaggeessuu akka beekanii fi sana boodas yaadota furmaataa akeekaman hojiirra oolchuu keessatti Inistiitiyuuticha waliin hariiroo gaarii kan qaban ta'uu kaasuun hubachiisanii jiru. Qorannoowwan ILQSO kunneen mana hojichaa fi tajaajila isaan kennan fooyyeessuu keessatti gahee guddaa kan taphatan ta'uu ibsaniiru. Qorannoo *Hariiroo Hojii fi Sirna Hiikkaa Waldhabbii Falmii Hojii Keessatti Rakkoolee Mul'atan (2007)* jedhuun yaadotni furmaataa kennaman hedduun isaaniis hojiirra oolaniiru jedhanii akka amanan hirmaattotni marii garee kun ibsaniiru. Jalqaba irratti, qorannoo ILQSO'n dura manni hojii isaanii xiyyeeffannoo guddaa kan hin argannee fi sadarkaa Ejansiirra kan ture ta'uu ibsuun yaada furmaataa qorannoo irraa argameen gara biirootti akka guddatee fi

xiyyeeffannoos kan argate ta'uu hubachiisaniru. Ejansiiwwan hojjetaa fi hojii wal-qunnamsiisan to'achuuf haguuggiin seeraa jiru qaawwa waan qabuuf, seerri bahuu qaba jedhamee kan akeekame, seeronni Ejansiiwwan kanneen to'achuuf oolan bahuu isaanii ibsaniiru. Keessumattuu, qajeelfamni hojii Ejansiiwwan biyya keessaa to'achuuf bahe bu'uura yaada furmaataa qorannoo ILQSO kan 'gaafatamummaa cimdii fi qeenxee ejansii fi dhaabbata fayyadamaa' jedhuun akka fooyya'e kaasaniiru. Qaxarriin dura, yommuu hojjetaan hojiirra jiruu fi yommuu hojjetaan hojii gadi dhiisu qorannoon fayyaa hojjetaaf akka taasifamu yaada dhiyaate bu'uureffatee hojiin jalqabamee jira. Dhaabbileen akka qorannoo kana gaggeessan dhiibbaan taasifamu dabalaa dhufee jira. Dhiibbileenis qorannoo kana gaggeessuu fudhataa jiru jechuun akka fakkeenyaatti '*Teeknoo Mobaayilii'* fi Warshaa Simintoo '*Daangotee'* jedhaman ta'uu kaasaniiru.

Sirni guddinaa, jijjiirraa fi haalli bulchiinsa humna namaa dhaabbilee hojjechiistotaa fooyya'aa dhufeera. Erga qorannoon kun gaggeffamee manni hojii isaanii ILQSO fi dhaabbilee deeggarsaa adda addaa waliin ta'uun hubannoo uumeen haalli isaa kan duraa irra fooyya'ee jira. Dhaabbileen dambii hojii akka qabaatan gorfamanii dambii hojii keessatti haalonni kunneen ibsamaa jiru jedhaniiru. Dhaabbilee hojjechiistotaa hedduu biratti hojjetaan gargaarsa yaalaa haalli itti argatu mijataa jira. Lakkoofsi waldaa hojjettootaa akka waliigalaatti dabalee jira. Hojjetaan mirga gurmaa'uu isaatti akka fayyadamu hubannoo uumuu fi haala mijeessuu irratti hojjetamee jira. Qorannoo ILQSO booda Boordii dhaabbataa dhimma hojjetaa fi hojjechiisaa haaraa lama dabalamanii akka jiranis ibsameera. Sadaffaa hundeessuufis adeemsa irraa akka jiran himaniiru. Kunis yaada qorannoo ILQSO lameen olitti ibsame irraa fudhatameen akka ta'e hubachiisan. Haalli walga'ii fi hojimaataa Boordii akkasumas durgoon miseensota boordii yaada qorannoo *An Assessment on effectiveness of Oromia Labor Relation Board-(2008)* jedhu bu'ureeffachuun fooyya'ee jira. Yaadota qorannoon adda bahan kanneen BDhHHO qaama dhimmi ilaallatuuf dhiyeesse murtee akka argatu, akkasumas hojiirra akka oolu taasiseera jechuun yaada isaanii nuuf kennani.

3.1.10. Biiroo Paabliik Sarvisii fi Misooma Qabeenya Namaa

Yaada furmaataa qorannoo *Rakkoolee Bu'aa Qabeesummaa Manneen Murtii Bulchiinsaa fi Aangoo Keessa Deebii Manneen Murtii Idilee-Haala Qabatama Naannoo Oromiyaa- (2009)* jedhamuun kenname haala hojiirra

itti oolchan ilaalchisee, afgaaffiin Abbootii seeraa[41] mana murtii bulchiinsaa waliin gaggeeffamee jira. Isaanis yaada kennaniin qorannoon kun isaan dhaqqabee argannoowwan qorannichaa irraa akka fayyadaman ibsanii jiru. Yaadota labsiin dura ture akka fooyya'u akeeku irratti hundaa'un labsiin fooyya'e labsii lakk.215/2011 akka bahu ta'eera. Labsiin kun dhaqqabummaa mana murtichaa fooyyessuuf bakka barbaachisetti dhaddacha hundeessuu akka danda'an kan aangeesseedha jedhan.[42] Murtiilee beenyan walqabatanii kennaman irratti M/Murtii Idilee keessa deebin akka ilaaluu danda'u wixineen dambii qophaa'ee jira.

3.1.11. Biiroo Eegumsa Fayyaa Oromiyaa

Qorannoowwan *Yakka Dirqisiisanii Gudeeduu: Rakkoowwan Qoranno Yakkaa Irra Hanga Murtii Kennisiisutti Mul'atan - (2007)* fi *Bulchiinsa Haqaa Yakkaa keessatti Qabiinsa Dhibamtoota Sammuu fi Namoota Dhagahuu fi Dubbachuu Hin Dandeenyee- (2012)* jedhan yaada furmaataa BEFO ilaallatan akeekanii jiru. Akkaataa hojiirra oolmaa yaadota kanaa hubachuuf ogeessa biirichaa[43] waliin afgaaffii taasifnee jirra.

Haaluma walfakkaatuun, qorannoon ILQSO hojii isaanii keessatti fayyadaman yoo jiraate gaafannee, dhimma mana hojii isaanii waliin wal-qabatu irratti ILQSO'n qorannoo gaggeessuu akka hin beekne ibsanii jiru. Garuu akka mana hojii isaanitti karoora qabataniin miidhaa fi yakka fayyaa dubartootaa miidhan hambisuu fi fooyyeessuuf qaamolee haqaa keessattuu, Poolisii, Mana murtii, waajjira haqaa fi BDhDDDO waliin qindaa'anii akka hojjetan ibsanii jiru. Qaamolee kanneen waliin karoora waliinii qabaachuus ibsanii jiru. Qindoomina qaamolee haqaa fi tola ooltota waliin taasifameen giddu-galli tajaajilaa qindaa'aa (one-stop center) hoospitaalota 6 keessatti gurmaa'ee hojiin yakka saal-qunnamtii dubartoota irratti raawwataman qorachuu fi tajaajila fayyaas kennuun wal faana hojjetamaa jira jedhani. Maannuwaaliin hojii qorannoo fi qindoomina gocha mirga dubartootaa tuqu irratti godhamu qajeelchuuf akka federaaalatti qophaa'ee jira. Akka

[41]Af-gaaffiiwwan Ob. Silashii Fiqaaduu, Biiroo Sivil Servisii Oromiyaatti Itti-gaafatamaa M/Murtii Bulchiinsaa fi Ob. Misgaanaa Saaqqataa Walittiqabaa Koree M/Murtii Bulchiinsaa waliin gaafa 29/08/2013 taasifame.

[42] Afgaaffii Ob. Silashii waliin taasifame (Akkuma 41ffaa).

[43] Afgaaffii Ad. Nadhii Dirribaa, Daarektara Daarektoreetii Korniyaa Idileessuu, BEFO waliin gaafa 9/08/2013 taasifame.

naannootti immoo Afaan Oromootti hiikamee kan itti hojjetaa jiran ta'uu ibsaniiru. Qaamolee hirtaa waliinis karoora waliinii kan qabanii fi qindoomina gaarii akka qaban himanii jiru.

Qorannoo *namoota dhibee sammuu qabanii fi dhaga'uu fi dubbachuu hin dandeenye* irratti gaggeeffames akka hin beekne kaasaniiru. Haa ta'umalee, rakkoo kana ofii isaaniis waan hubataniif, giddu-gala namootni dhibee sammuu qaban itti yaalaman (trauma center) hundeessuuf BEFO adeemsa irra akka jiru ibsanii jiru. Giddu-galeessi, caaseffamni isaa fi akkaataan kenna tajaajila isaa qoratamuutti jira jedhan.

3.1.12. Komishinii Investimentii Oromiyaa

Yaadota komishiinicha ilaallatan hojiirra oolchuu irratti afgaaffiin ogeessa komishinichaa waliin goone kan itti aanudha. Ogeessi kun akkuma ogeessota biroo, qorannoon ILQSO'n dhimma mana hojii isaanii irratti hojjate akka hin beekne ibsan. KIO hojiilee Investimentiif heeyyama yommuu kennan sakatta'iinsi dhiibbaa naannoo gaggeefamuu akka mirkaneessan ibsanii jiru. Dhaabbileen kanaan dura sakatta'iinsa dhiibbaa naannoo osoo hin taasisin hojiitti galan to'achuu fi sakatta'iinsa akka taasisan gochuun akka dabale hubachiisaniiru. Akkaataa gurmaa'insa boordii Investimentii irratti jijjiramni hin taasifamne jedhan.

3.1.13. Biiroo Bulchiinsaa fi Itti Fayyadama Lafaa

Qorannoowwan *Falmii Lafa Baadiyaa Hiikuu* jedhuu fi *Qabiyyee Faayidaa Ummataaf Gadi Lakkisuu* jedhu keessatti yaadota furmaataa taa'an haala kamiin hojiirra akka oolan hubachuuf afgaaffiin ogeessota waliin agggaffamee jira. Kunumaan, ogeessi waa'ee qorannichaa gaafatame tokko, bu'aan qorannoo ILQSO irraa mana hojii isaaniif dhaqqaabuu akka hin beekne, qorannichi gaggeeffamuus akka hin beekne ibse.[44] Itti aansuun yaadota furmaataa akeekaman kaasuun maal irra akka jiran gaafannee jirra. Yaada itti aanu nuuf kenne. Seerotni lafa baadiyaa rakkoo kan qaban hanga ammaatti akka hin fooyyofnee fi barsiifatumaan kan hojjetan ta'uu ibsani. Akkaataa shallaggii beenyaa irratti qajeelfamni akka hin fooyyofnee fi labsiidhumaan hojjataa akka jiran ibsan.[45] Ogeessi biraa afagaaffin

[44]Afgaaffii Ob. Tashoomaa Laggasaa, Biiroo Bulchiinsaa fi Ittifayyadama Lafaa Oromiyaatti ogeessa Tilmaama Beenyaa waliin gaafa 26/08/2013 taasifame.
[45]Afgaaffii Ob.Tashoomaa Laggasaa waliin taasifame (Akkuma 44[ffaa])

taasifameef, lafa Baadiyaa irratti qorannoo gaggeeffame akka beeku, dambii lakk.151/2005 baasuuf qorannicha kan fayyadaman ta'uu ibsee jira.[46] *Qabiyyee faayidaa ummataatif gadi lakkisiisun* akkaataa shallaggii beenyaa irratti qajeelfamni akka qophaahuf sochiin taasifamaa ture, garuu hanga ammaatti qajeelfamni akka hin baane dabalee ibseera. Beenyaa dabarsa lafaa fi tajaajiloota biroo hojimaata qofaan itti hojjataa turan uwwisaa seeraa akka qabaatu qorannoo gaggeessuun irratti hojjetaa jiraachuu ibsani. Yaada ILQSO'f kennanniin immoo qorannoo beeksisuu irratti hanqinni akka jiru kaasaniiru. Woorkishooppii qophaa'u irratti qaamota hirmaachuu qaban hunda afeeruun osoo danda'amee jedhaniiru.

3.1.14. Biiroo Misooma Qabeenya Bishaanii fi Inarjii Oromiyaa

Qorannoo *Federeeshinii Itoophiyaa Keessatti Qoodinsa Aangoo Bulchiinsa Qabeenya Uumamaa* jedhu keessatti yaadota abbaa taayitichaaf akeekaman hojiirra ooluu isaanii qulqulleessuuf ogeessa abbaa taayitichaa waliin afgaaffiin taasifamee jira. Qorannoon kun hirmaannaa isaaniitiin akka qoratame ibsanii bu'aa qoranichaas hojiirra oolchaa kan jiran ta'uu ibsan.[47] Qabeenya bishaanii naannichaa bulchuu fi itti fayyadamuu irratti seerota federaalaan bahan kan aangoo naannoo keenyaa dhiiban akka fooyya'an manni hojii isaanii dhaabbata '*Yaa'a Abbaay'* jedhamu waliin akka mari'atanii fi waliigaltee mallatteessan ibsaniiru. Dabalataan bulchiinsa qabeenya bishaan naannichaa irratti naannoon keenya seera baasuuf aangoo akka qabu kan qorannoon akeeke bu'ureeffachuun wixinee labsii bulchiinsa qabeenya bishaanii qopheessanii ragga'uu isaa eegaa akka jiran ibsani.

3.1.15. Abbaa Taayitaa Misooma Albuudaa Oromiyaa

Haaluma walfakkaatuun qorannoo *Federeeshinii Itoophiyaa Keessatti Qoodinsa Aangoo Bulchiinsa Qabeenya Uumamaa* jedhu keessatti yaadota abbaa taayitichaaf akeekaman maalirra akka gahan hubachuuf ogeessotaaf afgaaffiin taasifamee jira. Qorannoo kana ILQSO'n gaggeessaa akka ture ragaa adda addaa kennuudhaanis akka hirmaatan ibsaniiru. Haa ta'umalee,

[46] Afgaaffii Ob. Mootii Abraham, Biiroo Bulchiinsaa fi Itti fayyadama Lafaatti ogeessa Sona lafaa waliin gaafa 26/08/2013 taasifame.
[47] Afgaaffii Ob. Shuumii Araarsaa, Abbaa Taayitaa Bishaanii fi Inarjiitti Daarektoreetii seeraa waliin gaafa 03/09/2013 taasifame.

bu'aa qorannichaa akka hin beekne ibsan.[48] Labsiiwwanii fi dambiiwwan Federaalaa mirga galii albuuda irraa fayyadamuu MNO dhiphisan jijjiruu keessatti akka biyyaatti imaammata albuudaa qophaa'e keessatti labsiiwwan kunneen akka fooyya'an waliigalameera jedhan.[49] Galii albuuda irraa argamuu (loyality pay) kan duraan mootummaan federaalaa harka 60 fudhatee harka 40 naannoo keenyaaf kennaa ture amma jijjiiramee 50/50 akka hiratan karaa mana maree federeeshiniitiin kan murtaa'e bara 2013 akka hojiirra oolu taasifameera jedhan. Akkasumas, hojiiwwan Albuudaa eessaa akka baasu, qaamni misoomsu immoo hawaasa naannoo akka hammatuu qabuu fi hawaasichi gahee ykn sheerii akka qabaatu taasisuu irrattis hojjatamaa jira jedhan.[50] Dhimmootni olitti ibsaman akka sirratan hojiilee hojjetaman kanneen bu'aa qorannoo ILQSOti jechuu hin dandeenyu jedhaniiru.

3.1.16. Abbaa Taayitaa Eegumsa Naannoo, Bosonaa fi Jijjirama Qilleensaa Oromiyaa

Afgaaffii ogeessota[51] Abbaa Taayitichaa waliin godhameen qorannoon dhimma sakatta'iinsa naannoo irratti ILQSO'n gaggeesse kallattiidhan isaanif ergamuu akka hin beekne kaasaniiru. Haa ta'u malee, ogeessonni ILQSO wixinee qajeelfamoota adda addaa irratti yaada akka isaanii kennan yommuu afferaman ILQSOnis dhimma kana irratti qorannoo gaggeessuu akka baran ibsan. Hojii eegumsa naannoo ilaalchisee, bara 2008 irraa kaasuun odiitii naanoo gaggeessuun dhaabbilee naanoo Oromiyaa keessa turan keessaa dhibbeentaa 10 qofti sakatta'iinsa dhiibbaa naannoo kan gaggeessan ta'uu akka hubatan ibsan.[52] Kana booda dhaabbileen kun karoora manaajimantii naannoo (EMP) akka qopheeffatan beeksisuun raawwiin isaas hanga dhibbeentaa 70 akka gahe ibsanii jiru. Dhiibbilee hedduu irratti, keessumattuu warshaalee gogaa naannoo Mojoo jiran irratti tarkaanfii kan fudhatan ta'uu ibsan. Labsiin bara 2005 bahe dambii kan hin qabne ta'uu kaasuun dambii

[48] Ob. Zawuduu Taaddasaa, Abbaa Taayitaa Albuuda Oromiyaatti Daarektera Daaretoreetii Heyyamaa fi Bulchiinsa Albuudaa fi Ob. Efreem Mul'ataa, A/Taayitaa Albuuda Oromiyaatti Dursaa garee tajaajila Seeraa waliin gaafa 11/09/2013 taasifame.
[49] Ob. Zawuduu Taaddasaa, Akkuma 48ffaa.
[50] Akkuma miiljalee lakk.49ffaa
[51] Afgaaffiiwwan ob. Baqqalaa Kaffaaloo, Daarektara Eegumsaa fi Manaajimantii Bosonaa, ATENBJQO,12/09/2013 fi Sintaayyoo Bafiqaaduu, Daarektara Hojiirra Oolmaa Seerota Eegumsa Naannoo, ATENBJQO waliin gaafa 12/09/2013 taasifame.
[52] Afgaaffii ob. Bafiqaaduu waliin taasifame (Akkuma 51[ffaa]).

lakk.219/2013 fi lakk.220/2013 qopheessanii akka mirkanaa'eef ibsanii jiru. Qajeelfamas qopheessanii amma raggaasisuuf akka deeman ibsan. Sakatta'iinsa dhiibbaa naannoo gaggeessuu fi hordofuu irratti ogeessota ogummaa adda addaa qaban guutachuu irratti hanqinni akka jiru hubachiisan.

Gama hojiirra oolmaa yaadota *qorannoo bulchiinsa qabeenya uumamaa* jedhuun walqabatee gaaffii ka'een Abbaan Taayitaa isaanii qabeenya uumamaa irratti keessattuu, bosona ilaalchisee qorannoo ILQSO'n gaggeesse osoo hin argin rakkoo bulchiinsa bosona naannoo Oromiyaa keessumattuu walitti bu'iinsa seerota naannoo fi federaalaa ilaalchisee qo'annoo taasisanii furmaata isaa irratti wixinee akka qopheeffatan ibsan. Adeemsa keessa ILQSO'nis qorannoo gaggeessuu dhaga'uun qorattootni ILQSO yaada isaaniin akka gabbisan godhameera jedhaniiru. Walumaagalatti fooyya'iinsa gama sakatta'iinsa dhiibbaa naannoo gaggeessuun jirus ta'ee, bulchiinsa qabeenya uumamaa iratti dhufe kana qorannoo ILQSOtiin wal qabsiissuun nutti ulfaata jedhan. Kunis qorannoo ILQSO kan hin argannee fi rakkoo isaanii beekanii ofii isaaniitiin furachuuf tattaafachaa kan turan waan ta'eefidha jedhu.

3.1.17. Biiroo Daldalaa Oromiyaa

Daldala seeran alaa too'achuu fi *eegumsa mirga shamattootaa* irratti qorannoo ILQSO'n gaggeeffaman keessatti yaadota furmaataa taa'an hojiirraa oolchuun maal akka fakkaatu hubachuuf ogeessa biiroo daldalaa waliin afgaaffiin taasifamee jira. Qorannoon ILQSO'n gaggeessu bu'aan isaa biirichaaf beeksifamuu isaa akka hin beekne, garuu immoo dhuunfadhaan qorannoo ILQSO argatanii akka dubbisan hubachiisan.[53] Hojiin daldala seeran alaa too'achuu daarekteera addaa kan qabuu fi biiroo hanga aanatti caasaa mataa isaa diriirsun irratti hojjatamaa kan jiru ta'uu ogeessi kun nuuf ibsaniiru.[54] Rakkoo akka kontirobaandii fi oomishaalee dhoksanii kuusutiin walqabatee jiru furuuf Yunivarsitii Adaamaa waliin ta'uun qorannoo kan irratti hojjatamaa jiru ta'uu nuuf ibsan.[55] Mirga

[53] Afgaaffii Ob. Diinaa'ol Darajjee, Biiroo Daldala Oromiyaatti Ogeessa karooraa fi Bajataa waliin gaafa 14/08/2013 taasifame.
[54] Afgaaffi Ad. Kaziinaa Abbaa Duulaa, Biiroo Daldala Oromiyaatti Daarektera Qorannoo fi Ijaarsa dandeettii waliin gaafa 12/08/2013 taasifame.
[55] Afgaaffii Ad. Kazinee, Akkuma 54ffaa.

shamattootaa ilaalchisee yeroo yerootti hubannoon hawaasaf kennamaa jira jedhan.[56]

3.1.18. Abbaa Taayitaa Galiiwwan Oromiyaa

Ogeessi afagaaffiin taasifameef qorannoo *dhimma taaksitiin walqabatu* ILQSO'n yommuu gaggeefamu ogeessonni isaanis keessatti kan hirmaatan ta'uu bu'aan isaas erga beekamees yaadotni furmaataa akeekaman manaajimantiif dhiyaatee kan irratti mari'aataa turan ta'uu ibsani.[57] Yaadota qorannoon kun akeeke keessaa galii waliinii kan jedhu irratti duraan warri Federaalaa sassaabanii 70% fudhatanii 30% nuuf qoodu ture, amma garuu falmannee Ofii keenyaa sassaabnee 50%, 50% addaan qooddachaa jirra jedhan.[58] Vaatii (VAT), Taaksii galii, Taaksii qabeenyaa (property tax) fi kkf duraanis falamaa kan turan ta'uu himuun amma akka fooyya'ee jiru ibsani.[59] Madda taaksii (tax basis) babal'isuu irratti manneen qopheessaa hojii akka hojjetan godhameera jedhani. Vaatin (VAT) walqabatee nagaheen sirnaan akka muramu gochuun caalatti galiin akka sassaabbamu taasisuun naannonis irraa qoodamaa jira. Taaksii galii fi taaksii qabeenyaatiinis walqabatee hordoffiin sassaabbii taaksii gaggeefamaa jira jedhan. Qorannoo ILQSO qaama hojiirra oolchuuf beeksisuu irratti Inistiitiyuutiin hanqina akka qabu eeraniiru.

3.1.19. Ejensii Galmeessa Ragaalee Bu'uura Hawaasummaa Naannoo Oromyaa

Qorannoo mata duree *'Hojii Sanada Mirkaneessuu fi Galmeessuu Keessatti Rakkoowwan Seeraa fi Hojimaataa Mul'atan'(2010)* jedhuun yaadni furmaataa hojii mirkaneessaa fi galmeessa sanadootaa qaamolee adda addaa biratti bittinnaa'ee gaggeeffamu gidduu-galeessa humna namaa fi meeshaalee ammayyaa guuttatee fi gahumsa qabu tokko jalatti gurmeessuun hojjechuu kan jedhu hojiirra oolchuu irratti maal akka hojjetan adda baasuuf afgaaffiin hoogganaa fi ogeessa waliin gaggeffamee jira. Qorannoon kun gaggeeffamuu akka hin beekne ogeessi[60] ejansichaa af-gaaffiin godhameef ibsanii jiru.

[56] Afgaaffii Ad. Kazinee, Akkuma 55[ffaa]

[57] Afgaaffii Ob. Lammeessaa Ayyalaa, Abbaa Taayitaa Galiiwwanii Oromiyaatti Daarektoreetii Barumsaa fi komunikeeshinii waliin gaafa 14/08/2013 taasifame.

[58] Afgaaffii Ob. Lammeessaa Ayyalaa, Akkuma 57[ffaa].

[59] Afgaaffii Ob.Lammeessaa Ayyalaa , Akkuma 58[ffaa]

[60] Afgaaffii ob. Dirribaa Alamuu, Daarekteera Daarektoreetii Galmeessaa fi Mirkaneessa Sanadaa, EGRBHNO waliin gaafa 11/08/2013 taasifame.

Haaluma wal fakkaatuun, hogganaan[61] Ejansichaas qorannoon kuni gaggeefamuu akka hin beekne ibsee jira. Hojiirra oolmaa yaada furmaataa qorannichaan kenname ilaalchisee Ejansichi ragaa bu'uuraa qofa irratti xiyyeefachuun kan hojjetu ta'uu ibsuun hojiin sanada mirkaneessuu fi galmeessuu giddu-gala tokkotti raawwachuun ni rakkisa yaada jedhu kaasan.[62] Atoomina ILQSO waliin qaban ilaalchisee, yeroo tokko Inistiitiyuutiin qorannoo akka gaggeessuf xalayaan gaafatanii kan turan ta'uu ibsanii, haa ta'umalee, Inistiitiyuutichi bara bajataa sanatti akka hin mijatneef ibsuun waan dideef, gara Inistiitiyuutii Teeknoolojii Adaamaa adeemuun isaan qorannoo akka gaggeessaniif nutti himaniiru. Adeemsa kana keessatti qindoominaan hojjechuun isaanii ogeessis ta'ee hooggansi rakkoo fi furmaata beekee hojiirra oolmaa bu'aa qorannoof kan haala mijeesse ta'uu muuxannoo gaariidha jechuun ibsanii jiru.[63]

3.1.20. Biiroo Aadaa fi Turizimii Oromiyaa

Yaadota furmaataa BATO'tiif akeekaman hojiirra oolmaan isaanii maal akka fakkaatu hubachuuf ogeessota[64] Biirichaa waliin af-gaaffii taasifnee jirra. Qorannoo dhimma mana hojii isaanii ilaalchisee gaggeeffame kan *Mana Murtii Aadaa Hundeessuu* jedhu akka beekan ibsaniiru. Kunis yommuu qorannoon gaggeeffamu daataan kan isaan irraa funaanamee fi boodas bu'aa qorannoo irratti kan mari'atan ta'uu isaa ibsan. Hojiirra oolmaa isaa irrattis hirmaachaa kan jiran ta'uu hubachiisaniiru. Kanaan ala qorannoo biraa akka hin beekne, bu'aan isaas akka isaan hin geenye ibsaniiru. Akkaataa qorannoon haala fooyya'een hojjiirra itti oolu irrattis yaada nuuf kennaniiru. Qorannoon yommuu gaggeeffamu ogeessa biiroo sanaa hirmaachisuun hojiirra oolmaa qorannootiifis bu'aa waan qabuuf, ILQSO'n kana akka fayyadamu jedhaniiru. Akkaataa qorannoo hojiirra itti oolu irrattis mana hojii dhimmi ilaaluuf leenjiin dursee osoo kennamee yaada jedhus akeekaniiru.

Akka waliigalaatti, daataa olitti ilaallaman irraa akka hubatamutti ogeessotni tokko tokko qorannoon ILQSO mana hojii isaanii akka hin gahinii fi akka hin beekne ibsanii jiru. Gama ILQSO tiin immoo sakatta'a sanadaa taasifameen

[61] Afgaaffii Mariid Guddataa, I/A daarektara Olaanaa EGRBHNO waliin gaafa 12/08/2013 taasifame

[62] Afgaaffii Mariid Guddataa , Akkuma 61ffaa

[63] Afgaaffii Mariid Guddataa, Akkuma 62ffaa.

[64] Afgaaffii ob Balaay Gurmeessaa fi Tolasaa Galaan, ogeessota seeraa, BATO, waliin gaafa 20/08/2013 taasifame.

Biiroolee olitti guutumatti qorannoon ILQSO nu hin geenye jedhan: kan akka Biiroo Fayyaa Oromiyaa, Biiroo Daldalaa Oromiyaa, Biiroo Maallaqaa fi Walta'iinsa Diinagdee Oromiyaa yoo ilaalle qorannoon ykn bu'aan qorannoo ergamuufin ni hubatama. Fakkeenyaaf, Biiroo Maallaqaa fi Walta'iinsa Diinagdee Oromiyaatiif qorannoon mata duree' Taxation Power in Oromia Regional State: Analysis of Conistitution, Law anda Practice' jedhu xalayaa lakk.ILQSO/5/F/H2/13615 ta'e kan gaafa 11/11/2011 barreeffameen ergameefiin sanada irraa ni hubatama. Kan biraa immoo, BEFO tif qorannoon 'Qabiinsa dhukkubsattoota sammuu fi namoota dhagahuu fi dubbachuu hin dandeenyee jedhu' xalayaa lakk. ILQSO/ 1280I/ H2/1361280 ta'e kan gaafa 23/03/2013 barreeffameen ergamuufin ibsameera. Biiroo Daldalaa Oromiyaatiifis qorannoon 'Daldala Seeran Alaa Too'achuu' jedhu xalayaa lakk.ILQSO/188/F/H2/136/359 ta'e kan gaafa 20/07/2009 barreeffameen ergamuufii sanadni ni agarsiisa.

Qaamolee Muuxannoon Isaanii Ilaallaman

A. Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qorannoo Seeraa Federaalaa

Muuxannoo qorannoo seeraa gaggeessaa turan hojiirra oolchuu irratti qaban qooddachuuf daarekteera hojii qorannoo Inistiitiyuutichaa[65] waliin af-gaaffii taasifneerra. Haala HOQ Inistiitiyuutichaa yoo ibsan, qorannoon Inistiitiyuutichi gaggeessaa ture kan baay'inaan hojiirra oole akka jiru ibsanii jiru. Haata'umalee, rakkoon HOQ isaan birattis bal'inaan kan mul'atu ta'uu ibsanii jiru. Qorannoon sirnaan hojiirra akka hin oolee dhimmoonni taasisan jechuun kanneen itti aanu kaasaniiru:

- Hojii ykn sagantaan raawwatamu bu'aa qorannoo bu'ureffachuu dhabuu
- Ammaa amma jijjiiramuu hoggansaa fi yaadannoo dhabuu dhaabbataa (lack of institutional memory)
- Qaamolee gaggeessaa fi qorannoo hojirra oolchanii fi deeggaran gidduu hanqinni atoominaa jiraachuu
- Gareen qorannoo gaggeesse addaan faca'uunis sababa biraa qorannoon akka hojiirra hin oolle taasisu ta'uu kaasan.

[65]Ob. Mitikkuu Maddaa, Daarekteera Qo'annoo fi Qorannoo, ILOQHQSI waliin gaafa 29/08/2013 taasifame.

Inistiitiyuutiin isaanii qorannoo bu'aa qabuu fi hojiirra ooluu danda'u gaggeessuuf qaamolee adda addaa gargaaran akka qabu ibsan. Fakkeenyaaf, qaamni Mana Maree Gorsitootaa jedhamu qaamolee mootummaa, mit-mootummaa, dhaabbilee mootummaa olaanaa, dhaabbilee siivikii adda addaa yaada qorannoo fi leenjiif ta'u akka kennaniif ibsan. Haaluma kanaan fedhii qorannoo qaamolee adda addaa irraa funaannaman mana maree gorsitootaa kanaaf dhiyeessuun yaada kan irraa fudhatan ta'uu hubachiisan. Haa ta'umalee, manni maree gorsitootaa kun haala barbaadameen raawwachuu dhabuun hojii qorannoo irratti dhiibbaa fidee jira. HOQ Inistiitiyuutii isaanis kan baay'ee yaachise waan ta'eef, akka karoora hojiitti qabatanii waa'ee hojiirra oolmaa qorannoo isaanii ilaalaa akka jiran ibsaniiru. Qorannoo hojiirra oolchuun hojii qaamalee adda addaa amansiisuu (lobby) guddaa barbaadu akka ta'ee fi qaamoleen qorannoo gaggeessan kana irratti xiyyeeffachuu akka qaban kaasanii jiru.

B. Inistitiiyuutii Manaajimantii Itoophiyaa

Akkaataa hojiira oolmaa qorannoo dhaabbata isaanii irraa muuxannoo qaban fudhachuuf daarektara[66] qorannoo Inistiitiyuutichaa waliin af-gaaffii taasifnee jirra. Daarektarichi hojiirra ooluu dhabuun qorannoo dhimma dhaabbata isaanii birattis mul'atu akka ta'e dubbataniiru. Qorannoon isaan gaggeessan kan fedhii maamilaa irratti hundaa'eedha jedhan. Adeemsi gaggeessa qorannoo jalqaba Inistiitiyuutichi wantoota rakkoo ta'uu mala jedhan tarreessuun fayyadamtootni akka sadarkeessan taasisu.Yaadni fi sadarkeessi maamiltoota irraa funaanname erga xiinxalameen booda hojii qorannoo gaggeeffamuuf beeksisa baasu. Qorattootnis yaada ka'uumsaa ykn 'concept note' dhiyeessuun dorgomu. Yaada ka'uumsaa ykn 'concept note' kana koreen xinxaalu (review committee) ilaalee kanneen fudhatama argatan gumee qorannoo akka dhiyeessan godhama. Gumeen qophaa'e immoo ogeessota keessaa fi alaatiin ni madaalama ykn' peer reviewed' ta'a jedhan. Sana booda gara qorannoo seenama. Bu'aan qorannoos ogeessota keessaa fi alaatiin ni madaalama jedhan. Qorannoon madaallii kana darbe mirkaneessa bu'aa qorannoof (validation workshop) akka dhiyaatu ibsan. Mirkaneessi bu'aa qorannoo kun gosa lama akka ta'e nutti himan. Kunis mirkaneessa

[66] Afgaaffii Zamanuu Gaashaw, Daarekteera Qorannoo, Inistitiiyuutii Manaajimantii Itoophiyaa waliin gaafa 29/08/2013 taasifame

qabiyyee qorannoo (content validation) fi mirkaneessa adeemsa qorannoo (research process validation) akka ta'an hubachiisan. Sana booda qorannoon adeemsa kana keessa darbee mirkanaa'e koonfiransii qorannoof dhiyaata jedhan. Kaayyoon koonfaransichaa bu'aa qorannoo beeksisuu fi tamsaasuu akka ta'e nu hubachiisan. Konfaransii qorannoo booda yaadota kennamanis dabaluun maxxansa bu'aa qorannoo ykn 'research proceeding' akka baasanii fi qaamolee barbaadamu biraan akka gahan nutti himan. Dhimmi HOQ isaanis rakkisaa akka jiru ibsan. Inistiitiyuutichi irra caalmaan bu'aa qorannoo beeksisuun qaamni ilaallatu akka hojiirra oolchu qofa gochuu akka ta'e ibsan. Amma garuu 'policy note review' waan jedhamu qopheessuu irratti akka argaman ibsan. 'Policy note review'n kunis yaadni furmaata akkamii akka kenname, tarkaanfii (intervention) akkamii akka barbaadu, qaama kamiin akka raawwatamu fa'a kan of keessaa qabuudha. Kana qaama ilaallatuuf erguun qorannicha haala salphaa ta'een hubatanii akka hojiirra oolchan taasisuuf yaadanii hojjetaa jiru. Gara biraan immoo, qorannoo hojiirra oolchuuf qaamolee dhimmi ilaallatu faana marii garee xiqqaa gochuun barbaachisaa akka ta'e, itti amananii karoorfataniiru. Kanaan dura bu'aa qorannoo qaamolee kanaan qaqqabsiisuu malee itti dhiheenyaan akka hin gargaarre, sun immoo dadhabina isaanii akka ta'e hubachuun amma marii adda addaa qaamolee qorannoo hojiirra oolchan faana gochuuf qophii ta'uu isaanii ibsaniiru.

C. Muuxannoo Inistiitiyuutii Qorannoo Qonnaa Oromiyaa

Inistiitiyuutichi qorannoowwan gaggeessaa turee fi jiru hojiirra oolchuu irratti sirna akkamii akka qabu adda baasuuf af-gaaffii hoogganaa fi ogeessota Inistiitiyuutichaaf taasifnee jirra. Haaluma kanaan, HOQ isaanii maal akka fakkaatu gaaffii gaafanneef hogganaas ta'ee ogeessonni, qorannoo hojiirra oolchuun rakkoo isaanis mudataa jiru akka ta'e amanuun yaada nuuf kennan. Hoogganaan Inistiitiyuutichaa[67] rakkoo hojiirra oolmaa qorannoo isaan mudataa turee fi akkaataa rakkoo kana itti furan irratti yaada nuuf qoodaniiru. Qorannoo hojiirra oolchuu keessatti danqaan isaan mudataa ture qaamni siyaasaa hojii Inistitiiyuutichaa hubatee deeggarsa hojiirra oolmaa qorannoo kennuu dhabuu akka ture kaasan. Amma garuu sun jijjiramee deeggarsa argataa akka jiran ibsan. Deeggarsa amma argame kanaaf ka'uumsi namoota

[67] Af-gaaffi Dr. Asaffaa Taa'aa, I/A Daarektara Olaanaa, IQQO waliin gaafa 21/08/2013 taasifame

siyaasaatti siquun amansiisuudha jedhu. Inistitiiyuutichi dhaabbilee gargaarsaa ykn fandii kennuun gargaaran gara 10 kan ta'an waliin atoomina qabaachuus ibsaniiru.

Ogeessi olaanaan[68] Inistitiiyuutichaa biraa af-gaaffii waliin taasifne sirna hojiirra oolmaa fi akkaataa HOQ isaanii irratti yaada nuuf kennaniiru. Komiin qorannoon hojiirra hin oolu jedhu isaan biras akka jiru ibsaniiru. Caaseffamni Inistitiiyuutichaa qorannoo bu'a-qabeessa gochuuf ogummaa saayinsii qonnaatiin ala ogummaawwan adda addaa kan akka saayinsii hawaasaa fi diinagdeefaa akka fayyadaman nutti himan. Gareen tokko yommuu qoratu gareen biraa immoo qorannoo hojiirra oolchuu irratti hojjeta jedhan. Qorannoon erga gaggeeffameen booda qulqullinaa fi hojiirra oolmaa isaa milkeessuuf adeemsa 'research review meeting' jedhamu akka qaban ibsan. Kunis qorannoon dhiyaate ciminaa fi hanqina inni qabuu fi bu'aa isaa haala itti gamaaggamamudha. Kora kana irraa 'research proceeding' akka qophaa'uufi qaamolee hubachuu qabaniif akka hubachiisan himan. Akkaataan bu'aa qorannoo hojiirra itti oolchaa turan kan duraa irraa amma jijjiruu isaanii ibsanii jiru. Kanaan dura bu'aa qorannoo isaanii qaama hojiirraa akka oolchuuf yaadametti beeksisuudhaan kan dhiisan ta'uu ibsuun yeroo ammaa kana hojiirra oolmaa qorannoof gahee olaanaa taphachaa kan jiran ta'uu beeksisan. Ogeessi[69] biraa hojirra oolmaa qorannoo Inistiitiyuutichaa qindeessu akkaataa hojiira oolmaa qorannoo irratti yaada nuuf hiraniiru. Daarektoreetiin qorannnoo Haala Hawaas-diinagdee fi babal'inaa qonnaa fi teeknolojii bu'aa qorannoo hojiirra oolchuu irratti akka hojjetu nu hubachiisan.Adeemsa ykn yaa'insa hojii qorannoo ilaalchisees, hojiin qorannoo fedhii qonnaan bulaa irraa akka maddu ibsan. Fedhiin kunis caasaa ADPLAC (Agri Development Partners Linkage Advisory Council) jedhamuun kan isaan gahu ta'uu ibsan. Caaseffamni kun qooda fudhattoota dhimma qonnaa irratti hojjetan qaama mootummaa fi mit-motummaa fi hawaasa irraa kan walitti babba'anidha. Caasefamni kun Godinaa hanga Aanaatti kan gurmaa'e yoo ta'u; qooda fudhattootni kunneen waggaatti yeroo murtaa'e wal gahuun qonna ilaalchisee rakkoowwan jiran kaasanii irratti mari'atanii akka rakkoo ta'e irratti waliigaluun Inistitiiyuutiin qoratee fala akka kaa'u godhu. Gama biraatiin immoo, qorataan mataa isaa hojii hojjetu

[68] Afgaaffii Dr. Asaffaa waliin ta'e, Akkuma 67ffaa.
[69] Afaaffii ob.Xilahuun Gannatii, Qorataa exteenshinii Qonnaa Hawaas-diinagdee, IQQO, waliin 21/08/2013 taasifame

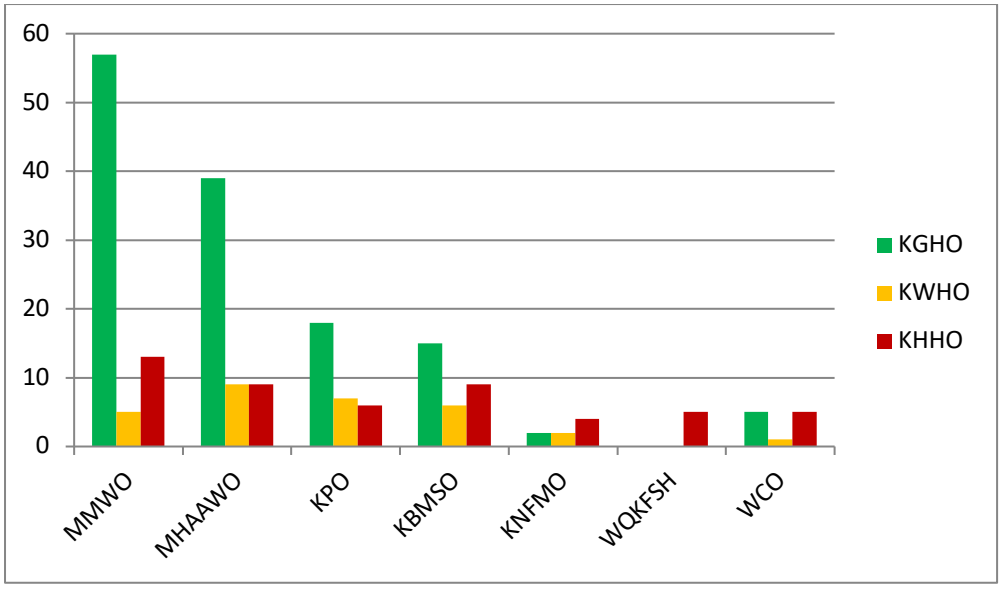
keessatti dhimmoota qonna keessatti rakkoo ta'an sakatta'iinsa haalaa (situational analysis) gaggeessuun qorannoo itti aanu gaggeessuuf ka'uumsa godhachuu danda'a jedhan. Dabalataan sakatta'a rakkoowwan adda addaa gaggeessuun qoranno idileef wantoota ka'uumsa ta'an akka adda baafatan ibsanii jiru. Dhimmi ykn naannoon qorannoon irratti hojjetamu erga addaan ba'ee booda qorattootni 'concept note' akka dhiyeessan ni godhama. Qorattootni dhaabatichaa hundinuu akkuma ogummaa isaanitti 'concept note' ni dhiyeessu. 'Concept note' adeemsa 'peer review' jedhamuun ogeessoota gitaatiin madaalamee, kan rogummaa qabu ykn hin qabne, barbaachisaa kan ta'e ykn kan hin barbaachisne jedhamee madaalama. Itti aansuun qorataan gumee qorannoo dhiyaaffatee gumichi sunis erga madaalameen booda gara qorannootti seenama. Adeemsa qorannoo keessatti qooda fudhattoota akka hirmaachisanis nuuf ibsaniiru. Qorannoon Inistitiiyuutichi gaggeessu gama dipaartimantii *'socio-economics and agriculatural extension'* jedhuun hawaasaaf akka qaqqabu hubatameera. Hojiirra oolmaa qorannoo kan qindeessu muummee kanadha.

Muuxannoo Inistitiiyuutichaa irraa hubachuun kan danda'amu bu'aa qorannoo hojiirra oolchuuf qaama deeggarsa taasisu amansiisuun barbaachisaadha. Hojii qulqullina qabu fi hawaasaaf bu'aa qabatamaa argamsiisu raawwachuun amantaa qaama deeggarsa kennu kanaa argachuuf nigargaara. Barnootni biraa muuxannoon dhaabbaticha irraa argamu akkaataa dhimmoonni qorannoof ka'uumsa ta'an fedhii qooda fudhattoota hundaa haala ilaalcha keessa galcheen Inistitiiyuuticha bira gahaniidha. Dhimmoonni qorataman haala kanaan fedhii qabatamaan jiru agarsiisuu danda'uun hojiirra oolmaa qorannichaatiif haala kan mijeessu ta'a. Hunda caala, qorannoo hojiirra oolchuun hojii haala idileen hojjetamuu fi hirmaannaa qaama qorannoo gaggeessee sirritti barbaadu ta'uun ni hubatama. Qorannoo hojiirra oolchuuf immoo, caaseffamaa fi ogeessota barbaachisu qabaachuun barbaachisaadha. Hojiin hojjetamus haala idilaa'eenii fi karoora kan bu'ureeffate yoo ta'e bu'aa buusa.

4. IBSA DATAA FI ARGANNOO QORANNICHAA

Yaadota furmaataa qaamolee qorannoo fayyadamaniif akeekaman hangamtu hojiirra oole hangamutu hojiirra hin oolle, kanneen hojiirra oolan haala kamiin hojiirra oolan kan jedhu yaadota af-gaaffii, marii garee fi tarkaanfii qabatamaan fudhataman (fakkeenyaaf, seerota tumaman ykn wixinee qophaa'an, hojimaata sirreefame fi kkf) irratti hundaa'uun xinxaallee jirra. Haaluma kanaan, tokkoon tokkoon yaadota furmaataa kennaman lakkaa'uudhaan, itti aansuun yaadota kennaman kanneen hojiirra oolanii fi hin oolle, kanneen walakkaan hojiirra oolanii fi kanneen hojiirra hin oolle jechuun adda baasnee jirra. Qorannoo Inistiitiyuutichaa adda addaa keessatti yaadni furmaataa qaama tokkoof ykn qaamolee adda addaaf kennamuu danda'ama. Kana jechuun irra deddeebiin yaada furmaataa mul'achuu danda'a jechuudha.Ta'us garuu, qorannoon hojiirra oole jechuuf yaadota furmaataa kennameen madaalama waan ta'eef, shallaggii kana keessatti irra deddeebii yaadota furmaataa ilaalcha keessa hin galchine.

Kan biraa, yaanni tokko guutummaan guututti hojiirra oole kan jedhamu haaluma yaada furmaataa kaa'ame sanaan mana hojii sanaan hojitti yoo hiikamedha yookaan tarkaanfiin akeekame yoo fudhatameedha. Kun garuu bu'aa (impact) hojiirra ooluun yaada furmaata sanii fide ykn fiduu dhabe hin dabalatu. Karaa biraatin yaanni furmaataa tokko walakkaan hojirra oole kan jedhamu, qaamni akka hojirra oolchu akeekameef sun yaadicha fudhachuun irratti hojjachuu kan jalqabe yoo ta'edha. Fkn: Yaadni furmaataa kenname qajeelfamni ykn danbiin akka qophaa'u kan akeeku yoo ta'e, manichi yaadicha fudhachuudhaan mirkanaa'us baatu, wixinee qajeelfamichaa ykn danbichaa kan qopheeffate yoo ta'edha. Kan biraa immoo yaanni furmaataa akeekame hojirra hin oolle kan jedhamu yaada akeekame sanarra dhaabbachuudhaan wanti hojjatame kan hin jirre yoo ta'edha. Itti aansuun, haala hojiirra oolmaa qorannoowwan kanneenii irratti raawwii qaamolee hojiirra oolchanii agariisuuf chaartii armaan gadiitiin haala itti aanuun teechifamee jira.

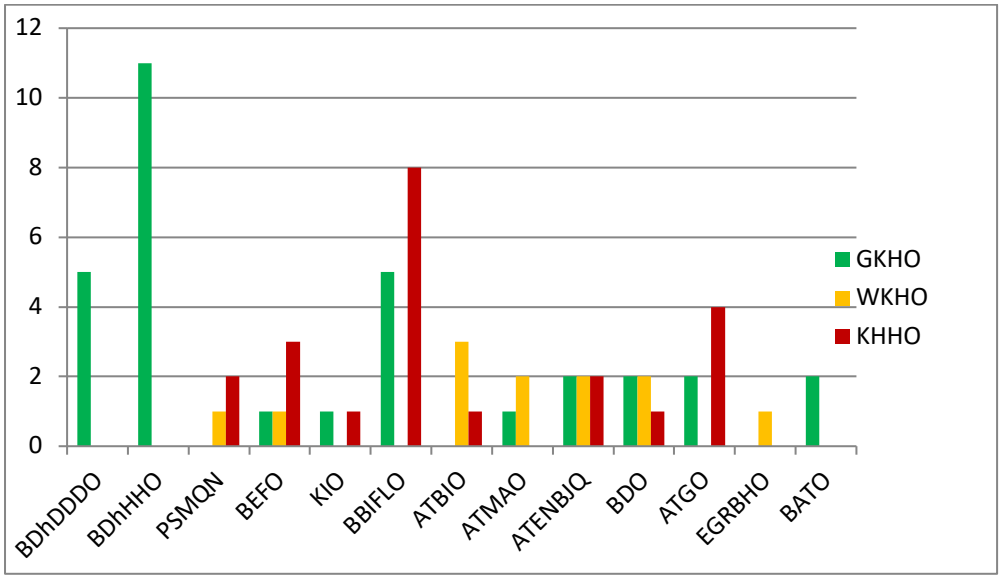


Chaartii 1: Raawwii HOQ Qaamolee Haqaa agarsiisu

Chaartiin kun argannoowwan qorannoo ILQSOtiin yaadota furmaataa qaamoleen haqaa akka hojiirra oolchan akeekaman sadarkaan hojiirra oolmaa isaanii maalirra akka jiru kan agarsiisudha. Manneen hojii kanneeniif yaadotni furmaataa garaagaraa qorannoo tokkoon yookaan immoo qorannoowwan adda addaatiin kan akeekaman yoo ta'u yaadonni furmaataa haalluu Magariisaa dibaman guutummaatti kan hojiirra oolan (GKHO), kan Keelloo dibaman walakkaan kan hojiirra oolanii (WKHO) fi kan Diimaa dibaman kan hojiirra hin oolle (KHHO) ta'uu agarsiisa. Akka chaarticha irraa hubatamu Mana Murtii waliigala Oromiyaatiif (MMWO) qorannoo garaagaraa 24 ta'aniin waliigalatti yaadota furmaataa 75 ta'an akeekamaniiru. Yaadota furmaataa 75 kanneen keessaa 57 kan ta'an hojiirra ooluu isaa ragaa argame irraa hubatamee jira. Kunis dhibbeentaan yoo shallagame 76%dha. Yaadota kennaman keessaa 5 (6.66%) kan ta'an walakkaan hojiirra oolaniiru. Yaadota furmaataa kennaman keessaa 13 ykn 17.3% kan ta'an hojiirra hin oolin hafanii jiru. Raawwiin hojiirra oolmaa kunis olaanaa kan jedhamuudha. Itti aansuun Mana Hojii Abbaa Alangaa Waliigalaa Oromiyaatiif (MHAAWO) yaadotni furmaataa 59 akka hojiirra oolan dhiyaatanii kanneen keessaa 40(67.79%) kan ta'an hojiirra kan oolan, kanneen 10(16.945) ta'an walakkaan hojiirra kan oolan fi kanneen 9(15.25%) ta'an immoo kan hojiirra hin oolle ta'uu ragaa argame irraa hubatamee jira. Qaamolee haqaa keessa Komishiniin Poolisii

Oromiyaa (KPO) fi Komishiniin Bulshiinsa Manneen Sirreessaa Oromiyaa (KBMSO) yaadota furmaataa akeekaman hojiirra oolchuun sadarkaa itti aanan qabatu. Waajjirri Caffee Oromiyaa (WCO) yaadota furmaataa isaaf laataman hanga walakkaa ta'u hojiirra kan oolche yoo ta'u, yaadota furmaataa Komishinii Naamusaa fi Farra Malaammaltummaa Oromiyaatiif (KFMNO) akeekaman muraasatu hojiirra oole. Yaadotni furmaataa Waajjirri Qindeessituu Koree Fooyya'iinsa Sirna Haqaa (WQKFSH) ilaallatan guutummaatti hojiirra osoo hin oolin hafanii jiru.

Itti aansuun, immoo raawwii HOQ qaamolee haqaan alaa biratti mul'atu haa ilaallu.



Chaartii 2: Raawwii HOQ Qaamolee Haqaan ala jiran agarsiisu

Chaartiin kun yaadota furmaataa qorannoo garaagaraatiin qaamolee seektara haqaatiin ala jiraniin akka hojiirra oolan akeekame sadarkaan hojiirra oolmaa isaanii maalirra akka jiru kan agarsiisudha. Manneen hojii kanneeniif yaadotni furmaataa garaagaraa qorannoo tokkoon yookaan immoo qorannoowwan adda addaatiin kan akeekaman yoo ta'u yaadonni furmaataa haalluu magariisaa dibaman guutummaatti kan hojiirra oolan (GKHO), kan keelloo dibaman walakkaan kan hojiirra oolanii (WKHO) fi kan diimaa dibaman kan hojiirra hin oolle (KHHO) ta'uu agarsiisa. Kana irraa hubachuu akka danda'amu yaadotni furmaataa BDhHHO, BATO fi BDhDDDO akeekaman hundi

hojiirra kan oolan ta'uu isaati. Manneen hojii hafan kanneen biroo biratti raawwiin hojiirra oolmaa qorannoo giddugaleessa yookaan isaa gadi ta'uun ni hubatama.

Akka waliigalaatti, ILQSO'n qorannoowwan gaggeessaa ture qaamolee haqaa fi haqaan ala jiraniitiif yaadota furmaataa lakkoofsaan gara 287 dhiyeessuun qaamoleen kunneen akka hojiirra oolchaniif akeekuu danda'ee jira. Hojiirra oolmaa yaadota kanaas yoo ilaalle yaadotni furmaataa 179 ta'an guutumaan guututti kan hojiirra oolan yoo ta'u, yaadotni furmaataa 39 walakkkaan hojiirra oolanii jiru. Yaadotni 69 immoo hojiitti osoo hin hiikkamin kan hafaniidha. Kun immoo yaadotni guutumaan hojiirra oolan 62.36% kan walakkaan hojirraa oolan 13.58% fi kan hojiirra hin oolin 24.04% ta'uu agarsiisa. Yaada walakkaan hojiirra oole kan guutummaan guututti hojiirra oole waliin yoo walitti daballle 75.94% ta'a. Kana jechuun yaadota furmaataa qorannoo Inistiitiyuutichaatiin akeekaman keessaa gara 76% kan ta'u adeemsa hojiirra oolmaa keessa darbeera jedhanii fudhachuun ni danda'ama. Kuni immoo raawwii gaariidhaa jechuun ni danda'ama. Haa ta'umalee, hangi hojiirra hin oolles yoo ilaallamu kan tuffatamuu miti. Yaadotni furmaataa kennaman sababa hojiirra hin oollleef adda baasanii beekuun hojiirra oolmaa qorannoo gara fuulduraa jiru fooyyeessuuf garagaara.

Sababoota Hojiirra Oolmaa Qorannoo Irratti Dhiibbaa Uuman

Daataa af-gaaffii fi marii garee irraa hubachuun akka danda'ametti, ILQSO'n qorannoo yommuu gaggeessu fi bu'aa qorannoo hojiitti hiikuu irratti qaamolee bu'aa qorannoo fayyadaman waliin atoomuu irratti hanqinni akka jiru ibsame. Daataan bar-gaaffii irraa argames kanuma cimsa. Namoota bar-gaafficha guutan 54 keessaa 49% kan ta'an atoomina irratti hanqinni akka jiru ibsani. Haaluma wal fakkatuun, argannoo qorannoo hojiirra oolchuu keessatti hanqinni ogummaa isa tokkoodha. ILQSO qorannoo gaggeessuun dura sakatta'a fedhii qorannoo ni taasisa. Haa ta'umalee, qaamoleen kunneen fedhii qorannoo isaanii haala gurmaa'een adda baafatanii ILQSO'f kennuu irratti hanqinni jira. Dhimmi biraa HOQ irratti dhiibbaa uume, dhabamuu sirna hojiirra oolmaa qorannooti. Qajeelfama qorannoo keessatti qorannoo hojiirra oolchuu keessatti gaheen ILQSO, qorannoo gaggeeffame workishooppii fi waltajjii adda addaatti dhiyeessuun beeksisuu, tamsaasuu, maxxansuun raabsuu fi kkf akka ta'e ibsameera. ILQSO'n qorannoon erga gaggeeffamee booda workshooppiif ni dhiyeessa. Maxxansa adda addaattti jijjiramuun

qaamolee hojiirra oolchaniifis ni erga. Marsariitii manichaa irrattis gadi ni dhiisa. Haa ta'umalee, bu'aa qorannoo beeksisuu irrattis hanqinni akka jiru daataa qorannoo kana irraa hubachuun ni dand'ama. Qaamoleen hirtaa keessummaattuu, qaamoleen haqaan ala jiranii fi ogeessonni isaanii qorannoon gaggeeffamuu isaas ta'ee, bu'aa isaa hin beeknu jedhan xiqqoo miti. Kana jechuun bu'aa qorannoo beeksisuu fi dhaqqabamaa gochuu irratti hanqinni jiraachuu mul'isa. Qaamolee qorannoo hojiirra oolchaniif deeggarsa ogummaa gochuu irratti hanqina guddaatu mul'ata. Kun immoo Inistiitiyuuticha keessatti dhimmi qorannoo hojirra oolchuu abbummaan qaama ykn garee tokkoof kennamee karooraan irratti hojjatamuu dhabuu irraa kan dhufedha. Qorannoon saayinsii qorannoo irratti hundaa'ee gaggeeffama waan ta'eef, bu'aa qorannoo haala qaamni hojirra oolchu hubachuu danda'uun bifa salphaa fi ifa ta'een dhiyeessun barbaachisaadha. Iddoo barbaachisaa ta'etti leenjii, gorsa fi maanuwaalii hojiirra oolmaaf haala mijeessu qoheessuu gaafata. Akka ILQSOttii garuu, qaamolee qorannoo hojiirra oolchaniif deeggarsi ogummmaa qindaa'aa fi karoora irratti hundaa'e taasifamaa hin jiru.

Gama biraatiin, qaamolee gaggeessa fi hojiirra oolmaa qorannoo irratti deeggarsa godhan waliinis rakkoon atoominaa ni mul'ata. Itti bahi ykn bu'aan qorannnoo ILQSO yaadadha.Yaada hojiirra oolchuuf deeggarsa qabeenyaa fi qabeenyaan alaa (humna dhiibbaa uumuu) barbaada. Gama kanaan dhaabbilee biyya keessaa fi biyya alaa sirna seeraa fi haqaa deeggaruu irratti hojjetan waliin hojjachuu gaafata. Haa ta'umalee, Inistitiyuutiin gama kanaan koroora qabatee haala qindaa'aa fi sirnaawaa ta'een hojii atoominaa kana milkeessuu hin dandeenye.

Rakkoon biraa HOQ ILQSO irratti dhiibbaa uume dhimmoota adeemsa gaggeessa qorannoo fi qulqullina qorannoo waliin walqabataniidha. Akkuma olitti ibsame gaggeessi qorannoo sakatta'a fedhii qorannoo irraa madda. Haala addaatiin fedhii qaamoleen fayyadamtoota qorannoo ILQSO ta'an dhiyeeffatanis bu'ureeffachuu danda'a. Sakatta'iinsa fedhiin wal qabatee akkuma olitti ibsame qaamoleen hirtaa fedhii isaanii dursuun adda baasanii gurmeessanii ILQSO'f laataa hin jiran. Fedhii qorannoo bara baraan gaggeeffamu yoo ilaallame dhimmootuma kanaan dura qorannoon irratti gaggeeffame deebi'anii yoo dhiyaatan ni mul'ata. Qorannoo haala kanaan gaggeeffamu rakkoo qabatamaa fi ijoo ta'e furuu irratti hanqina horachuun isaa hin hafu. Qaamoleen qorannoo gaggeessanii fi adeemsa gaggeessa

qorannoo kanaa irratti muuxannoo isaanii ilaallee rakkoo ka'umsa qorannoo ta'uu adda baaasuuf, adeemsa adda addaa fi qaama odeeffannoo isaanii kennu kan idileen hojii kana hojjetu akka qaban hubannee jirra. ILQSO'n rakkoo sakatta'iinsa fedhii adda baasuu irratti qunnamaa jiru kanaaf fala barbaadun furmaata filannoo hin qabnedha.

Gama biraan rakkoo dhageettii dhabuu fi seerri hojiirra oolmaa qorannoo ittiin dirqisiisan dhabamuun akka dhimma HOQ ILQSO danqan tokkootti ka'ee jira. ILQSO'n qaama qorannoo gaggeessuudha. Akka qaamolee haqaa biraa humna seera ittiin raawwachisan hin qabu. Irra caalmaan qorannoon hojiirra kan oolu faayidaa qorannichi argamsiisu qaama hojiirra oolchu amansiisuudhaani. Kun immoo, hojii qulqullinaa fi faayidaa qabatamaa qabu hojjechuun ta'a. haala qaamoleen dhimmi ilaalu deeggarsa ittiin gochuu danda'an irrattis ILQSOn fala waaraa barbaaduun dirqama ta'a.

Qulqullinni qorannoo ILQSO bara baraan dabalaa akka jiru adeemsa sakatta'a qorannoowwan ILQSO irratti gaggeeffame kana keessatti hubannee jirra. Haa ta'umalee, ammas hanqinni qulqullinaa ni mul'ata. Keessumatttuu, argannoo qorannoo adda baasanii kaa'uu fi yaadota furmaataa akeekuu irratti hanqinni ni mul'ata. Yaadonni furmaataa dhiyaatan sirnaawaa, iftoomina kan qaban, hojiirra ooluu kan danda'an, hojiirra oolmaan isaanii kan safaramu, yeroodhaan kan daanga'an (SMART) fi qaama hojiirra oolchu kallattiin kan adda baasan ta'uu irratti hanqina qabu.

Dhimmi biraa hubatamuu qabu olitti qorannoo hojiirra oolchuuf moodeelotni (models) garagaraa jiraachun ibsamee jira. Akkaataa qorannoo isaanii irratti hundaa'un dhaabbileen garagaraa moodeelota garagaraa filatu. Haata'umalee, amalli HOQ Inistiitiyuutii kanaa moodeela tokko kan filachiisuu miti. Kanumarraa ka'uun Inistiitiyuutichi qorannoo isaa hojirra oolchuuf, haala qorannichaa fi yeroo irratti hundaa'uun moodeelota jiran keessaa filachuun irra bu'aa waan qabuuf, moodeelota walitti makuun fayyadamuun bu'a qabeessa ta'a.

5. YAADOTA GUDUUNFAA FI FURMAATAA

5.1 YAADOTA GUDUUNFAA

ILQSO'n bara 2001 kaasee hanga ammaattii rakkoowwan adda addaa qaamolee haqaa fi sirna seeraa naannoo Oromiyaa keessatti mul'atan fooyyessuuf qorannoo gaggeessaa tureera. Qorannoowwan kunis sirna haqaa fi seeraa naannichaa cimsuu keessatti gahee olaanaa taphataniiru. Qorannoowwan Inistiitiyuutichi gaggeessaa ture irratti qorannoon hojiirra oolaa hin jiru kan jedhu qaamoleen adda addaa kaasaa turan. Komii fi yaada ka'u kana qulqulleessuu fi akkasumas, sirna hojiirra oolmaa qorannnoo Inistiitiyuutichaa madaaluuf qorannoon kun gaggeeffamee jira. Qorannoo gaggeeffame kana irraa hubachuun kan danda'ames qorannoon Inistitiiyuutichaa hojiirra oolman isaa sadarkaa gaarii jedhamu irra kan jiru ta'uu agarsiisa. Akka waliigalaatti qorannoowwan gaggeeffamaa turaniin yaadota furmaataa lakkoofsaan 287 ta'an qaamolee hojiirra oolchan addaa addaatiif gumaachuu danda'ee jira. Yaadota furmaataa akka waliigalaatti akeekaman kana keessaa 179 kanneen ta'an qaamolee garaagaraatiin guutummaa guututti kan hojiirra oolan yoo ta'u, yaadotni 39 walakkkaan hojiirra oolanii jiru. Yaadotni 69 immoo, hojiitti osoo hin hiikkamin kan hafaniidha. Kana jechuun yaadotni guutummaan hojiirraa oolan 62.36% kan walakkaan hojirraa oolan 13.58% fi kan hojiirra hin oolin 24.04% dha. Yaada walakkaan hojiirra oolan kan guutummaan guututti hojiirra oolan waliin yoo walitti daballe 75.94% ta'a. kana jechuun, yaadota furmaataa qorannoo Inistiitiyuutichaatiin akeekaman keessaa gara 76% kan ta'u adeemsa hojiirra oolmaa keessa kan darbaniidha jechuudha. Kun immoo, raawwiin isaa gaarii ta'uu agarsiisa. Haa ta'u malee, kanneen hojiirra hin oolles yoo ilaallamu kan tuffatamuu miti. Yaadotni furmaataa hojiirra hin oolle dhimmoota hojiirra oolmaa qorannoo irratti dhiibbaa uumaniin kan walqabataniidha. Wantootni hojiirra oolmaa qorannoo ILQSO irratti dhiibbaa uuman hanqina atoomina ILQSO'n qaamolee qorannoo fayyadaman, qaamolee gaggeessaa fi hojiirra oolmaa qorannoo irratti deeggarsa taasisan waliin qabu, sirni hojiirraa oolmaa qorannoo guutuu ta'uu fi kan jirus hojiirra ooluu dhabuu, akkasumas, hanqinaalee adeemsaa fi qulqullina qorannoo waliin walqabatan ta'uun adda bahee jira.Rakkoowwan kana furuuf yaadonni furmaataa itti aanan akeekamaniiru.

5.2 YAADOTA FURMAATAA

1. Rakkoo guddaa HOQ ILQSO kan ta'e rakkoo atoominaati. Rakkoo kana furuuf sirna HOQ kana karooraa fi xiyyeeffannoon raawwatu horachuun barbaachisaadha. Kanaafis, ILQSO'n hojii kana akka hojii ijoo fi idilee tokkotti fudhachuun caaseffamaa fi humna namaa barbaachisaa ta'e ramaduun hojjechiisuu qaba. Hojiin guddaan caaseffama kanaan hojjetamu qaamolee fayyadamtoota qorannoo ILQSO ta'an, qaamolee deeggarsa taasisan (mootummaa, mit-mootummaa fi dhaabbilee qorannoo gaggeessan biroo) waliin hariiroo hojii uumuun akkaataa milkaa'ina hojii manichaa akka waliigalaa fi HOQ'f haala mijeessuudha. Dabalataan hojiiwwan qorannoo hojiirra oolchuuf barbaachisan kan akka deeggarsa ogummaa taasisuu ni raawwata. Akkaataa caaseffamni kun itti gurmaa'u ilaalchisee filannoo lama ilaaluun barbaachisaa dha. Tokkoffaan, hojiin atoominaa hojii daarektoreetii leenjii fi qorannoo irra darbu waan ta'eef, hojii bakka lachuu jiru walitti gurmeessanii hojjechuuf akka tolu caaseffama garee lamaan irraa adda ta'e, garuu wal hubannaan hojjetu yoo caaseffame gaaridha. Hojiin gorsaa yeroo amma daarektoreetii leenjii jala jiruu fi guddaa ittiin hin hojjetamne amala hojiirra oolmaa qorannoo waan qabuuf caaseffama kana jalatti akka gurmaa'u taasisuun gaaridha. Caaseffama kana sababoota garaagaraatiif amma milkeessuun kan hin danda'amne yoo ta'e akka filannoo lammaffaatti daarektoreetii qorannnoo jalatti garee hojii atoominaa fi gorsaa hojjetu gurmeeessuun hojiitti galchuun ni danda'ama. Hojii qorannoo hojiirra oolchuu akka hojii idileetti ilaaluun qorannoon gaggeeffame hanga hojiirraa oolutti akka hordofamu karooraan akka hojjetamu taasisuu barbaachisa.
2. Gama biraan dandeettii dhaga'amuu fi dhiibbaa uumuu horachuuf qaamolee hojiirra oolmaa seeraa too'atan, kan akka caffee waliin hojjechuun barbaachisaadha. Kanaafis, ILQSO'n hojiilee HOQ irratti hojjetaman yeroo, yeroon Caffeef gabaasuun Caffeen tarkaanfii bulchiinsaa akka fudhatu taasisuutu irraa eegama. Dambii hundeeffama ILQSO keessattistumaa HOQ irratti dirqama deeggarsa kennuu kaa'u fi kana gochuu dhabuun bu'aa inni hordofsiisu waliin ibsuun akka fooyya'u gochuun ILQSO irraa eeggama. Manni Marii Bulchiinsa Mootummaa Naannoo Oromiyaas barbaachisummaa dhimma kanaa hubatee dambii haala kanaan fooyyessuutu irraa eeggama. Gama biraatiin rakkoon hojiirra ooluu dhabuu qorannoo yeroo ammaa kana rakkoo akka biyyatti beekame

ta'eera. Rakkoon kun rakkoo waliinii waan ta'eef, ILQSO'n dhaabbilee biyyoolessaa qorannoo gaggeessan keessumattuu, kan seeraa fi imaammataa, waliin sirna itti wal arganii HOQ isaaniif haala mijeessan, waliin ta'anii dhiibbaa uuman akka jiraatuuf, kaka'umsa fudhachuun hojjechuu qaba.

3. Bu'aa qorannoo bifoota adda addaan dhaqqabamaa taasisuu fi beeksisuun hojiirra oolmaa qorannoof baay'ee barbaachisa. ILQSO'n yeroo ammaa qorannoo maxxansuu fi raabsuun akkasumas, marsariitii dhaabbataa irratti gadhiisuun qorannoo dhaqqabamaa akka ta'u hojjetaa jira. Hojii kana cimsuun maxxansa qorannoo qaamolee dhimmi ilaallatu biraan gahuun barbaachisaadha. Gama biraan, qorannoowwan kanaan dura gaggeeffaman argannoowwan hojiirra hin oolle keessa deebi'anii ilaaluun fooyya'anii hojiirra akka oolan taasisuun barbaachisaadha. Bu'aa qorannoo fi hojiirra oolmaa isaa irratti waltajjiiwwan adda addaa fi sab-qunnamtii fayyadamuun beeksisuun barbaachisaadha. Qaamolee qorannoo hojiirra oolchan, deeggaranii fi hooggansa isaanitiif cuunfaa qorannnoo ifa ta'e (policy note) qopheessuun hubachiisuun barbaachisaa dha.
4. Rakkoo adeemsaa fi qulqullina qorannootiin wal qabatu furuuf, ILQSO'n akkaataa dhimmoota qorannoof ka'umsa ta'an adda itti baafatu irratti hojjechuu qaba. Yeroo ammaa akkaataan fedhiin qorannoo qaamolee hirtaa irraa itti sassaabbamu qorannoo rakkoo qabatamaa furu gaggeessuuf kan dandeessisan miti. Dhimmoonni qorannoo ILQSOtiin tuqaman hedduun akka fedhii qorannootti deebi'anii dhufaa jiru. Dabalataan, dhimmoonni rakkoodha jedhaman qorannoo sirnaawaa ta'e gaggeessuuf kan dandeessisan ta'aa hin jiran. Kana hiikuuf ILQSO'n akkaataa qaamoleen hirtaa rakkoo sirna haqaa fi seeraa keessa jiru sadarkaa gadiitii kaasee hanga Biirotti gabaafamee ILQSO'f gahuu danda'u irratti akka hojjetan ILQSO'n amansiisuu qaba. Kana cinaatti ILQSO'n dhimmoota qorannoof ka'umsa ta'uu danda'an irratti sakatta'iinsa gadi feegenya qabu gaggeessuun gumbii yaadotni qorannoof ka'umsa ta'an itti qabaman qopheeffachuun akka haala fi yerootti sanarraa fayyadamuutu irra jiraata. Sirna qaamolee hirtaa yeroo, yeroon arganii itti mari'achiisan ykn waltajjii isaanii (gamaaggama karooraa fi gabaasaa) irratti hirmaachuun rakkoolee jiranii fi kallattii deemamuu qabu irraa hubachuun irratti hojjachuu qaba. Muuxannoo dhaabbilee qorannoo ilaalle irraa fudhachuun mana marii

gorsitootaa kan qaamoleen haqaa fi qaamoleen sochii hawaasa sirna seeraa irratti dhiibbaa dhihoo qaban bulchan irraa walitti bahan hundeessuu fi itti fayyadamuun ni danda'ama. Gama biraan, yaadni ka'umsa qorannoo dhuunfaan qorataa Inistiitiyuutichaa ykn ala irraa dhufee madaallii jiru yoo darbe akka gaggeeffamu haala heyyamuun fooyya'uu qaba.

5. Manneen hojii qorannoowwan ILQSO isaanif ergamee hojirra hin oolchin qorannoo isaanif ergame irra deebi'anii sakatta'uudhaan yaadota furmaataa qorannicha keessatti akeekaman hojirra oolchuu qabu. ILQSO nis qorannoowwan ykn yaadota furmaataa hojirra hin oolin kanneen qorannoo kanaan adda bahanii jiran qaamolee dhimmi ilaalu kan kanaan dura ergameefis yoo ta'e, irra deebidhaan erguufii hojiirra oolchuuf deeggarsa ogummaa taasisuufii qaba.

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List of articles, case analysis and reflections published so far on the eleven issues of Oromia Law Journal

No	*Title*	*Contribution Type*	*Volume and No.*	*Author/s*	*Publication year*
1	**Gaa'ilaafi Gaa'ilaan Ala Akka Dhirsaa fi Niitiitti Waliin Jiraachuu Adda Baasuu Keessatti Yeroo Waraqaan Ragaa Gaa'ilaa Hin Jirre Rakkoolee Qabatamaan Mudatan** ***Corresponding Translation*:** **Distinguishing Marriage from Irregular Union: Some Practical Challenges in Absence of Marriage Certificate**	**Article**	**1(1)**	**Jemal K.**	**2004/2012**
2	**The Degree of Court's Control on Arbitration under the Ethiopian Law: Is It to the Right Amount**	**Article**	**1(1)**	**Birhanu B.**	**2004/2012**
3	**Madaallii Raawwii Hojii Abbootii Seeraa Oromiyaa: Barbaachisummaa fi Sirna Raawwii Isaa** ***Corresponding Translation*:** **Judges' Performance Evaluation in the State of Oromia: The Need and the How**	**Article**	**1(1)**	**Teferi B.**	**2004/2012**
4	**Mediating Criminal Matters under Ethiopian Criminal Justice System: The Prospect of Restorative Justice**	**Article**	**1(1)**	**Jetu E.**	**2004/2012**
5	**Sadarkaa Mirkaneessa Ragaa Dhimma Yakkaa:Yaadrimeewwanii fi Xiinxala Dhimmaa** ***Corresponding Translation*:** **Standard of Proof in Criminal Cases: The Concepts and Case Analysis**	**Case Analysis**	**1(1)**	**Milkii M.**	**2004/2012**

6	**Oromia Justice Sector Professionals Training and Legal Research Institute: Major Activities and Achievements**	**Reflection**	**1(1)**	**Milkii M.**	**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 G.**	**2005/2013**
8	**Derivation of Rights: Affording Protection to Latent Socio-economic Rights in the FDRE Constitution**	**Article**	**2(2)**	**Amsalu D**	**2005/2013**
9	**Bu'a qabeessummaa Rifoormiiwwan Manneen Murtii Oromiyaa:Kallattii Si'oomina Abbaa Seerummaatiin Yoo Madaalamu** ***Corresponding Translation*:** **Assessing the Effectiveness of Judicial Reforms from the Perspective of Efficiency: The Case of the State of Oromia**	**Article**	**2(2)**	**Teferi B.**	**2005/2013**
10	**Cassation Review of Arbitral Awards: Does the Law Authorize It?**	**Article**	**2(2)**	**Birhanu B.**	**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 B.**	**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 E.**	**2005/2013**
13	**Federalism in Ethiopia and Foreign Relations: Regional State Diplomacy**	**Article**	**3 (1)**	**Tesfaye A.**	**2006/2014**

14	Dagannoon Nama Ajjeesuu Ilaalchisee Firiiwwan Dubbii Seerichaa Irratti Hundaa'uun Hojjechuun Walqabatee Rakkoowwan Qabatamaan Mul'atan *Corresponding Translation*: Negligent Homicide: Law and Practice	Article	3 (1)	Tolosa D.	2006/2014
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47	**Kenniinsa Korooraa fi Dhiifama Sirreefamtoota seeraa Naannoo Oromiyaa: Seeraafi Hojimaata** *Corresponding translation* **Parole and Pardon Granting in Oromia Regional State: Law and Practice**	**Article**	**8(1)**	**Getachew F** **Abduselam A**	**2011/2019**
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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 M**	**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 J**	**2012/2020**
51	**Review of Final Criminal Judgements in Ethiopia and the Quest for Remedies**	**Article**	**9(1)**	**Tesfaye B**	**2012/2020**

52	The Place of Multiparty Commercial Arbitration under Ethiopian Arbitration Law	Article	9(1)	Alemu B	2012/2020
53	Bu'a qabeessummaa Mana Murtii Hawaasummaa Gandaa Mootummaa Naannoo Oromiyaa *Corresponding translation* The Effectiveness of Kebele Social Courts : The Case of Oromia	Article	9(1)	Azzanee E. Abdi T.	2012/2020
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59	Hundeeffama Mana Murtii Aadaa Naannoo Oromiyaa *Corresponding Translation* Establishment of Customary Courts in Oromia	Article	10(1)	Azane E Abdi T	2013/2021
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65	**Hojiirra Oolmaa Qorannoowwan ILQSO Bara 2001-2012** ***Corresponding Translation*** **Implementation of Oromia Training and Legal Research Institute (Ten Years Audit :2009-2020)**	**Article**	**11(1)**	**GetachewF.** **Kedir K**	**2014 /2022**