JOORNAALII SEERAA OROMIYAA

OROMIA LAW JOURNAL

Jiildii 1ffaa, Lakk.1 Waggaatti Yeroo Tokko Kan Maxxanfamu

Vol.1 No.1 Published At Least Once Annually

Barruulee

Articles

Gaa'ilaa fi Gaa'ilaan Ala Akka Dhirsaa fi Niitiitti Waliin Jiraachuu Adda Baasuu Keessatti Yeroo Waraqaan Ragaa Gaa'ilaa Hin Jirre Rakkoolee Qabatamaan Mudatan

The Degree of Court's Control on Arbitration under the Ethiopian Law: Is It to the Right Amount?

Madaallii Raawwii Hojii Abbootii Seeraa Oromiyaa: Barbaachisummaa fi Sirna Raawwii Isaa

Mediating Criminal Matters in Ethiopian Criminal Justice System: The Prospect of Restorative Justice

Xiinxala Dhimmaa

Case Analysis

Sadarkaa Mirkaneessa Ragaa Dhimma Yakkaa: Yaadrimeewwaniifi Xiinxala Dhimmaa

Reflection

Oromia Justice Sector Professionals Training Legal Research Institute: Major Activities and Achievement

JOORNAALII SEERAA OROMIYAA

OROMIA LAW JOURNAL

Miseensota Boordii

Misgaanuu Mul'ataa- Daarikteera Inistiitiyuutii (Dura-taa'aa)

Abarraa Dagafaa (Yun. Addis Ababaa) Luboo Tafarii (Yun. Adaamaa)

Mallasaa Abbaayinaa (D/T/K/Dh/Dh/S/B/Caffee Oromiyaa) Tashoomaa Girmaa (A/A/B/H/O)

Koree Gulaallii

Editorial Committee

Tafarii Baqqalaa (Gulaalaa Muummichaa)

Milkii Makuriyaa (Gulaalaa M/I) Daawit Geetaachoo (Miseensa)
Habtaamuu Bultii (Miseensa) Tasfaayee Niwaay (Miseensa)

Gulaaltota Alaa

External Assessors

Abarraa Dagafaa (LLB, LLM, kaadhimamaa PhD)

Yoosef Aymiroo (LLB)

Amsaaluu Moosisaa (LLB, LLM,)

@2004 Adaamaa

Baafata

Contents

Barruulee

Articles

Gaa'ilaa fi Gaa'ilaan Ala Akka Dhirsaa fi Niittiitti Waliin Jiraachuu Adda Baasuu Keessatti Yeroo Waraqaan Ragaa Gaa'ilaa Hin Jirre Rakkoolee Qabatamaan Mudatan 1

Jamaal Qumbii

The Degree of Court's Control on Arbitration under the Ethiopian Law: Is It to the Right Amount?.....26

Birhanu Beyene

MRH Abbootii Seeraa Oromiyaa : Barbaachisummaa fi Sirna Raawwii Isaa.....44

Tafarii Baqqalaa

Mediating Criminal Matters under Ethiopian Criminal Justice System: The Prospect of Restorative Justice 74

Jetu Edosa

Xiinxala Dhimmaa

Sadarkaa Mirkaneessa Ragaa Dhimma Yakkaa: Yaadrimeewwaniifi Xiinxala Dhimmaa.....107

Milkii Makuriyaa

Reflection

Oromia Justice Sector Professionals Training Legal Research Institue: Major Activities and Achievements.....124

Milkii Mekuria

Ergaa Walitti Qabaa Gumii Inistiitiyuutii

Jaallatamtoota Dubbistootaa!

Tajaajiloonni Qaamolee Mootummaan Uummata tajaajilamaaf kennaman saffisaa fi qulqulluu ta'anii, tajaajila argatutti garaa gahinsi hawaasaa dabaluun amantaa mootummaa irratti qabu guddisaa deemuuf dandeettiin raawwaachistummaa qaamolee mootummaa yeroo dhaa gara yerootti fooyyessaa fi cimsaa deemuun kan barbaachisu ta'uun beekamaa dha. Dandeettii raawwachiistummaan gahumsa humna namaa, hojimaataa fi gurmaa'inaa kan hammatu yoo ta'u, kanneen keessaa inni adda duree fi murteessan ammoo gahumsa humna namaa ti.

Mootummaan Naannoo Oromiyaa dandeettii raawwachiistummaa qaamolee mootummaa cimsuudhaaf sochiilee taasisaa jiru keessaa, dandeettii raawwachiistummaa qaamolee haqaa naannoo keenyaa gama ilaaluun tattaaffiin godhamaa jiru isa tokkoo fi isa hangafaa ti jechuun ni danda'ama. Sochiiwwan gama kanaan godhamaa turanii fi jiran keessaa ammoo leenjii kennuu fi qorannoo gaggeessuun gahumsa humna namaa qaamolee haqaa naannoo keenyaa cimsaa akka deemuuf yaadamee, Inistiitiyutiin Leenjii Ogeessota Qaamolee Haqaa fi Qorannoo Seeraa Oromiyaa Danbiin akka hundeeffamu gochuu fi bara baraan baajata ramaduufiin jajjabeessaa deemuun kanneen sochiilee ijoo jedhamanii caqasamuu malani dha.

Inistiitiyutiin keenya kunis baroottan darban ogeessota qaamolee haqaa keenyaaf leenjii hojiin duraa fi hojii irraa kennaa kan ture ta'uu caalaayyuu, mata- dureewwan adda addaa irratti qorannoo gaggeessuun woorkishooppii irratti mariif dhiyeessuun hubannoo fi gahumsi ogeessota qaamolee kunneennii akka cimu tattaafii cimaa gochaa tureera; yeroo ammaas gochaa jira. Sochiileen kun fooyyaa'insa kenna tajaajilaa yeroo ammaa kan qaamolee haqaa naannoo keenyaa biratti mul'atuuf shoora mataa isaa gumaacheera jedhanii kaasuun ni danda'ama.

Jaallatamtoota Dubbistootaa!

Akkuma olitti caqasame, sochii dandeettii raawwachiistummaa keessaa inni murteessan hojii gahumsa humna namaa cimsuu irratti hojjetamu dha. Gahumsa humna namaa cimsuuf leenjiin kennamuu fi qorannoo gageeffamu irratti mari'achuun gahee guddaa qabaatanis, sochiin kun aadaa dhimmoota waayitaawaa fi falmisiisoo ta'an irratti ija ogummaan ilaalanii barreessuu fi kan barreeffame sana irratti ammoo qeeqa dhiyeessuun wal-irraa barachaa deemuun yoo deeggarame malee bu'aa barbaadamu milkeessuun hin danada'amu. Haaluma

kanaan, Inistitiiyutiin keenya hojii gama gahumsa humna namaa cimsuun jiru kallattii hundaan deeggaruuf imaammataa fi tarsiimoo qabu irraa ka'uun *JOORNAALIIN SEERA OROMIYAA* maxxansi jalqabaa kun akka maxxanfamu taasiseera. Kunoo! isin harkaan gaheeras.

Joornaaliin Seera Oromiyaa kun Uummanni keenya,Uummanni Oromoo yeroo dheeraadhaaf hacuuccaa jala erga turee booda, iddee sirna bulchiinsaa fi seeraa diriirsatee ofiin of bulchuu jalqabee Joornaalii jalqabaa waan taateef, Joornaalii seena-qabeettiidha amantaa jedhun qaba. Joornaaliin kun ogeessonni seeraa dhimmoota adda addaa wayitaawoo fi falmisiisoo ta'an irratti barressuu fi wal-qeequun bakkatti yaada ofii ibsatanii ogummaa isaanii cimsataa deeman ta'uu caalaayyuu, ogeessonnii fi hawaasni Joornaalii kana dubbisan hubannoon isaan seeraa fi hojimaata qaamolee haqaa irratti qaban dabalaa waan deemuuf, gumaachi mirkanaa'uu ol'aantummaa seeraa, bulchiinsaa gaarii, fi lafa qabatinsa sirna dimokiraasii naannoo keenyaaf qabu haalaan ol'aanaa ta'uu isaan caqasuu fedha.

Dhuma irratti, namootni/ogeessotni Joornaalii seena-qabeettii taate maxxansa ishii jaqabaa kana irratti hojii ogummaa keessanii dhiyeessuun seenaa galmeessistan baga kanaaf geessan jechaa, namootaa fi qaamoota maxxansamuu Joornaalii kanaaf gumaacha taasisan hundaa galatteeffadheen, jaallatamtoonni dubbistoonni keenyas maxxansaalee Joornaalii kanaa itti aananiif gumaacha akka nuuf gootan kabajaan gaafadhee, dubbisa gaarii akka isiniif ta'u hawwaa ergaa koo xumura.

Haqaaf Haa Dubbannu; Haa Hojjennus!!

Taaddalee Nagishoo Baayisaa

Pirezidaantii Mana Murtii Waliigala
Oromiyaa fi Walitti Qabaa Gumii Inistitiiyutii

Ergaa Daarikteeraa

Biyya tokko keessatti kenniinsi tajaajila haqaa saffisaa, qulqulluu fi uwwisa qabu jiraachuun murteessa dha. Sirni haqaa cimaan hawaasa garaa gahu jiraachuun isaa ijaarsa sirna dimokiraasii, guddina hawaas-dinagdee, nagaa fi tasgabbii uumuurratti dhagaa bu'uuraa waan ta'eefi. Haa ta'u malee, kenniinsa tajaajila haqaa biyya keenyaa sirnoota darbanii yoo ilaalle rakkoo walxaxaa hedduu keessa kan turee fi fedhii hawaasichaa galmaan kan hin geenye harkifataa fi bu'aa dhabeessa kan ture ta'uun isaa yaadannoo yeroo dhiyoo ti. Rakkoowwan sirnicha tarkaanfachiisuu dhoowwuun xaxanii qaban keessaa adda dureen kan caqasamu hojimaata badaa, gahumsaa fi ilaacha ogeessotaa akkasumas miiraa tajaajilaa horachuu dhabuu ogeessotaati. Rakkoowwan sirnicha xaxanii qaban kana hundee irraa furuuf mootummaan sagantaa fooyya'insa sirna haqaa diriirsuun tattaaffii adda addaa taasisaa tureera. Gama kanaan tarkaanfii fudhatame keessaa adda duraan kan caqasamu bu'aa sagantaa fooyya'insa sirna haqaa kan ta'e dhaabbata leenjii fi qorannoo seeraa gaggeessuu hundeessuu dha. Haaluma kanaan, Mootummaan Naannoo Oromiya rakkoo hanqina humna namaa baay'inaa fi qulqullinaan, ilaalcha, naamusaa fi miira tajaajiltummaa horatan uumuun rakkoo gama kanaan jiru hundeerraa furuuf Inistiitiyuutiii Leenjii Ogeessota Qaamolee Haqaa fi Qo'annoo Seeraa Oromiyaa Danbii lak. 77/1999 tiin hundeesseera.

Ergamni Instiitiyuutichaa "**Leenjii** ogeessota qaamolee haqaa gahumsa ol'aanaa gonfachiisu itti fuufiinsaan kennuun ogeessota sirna heeraa fi seeraa kabajanii fi kabachiisan baay'inaa fi qulqullinaan horachuu fi rakkoowwan sirna haqaa irratti **qorannoo fi qo'annoo** gaggeessuun yaada furmaataa burqisiisuun fooyya'iinsi sirna haqaa itti fufiinsaan akka jiraatu dandeessisuu" isa jedhu dha. Instiitiyuutichi kana haala galmaan gahuu isa dandeesisuun caaseffama mataa isaa diriirsuun toora xiyyeeffannoo isaa leenjii ogeessota qaamolee haqaa fi tajaajila gorsaa ,fi qo'annoo fi qorannoon rakkoo sirna haqaa adda baasee furuu danda'u diriirsuun sochiirratti argama. Kana malees, adeemsaalee hojii deeggersaa sadii gurmeessuun tajaajila isarraa barbaadamu kennuurratti argama.

Akkuma gubbaatti caqasuuf yaalame Adeemsi Hojii Ijoo Qo'annoo fi Qorannoo kaayyoon isaa inni guddaan naannicha keessatti rakkoowwaan sirna haqaa sakaalanii sirnicha tarkaanfachiisuu dhoorkan qorannoon addaa baasuun yaada furmaataa burqisiisuu dha. Adeemsa kana jalatti, hojiilee hojjetaman keessaa hojiin maxxansa Joornaalii adda dureen kan caqafamu ta'ee, barbaachisummaan isaas leenjii fi qo'annoo Inistiitiyuutichi gaggeessu deeggaruudhaan gahuumsa ogeessota seeraa, amalaa, fi ilaalcha tajaajiltummaa ummataa

qaban horachuu dha. Kana malees, garaagarummaa barmaatilee fi seera gidduutti mul'atan hambisuun waltajjiin yaadoleen hayyoota seeraa bal'inaan irratti hirmaachuu danda'an uumuun sirna adeemsa seeraa irratti ogeessonni yaada ceephoo kennuudhaan aadaan seerota irratti mari'achuu daran akka saffisu taasisuu dha. Moggaafamni isaas *JOORNAALII SEERAA OROMIYAA* jedhama. Joornaalii kana maxxansiisuuf sirni isaa bara 2001 keessa diriiru illee hanga yoonaatti maxxansiisuun hin danda'amne; namni karaa fagoo deemu galaa naqachuu qaba jedhama mitii ree! Karaan keenya dheeraa, fagoo ta'uu isaa hubachuun akkaataa Joornaaliin kun hirmaachisaa itti ta'u, qulqullina qabaatuufi itti fufinsaan argamuu danda'u irratti ogeessota adda addaa waliin gama hubannoo uumuutiin woorkishooppii qopheessuun akkaataa calqabbii isaa irratti mariin kan gaggeeffamee,fi galtee guddaas kan irraa argame dha. Hojiin gama kanaan raawwatames bu'aa qabeessa ture jechuun ni danda'ama. Akkuma Obboo Tsaggaayee Raggaasaa barreeffama isaanii tokko keessatti caqasan, Joornaalii calqabuun ulfaataa dha; itti fufinsa isaa mirkaneessuun ammoo caalaatti ulfaataa dha. Kun ergaa guddaa kan dabarsu ta'uu isaa,fi nutis iddoo ol'aanaa kan itti kenninu dha. Dhugaa kanaaf immoo ragaa kan ta'u seenaa gaggaragalchuu osoo hin barbaachisiin asuma dhiyootti Joornaalota seeraa meeqatu eegalamanii karaatti kan hafan ta'uu dhaloonni kun quba qaba; kana nu haa oolchu kaa!

Gama keenyaan yaaddoo kanarraa bilisa jechuu yoo baannee illee Joornaalii uummata bal'aa keessatti hundee gadi fageeffatee fi hirmaachisaa taasisuun hundaahe ta'uu isaa waan amannuuf rakkoo kana jalaa miliquu dandeenya abdii jedhu qabna. Ammaas akkuma kanaan duraa abdiin keenya gumaacha ogeessota bal'aa keenyaa waan ta'eef, akkuma eegalametti osoo addaan hin citiin kan itti fufu ta'a. Kana malees, ciminni sirna diriiree jiruu fi kutannoon ogeessota dhaabbiin Inistiitiyuuticha keessatti yeroo isaanii guutuun tajaajila kennaa jiranii itti fufiinsa Joornaalii kanaaf wabii ta'uu danda'a jennee amanna.

Joornaalii seena-qabeessa kana keesstti maxxansa jalqabaa kanarratti yeroo qabdan aarsaa gochuun mallattoo keessan kan keessan gumaachitootaa keenyaaf galata guddaa qabna. Adda duraan garuu, sirna isaa diriirsuun yaada ka'umsaa burqisiisuun hanga dhugoomutti kutannoon kan nu faana turan Gumii Instiitiyuutii kanaa, Boordii Joornaalii, fi Koree Gulaallii Joornaalii yeroo fi beekumsa keessan osoo hin qusatiin hedduu dadhabuun dhugoomuu Joornaalii kanaaf tattaaffii guddaa waan gootaniif, maqaa koo fi maqaa Instiitiyuutichaan isin galateeffachaa, ciminni eegale kun caalaatti itti akka fufu yaadachiisaa, ergaa koo guduunfa.

GAA'ILAA FI GAA'ILAAN ALA AKKA DHIRSAA FI NIITIITTI WALIIN JIRAACHUU ADDA BAASUU KEESSATTI YEROO WARAQAAN RAGAA GAA'ILAA HIN JIRRE RAKKOOLEE QABATAMAAN MUDATAN

Jamaal Qumbii*

ABSTRACT

This article assesses the methods of proof of marriage where there is no valid certificate of marriage by paying attention to the discrepancies and outcomes between the Federal and Oromia Family Laws. As to the Federal Family Law when it is difficult to prove marriage by producing the certificate of marriage it is possible to prove it by possession of status. According to Oromia Family Law, however, at inexistence of certificate of marriage it is proved only where the conclusion (celebration) of the marriage is established by adducing sufficient and convincing evidence. The Federal Family Law put proof of regular marriage by possession of status and irregular union in a similar way. Intentionally by avoiding proof of marriage by possession of status, and including proof of marriage by celebration of marriage , therefore, the Oromia Family Law avoided such confusions. These dissimilarities brought about diversity of jurisdiction between the federal and regional judicial powers via power of cassation over cassation. Where Oromia courts decline to prove marriage by possession of marriage depending on the regional law, the Federal Supreme Court Cassation Bench reverses such decisions based on the federal family law in a way that contravene with Oromia Family Law. It is clear that such practices disregard the principle of self rule which is the heart of federalism and object of enacting state Family Laws.

Seensa

Walquunnamtiin seera duratti beekamtiin gaa'ilaa kennamuuf tokko bu'uura Seera Maatii Oromiyaa (amma booda SMO) boqonnaa 3^ffaa keessatti tumameen sirnoota sadan[1] ibsaman

*LL.B (Yunivarsiitii Addis Ababaa), Abbaa Seeraa Mana Murtii Ol'aanaa fi Leenjisaa Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qo'annoo Seeraa Oromiyaa, I-meelii: jomo.roba@yahoo.com

[1]Seera Maatii Oromiyaa (SMO), Labsii (Lab.) lakk. 83/1995/96, kwt.24: Sirna raawwii gaa'ilaa Itti gaafatamaa Galmeessa Haala Hawaasummaa duratti raawwatamu, sirna raawwii gaa'ila aadaa fi sirna raawwii gaa'ila

keessaa karaa isa tokkootiin yoo raawwatame qofa akka ta'e tumamuun isaa ni beekama. Kanaaf, walquunnamtiin tokko gaa'ila dha kan jedhamu hundeeffamni isaa akkaataa sirna siivilii ykn sirna amantaa ykn immoo sirna aadaa walfuutonni filataniitiin kan raawwatame yoo ta'e dha. Kun immoo yeroo gaa'illi ragga'e jiraachuu isaa irratti falmiin ka'e firiiwwan ijoo qulqullaa'uu qaban keessaa akkaataa waliin jireenya dhiira tokkoo fi dubara tokkoo osoo hin taane akkaataan waliinjireenyi/walquunnamtiin isaanii ittiin raawwatame isa murteessaa ta'uu isaa agarsiisa.

Gama biraatiin, gaa'ila akkaataa olitti ibsameen osoo hin raawwatin dhiirri tokkoo fi dubarri tokko akka dhirsaa fi niitiitti waliin jiraachuudhaan walquunnamtii adda ta'ee fi seera durattis beekamtii qabu uumuu nidanda'u. SMO boqonnaa 8^{ffaa} ykn Seera Maatii Federaalaa fooyya'e (ammaan booda SMF) boqonnaa 7^{ffaa} keessatti akka tumametti walquunnamtiin akkasii kun *gaa'illi osoo hin raawwatamiin akka dhirsaa fi niitiitti waliin jiraachuu* jedhamee beekamtiin kennamuudhaan bu'aawwan hordofsiisus diriirfamanii jiru.

Seeronni kun kallattiidhaan kan tumanis dhiirri tokkoo fi dubartiin tokko gaa'ila osoo hin raawwatiin akka dhirsaa fi niitiitti waliin jiraachuun isaanii walquunnamtii maatii adda ta'e seera duratti kan uumu akka ta'e dha[2]. Innis walquunnamtii dhiira tokkoo fi dubartii tokko jidduutti uumamu danda'an kan seerri maatii beekamtii kenneef inni duraa fi bu'uuraa *gaa'ila* yoo ta'u, inni lammaffaa fi addaa immoo gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu dha. Waliin jireenyi kun akkuma gaa'ilaa mirgaa fi dirqamni waliin jiraattota irratti hordofsiisu kan jiru yoo ta'u, kunis karaalee maatiin ittiin hundeeffamu keessaa isa tokko waan ta'eef tasgabbii fi nageenya maatii sanaafis akkuma gaa'ilaatti eegumsi seeraa kan godhameef akka ta'e ogeessotni ibsan ni jiru[3].

---

amantaa jedhamee beekamtiin seeraa kan kennameef yoo ta'u, sirnoota kanneeniin alatti walquunnamtiin raawwatamu kamuu gaa'ila akka hin taane tumee jira.

[2] Ibid, keewwattoota 128 fi 129: seerichi "fuudhaa-heeruma osoo hin raawwatiin akka abbaa warraa fi haadha warraatti waliin jiraachuu" jechuun kan tume yoo ta'u, barreeffama kana keessatti immoo gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu kan jedhu fayyadameera. Karaa lameeniinuu yaadni isaa tokko akka ta'e hubatamuu qaba.

[3] Mahaarii Radaa'ii, Yaadota Bu'uuraa Seera Maatii Federaalaa Fooyya'e Hubachuuf Gargaaran Muraasa (hiikkoon kan barreessaati), 1995 lakk.2, F 121.

Gama biraatiin, ogeessotni seeraa biroo immoo akka jedhanitti seerri maatii beekamtiin inni warra akka abbaa warraa fi haadha warraatti osoo gaa'ila hin raawwatiin waliin jiraataniif kenne akkuma nama kamiiyyuu yommuu waliin jiraatan akka walgargaaranii fi yommuu waliin jireenyi isaanii waggaa sadii fi ol ta'e dhama'a waliin qabaachuu danda'u tilmaama jedhu irraa kan ka'e qabeenya waliinii ilaalchisee beekamtii kennaaf malee karaalee maatiin ittiin hundeeffamu keessaa isa tokko akka ta'eetti iddoon seerri itti tume ykn raggaase hinjiru[4].

Yaadonni kunniin bu'uura tumaalee seera maatii ilaallataniin yommuu xiinxalaman walquunnamtii gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu akka karaa hundeeffama maatiitti seerri gonkumaa beekamtiin kenneef hin jiru jechuudhaaf yaada amansiisaa ta'ee hin mul'atu. Sababoonnis:

Tokkoffaa, hundeeffama maatii ilaalchisee SMO kwt 128-129 jalatti akkaataa gaa'ilaan ala waliin jireenyi dhirsaa fi niitummaa ittiin hundaa'uu fi ittiin mirkanaa'u tumuun alattis dhorkaan raawwii gaa'ila firooma dhiigaa fi gaa'ila keessatti SMO kwt. 27 fi 28 jalatti ibsame walquunnamtii gaa'ilaan alaa akka dhirsaafi niitiitti waliin jiraachuu irrattis raawwatamummaa akka qabu seerumti kun kwt.130 (2) jalatti tumuun isaa hundeeffama walqunnamtichaaf eegumsaa fi beekamtii kennuu isaa kan agarsiisuu dha.

Lammaffaa, gama bu'aawwan hordofsiisaniitiinis gaa'illi dhuunfaa walfuutotaa fi qabeenya isaanii irrattis dirqamootni hordofsiisu kan jiran yoo ta'u, gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuunis walkabajaa fi waldeeggarsa waliin jireenyichi gaafatu guutuudhaaf dirqama kan uumu ta'uun isaa waliin jiraattonni akkuma nama kamiiyyuu osoo hin ta'in akkuma warra gaa'ila raawwataniitti dirqamoota kana bahuu akka qaban waan agarsiisuuf kunis seerichi beekamtiin walquunnamtii kanaaf kenne jiraachuu isaa kan cimsuu dha.

Sadaffaa, abbummaa daa'imman walquunnamtii kana keessatti dhalatanii mirkaneessuu ilaalchiseetis SMO kwt.134 jalatti bu'uura tumaalee seerichaa keewwattoota 142-147'tiin kan ilaalamu ta'uu kan tume yommuu ta'u, abbaan daa'ima walqunnamticha keessatti ulfaa'amee

[4] Sisaay Mangistee, Seera Maatii Ilaalchisee Qajeeltoowwan Bu'uuraa Heera Mootumma, mata duree jedhuun leenjii kennan irratti yaada ibsan, ILQSO, Guraandhala 29, 2004 ALI.

ykn dhalatee namicha akka abbaa warraatti haadha daa'imichaa waliin jiraachaa ture akka ta'e akkuma isa gaa'ila keessatti ulfaa'amee ykn dhalateetti tilmaamni seeraa kan fudhatamu ta'uu seerichi kallattiidhaan kwt.142 jalatti tumee jira. Kunis seerichi walquunnamtii gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu irraa maatii uumamuuf eegumsaa fi beekamtii kennuu isaa mul'isa. Haaluma walfakkaatuun, hariiroowwan olitti ibsaman kanaan alatti hariiroowwan kan biroo dhiiraa fi dubara tokko jidduutti godhaman seera duratti bu'aa wayiituu kan hin qabne (beekamti seeraa kan hin qabne) ta'uu SMO kwt.139 (1) jalatti ifaan kan tumames yaaduma kana kan cimsuu dha.

Haata'u malee, walquunnamtii gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu kanaaf beekamtiin seerri kenne isa gaa'ilaatiin walqixa ykn tokkoodha jechuu akka hin taane hubachuun kan barbaachisu yoo ta'u, yaadni gama kanaan ogeessotni tokko tokko tarkanfachiisanis guutumatti amansiisaa fi bu'uura seeraa kan qabu ta'ee hin mul'atu. Sababiin isaatis walquunnamtiiwwan lameeniifuu beekamtii fi eegumsi seerri kenne ykn godhe walqixa ykn tokkuma taanaan barbaachisummaa gaa'ilaa gaaffii keessa galchuu akka ta'e ifaan hubatama.

Sababiiwwan kana irraa ka'uudhaan walquunnamtiiwwan lameeniifuu seerichi akka madda argama maatiitti beekamtii fi eegumsa bu'uuraa kan godheef yoo ta'ellee bu'aan walquunnamtiin gaa'ilaan ala dhirsaa fi niitummaan waliin jiraachuu dhuunfaa waliin jiraattotaa fi qabeenya isaanii irratti hordofsiisu kan gaa'ilaa irra xinnaa ta'uu fi eegumsi godhamuufis akkasuma kan gaa'ilaan qixa akka hin taane[5] yaadni dhiyeessu caalatti seera qabeessaa fi amansiisaa fakkaata.

Kanaaf, gama dhuunfaa waliin jiraattotaa ilaalchisee bu'aan hordofsiisu akkuma warra gaa'ilaatti walkabajuu, walgargaaruu, fi akkaataa dandeettii isaaniitti jireenyaa waliif

[5] Olitti yaadannoo lakk.3, FF 124 fi 125. Beekumtii fi eegumsi walqixa yoo kennameef garaagarummaan gaa'ilaa fi gaa'elaan ala waliin jiraachuu jidduu hin jiru jechuu dha. kana malees gaa'ilaa galmeessuudhaaf wanti nama kakaasusi hinjiru. Akkasumas, Gillian Douglas et al**,** A Failure of Trust: Resolving Property Disputes on Cohabitation Breakdown, 2007, F 8 ilaaluun ni danda'ama.

gumaachuu kan gaafatu[6] yoo ta'u gama qabeenyaatiin immoo waliigalteedhaan waliin jiraattonni kan murteeffatan ta'ee walquunnamtichi waggaa sadii guunnaan garuu akkuma gaa'ilaatti qabeenya gamtaa kan uumuudha[7]. Walquunnamtiin gaa'ilaan alaa kunis jira jechuudhaaf namoonni kun haalli isaan agarsiisan akka fakkii warra seeraan walfuudhanii tahuun barbaachisaa fi gahaa akka ta'e seerichi ni ibsa[8]. Akkasumas, walquunnamtii saalaa haala baratamaa ta'eefi irra deddeebii qabuun raawwachuu qofaan walquunnamtii gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu kan hin uumne ta'uus seerichi kwt.129 (3) jalatti ifaan tumeera.

Haaluma walfakkaatuun gaa'illi ragga'e jiraachuu mirkaneessuu ilaalchiseetis seerichi tooftaalee adda addaa kan diriirse yoo ta'u isaan keessaa inni bu'uuraa fi akka qajeeltoo waliigalaatti raawwatiinsa qabu waraqaa ragaa gaa'ilaa dhiyeessu dha[9]. Akkasumas sababiiwwan adda addaa irraa kan ka'e waraqaan ragaa gaa'ilaa kan hin jirre yoo ta'e immoo gaa'illi ragga'e raawwatamuu isaa ragaa gahaa fi amansiisaa biroo kamiyyuu dhiyeessuudhaan mirkaneessuu tooftaan jedhu kan tumame[10] yoo ta'u, innis tooftaa haala addaa yeroo waraqaan ragaa gaa'ilaa hin jirre keessatti raawwatamudha. Gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuun immoo kan mirkanaa'u osoo gaa'ila hin raawwatiin akka dhirsaa fi niitiitti haalli waliin jiraachuu kan jiru ta'uu isaa hubachiisuun ta'a[11].

Egaa sirni hundeeffama walquunnamtiiwwan (regular union and irregular union) kanaa maal akka ta'e, bu'aawwan akkamii akka hordofsiisanii, fi tooftaalee akkamiin akka mirkanaa'an

---

6 Olitti yaadannoo lakk.1, kwt.131-133: waliin jiraattonni waliin jireenya isaaniif baasiiwwan barbaachisan akkuma humna isaaniitti haguuguuf dirqama qabu. Kunis kunuunsaa fi guddisa daa'immanii kan dabalatu dha.

7 Olitti yaadannoo lakk.1, kwt.132 fi 133: walqunnamtii isaanii ilaalchisee waliin jiraattonni qabeenya qaban waliigalteedhaan kan murteessan yoo ta'u, waliigalteen kunis walquunnamtichi waggaa sadii hanga hin guutinitti bu'uura seeraa waliigaltee qabeenyaatiin kan ilaalamu malee seera maatiin miti.Waggaa sadii irraa eegalee garuu waa'een qabeenya isaanii bu'uura seera maatiitiin akkuma gaa'elaatti ilaalama.

8 Olitti yaadannoo lakk.1, kwt.129 (1).

9 Olitti yaadannoo lakk.1, kwt. 92

10 Olitti yaadannoo lakk.1, kwt. 93; gaa'illi kan hin galmoofne yoo ta'e ykn galmeen yoo bade, gubate, hatamee fi kkf

11 Olitti yaadannoo lakk.1, kwt.136

seera maatii keessatti kan diriirfame akka ta'e ibsa waliigalaa gabaabinaan akka seensaatti olitti dhiyaaterraa kan hubatamu yoo ta'u, kunis qabxii xiyyeeffannaa barruu kanaatti osoo hin seenin dura yaada waliigalaa karaa saaqu kaahuuf malee kaayyoon ijoon barreessan kun barruu kana dhiyeesseef sirna hundeeffamaa fi bu'aawwan walquunnamtiiwwan kanniinii walcinaa qabuun seera maatii xiinxaluu akka hin taane gamanumaan hubatamuu qaba.

Seensa waliigalaa olitti dhiyaate kana irraa ka'uudhaan kaayyoon ijoon barruu kanaa dhimmoota falmii maatii qabatamaan manneen murtiitti ilaalaman keessatti yeroo waraqaan ragaa gaa'ilaa hin jirre gaa'illi ragga'e jiraachuu mirkaneessuun walqabatee gaa'ilaa fi gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu addaan baasuu irratti rakkoolee qabatamaa tooftaalee mirkanaa'inaa (methods of proof) qaban agarsiisuu yoo ta'u, kanas qabxiilee gurguddoo lama irratti xiyyeeffachuun dhimmoota qabatamaan deeggaruun seericha xiinxaluu dha. Qabxiileen kunniinis;

1ffaa Yeroo waraqaan ragaa gaa'ilaa hin jirre walquunnamtiin maatii falmii kaase gaa'ila ragga'e moo gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuudha kan jedhu qabatamaan addaan baasuudhaaf tooftaaleen seerri maatii diriirse qaawwa qabaachuu isaanii fi sababii kanaanis walquunnamtii falmii kaase irratti murtiileen garaagarummaa garmalee bal'aa ta'e qaban kennamaa jiraachuu kan agarsiisuu fi,

2ffaa Dhimmoonni akkanaa kun iyyata ijibbaataatiin Mana Murtii Waliigala Federaalaa dhaddacha ijibbaataatti yommuu dhiyaatan murtii dhaddachi kun kennaa jiruun walqabatee bu'aa aangoo naannoleen dhimmoota isaanii irratti qaban irratti hordofsiisaa jiru xiinxaluun rakkoo qabatamaa jiru yaada furmaataa waliin kan dhiyeessuu dha.

Qabxiilee kanniin keessatti rakkoon bu'uura ta'e seerota federaalaan kan walqabatu waan ta'eef xiinxalli barruu kanaan godhamus seerota federaalaa qabxiilee kanaaf rogummaa qaban kan akka Seera Maatii Federaalaa fi seera manneen murtii federaalaa irra deebi'uun hundeesse, labsii lakk. 25/88 fa'as kan hammatudha. Bu'uruma kanaan qabxiilee xiyyeeffannaa lameen kana mata duree xiqqaatti hiruudhaan walduraa duubaan akka armaan gadiitti xiinxaluuf ni yaalla.

1.1, WALQUUNNAMTIIWWAN LAMEEN ADDA BAASUUN MIRKANEESSUN WALQABATEE RAKKOO JIRU

Falmiiwwan hariiroo maatii keessatti ka'an keessaa inni guddaa fi bal'inaanis manneen murtiin ilaalamu diiggaa/hiikkaa gaa'ilaa fi qooda qabeenyaa irratti dha. Hiikkaa gaa'ilaa bu'uura adeemsa seeraan ilaalanii murteessuu fi bu'aawwan hiikkaan hordofsiisu irrattis ajaja barbaachisu kennuudhaaf walfalmitoota jidduu gaa'illi ragga'e jiraachuu fi dhiisuu adda baasanii mirkaneessuun kutaa falmichaa isa jalqabaa ykn isa duraa akka ta'e ifa dha. Kunis yeroo hedduu gaaffii gaa'illi ragga'e jiraachuu mirkaneeffachuuf ykn immoo hiikkaan akka mirkanaa'uuf dhiyaatu irratti gareen inni kuun (himatamaan) gaa'ilichi jiraachuu isaa ykn raawwatamuu isaa haaluudhaan falmii yommuu kaasu mul'ata. Himatamaan ykn qaamni deebii kennu yommuu hin jirres, gaaffii dhiyaate ragaa seera qabeessaan qulqulleessee murtii kennuun hojii mana murtii ta'uun isaa ni beekama. Kanaaf, gaa'illi ragga'e jiraachuu mirkaneessuun dirqama ta'a.

Gaa'illi ragga'e jiraachuu mirkanneessuu ilaalchisees seerri tooftaalee adda addaa sadarkaa isaanii waliin diriirsee jira. Isaanis, akka SMO tti tooftaaleen tumaman, ragaa fuudhaa fi heerumaa dhiyeessuu fi yoo kun hin jirre immoo ragaa biroo gahaa fi amansiisaa ta'e dhiyeessuun gaa'illi ragga'e raawwatamuu mirkaneessuun akka danda'amu tumamee argama[12]. Asirratti, qabxiilee gurguddoo lama kaasuun ni danda'ama. Tokkoffaa garaagarumaan SMO fi SMF[13] ragaalee gaa'illi ittiin mirkanaa'u irratti qaban jiraachuu fi garaagarummaan kunis qabatama hojii irratti rakkoon uumaa jiru maal akka ta'e, fi lammaffaa garaagarummaan kun jiraatus dhiisus yeroo ragaan fuudhaa heerumaa hin jirre gaa'ila mirkaneessuu keessatti gaa'ilaa fi walquunnamtii gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu addaan baasuudhaaf rakkoo jiru dha. Qabxiilee kanniin sirritti xiinxaluuf

[12] Olitti yaadannoo lakk.1, kwt.92 fi 93; Kwt 92 jalatti kan tumame qajeeltoo isa bu'uuraa yoo ta'u, kunis waraqaa ragaa gaa'ilaa dhiyeessuun raawwatamuu isaa mirkaneessuu tooftaa jedhu yoo ta'u, kwtni 93 immoo yeroo waraqaan ragaa kun hin jirre haala addaatiin tooftaa tumamee dha.

[13] Kaayyoon qabxii kanaa seerota lameen walcinaatti madaaluuf osoo hin taane bal'ina rakkoo gama kanaan mul'atuu agarsiisuuf barbaachisaa ta'ee waan argameef qofa kan ka'u akka ta'e hubatamuu qaba.

akka mijatu dursinee mee tooftaalee walquunnamtiiwwan lameen kanniin mirkaneessuuf seerichi diriirse kophaa kophaatti hanga tokko haa ilaallu.

1.1.1. Gaa'illi Ragga'e Jiraachuu Mirkaneessuu

Gaa'illi ragga'e jiraachuun isaa kan ittiin mirkanaa'u seerri maatii tooftaawwan lama kan diriirse yoo ta'u, isaanis waraqaa ragaa gaa'ilaa fi ragaa gahaa fi amansiisaa akka ta'an seericha kwt. 92 fi 93 jalatti tumameera. Tooftaa isa 1[ffaa] ilaalchisee SMO waraqaa ragaa gaa'ilaa sadarkaa duraa irratti kan kaahee dha. Kallattiidhaanis SMO gaa'illi raawwatamuu isaa mirkaneessuun kan danda'amu, guyyaa gaa'elichi raawwatame ykn sanaan booda akkaataa seerichaatiin qophaa'ee kan kenname waraqaa ragaa gaa'ilaa ykn garagalcha isaa kan mirkanaa'e dhiyeessuudhaan akka tahe dha[14].

Kana jechuun guyyaa raawwii gaa'ilaa sana ykn sana booda waraqaa ragaa qophaaheen ta'uun yoo hubatamu kunis gaa'illi tokko akkaataa sirna aadaas ta'e, amantaan raawatamu galmaa'uu waan qabuuf, kunis tarii raawwii gaa'ilichaa booda kan galmaa'e ta'uu waan danda'uufi dha. Guyyaa sanas ta'e sana booda galmaa'us waraqaan ragaa kun gaa'ilichi yoom, eessattii fi akkaataa sirna kamiin akka raawwatame ykn haala biroo kamuu akkaataa sirnoota sadiin keessaa isa tokkoon raawwatamuu gaa'ilichaa kan ibsu ta'uu akka qabu hubatama. Haala kanaanis waraqichi mirkaneessuu kan qabu raawwatamuu gaa'ilaa akka ta'e tumaa SMO kwt.92 irraa ifaan mul'ata. Kanaaf, gaa'ila ragga'e mirkaneessuudhaaf waraqaan ragaa gaa'elaa isa murteessaa fi seerris sadarkaa duraa kan kenneef ta'uun isaa ifaa dha. Kunis, gaa'illi karaa sirna kamuu raawwatamu galmaa'uu akka qabu seerri waan tumeef waraqaan ragaa gaa'ilaa Ittigaafatamaa Galmeessa Haala Hawaasummaa (IGHH) tiin walfuutotaaf waan kennamuuf[15] ragaan kun haala qulqulluu fi amansiisaa ta'een kan argamu ta'uu seerichi waan tilmaamuufi dha.

Haata'u malee, sababa adda addaatiin gaa'illi tokko osoo hin galmaa'in hafuu ykn erga galmaa'e booda galmeen baduu waan danda'uuf yommuu kana gaa'ilicha waraqaa ragaa dhiyeessuun mirkaneessuun rakkisaa ta'a. Yeroo haalli addaa akkasii mudatu, raawwatamuu

[14] Olitti yaadannoo lakk.1, kwt.92.

[15] Olitti yaadannoo lakk.1, kwt.45 (1) fi 42; gaa'illi raawwatame kamiiyyuu galmaa'uu akka qabuu fi kanaafis dirqamni IGHH maalfa'a akka ta'e ifaan diriiree tumamee jira.

gaa'ilichaa ragaa biroo gahaa fi amansiisaa ta'e dhiyeessuun hubachiisuun akka danda'amu tumameera[16]. Kunis tooftaa isa 2^ffaa ta'uu isaati.

1.1.2, Gaa'ilaan Ala Akka Dhirsaa fi Niitiitti Waliin Jiraachuu Mirkaneessuu

Walquunnamtiin gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu kan mirkanaa'u ragaa bifa kamiiyyuu gahaa ta'e dhiyeessuudhaan yoo ta'u, ijoon mirkanaa'uu qabus haalli dhirsaa fi niitummatti waliin jiraachuudhaa dubartii tokkoo fi dhiira tokko jidduu jira moo hin jiru kan jedhudha[17]. Haalli kun jiraachuu mirkaneessuufis ragaan dhiyaachuu qabu gosa kamiiyyuu ta'ee ijoon dubbii jedhame kun jiraachuu ykn jiraachuu dhabuu isaa haala gahaa fi amansiisaa ta'een agarsiisuu danda'uutu irra jira. Ragaan kunis kan barreeffamaa ykn kan ijaa ykn agarsiisaa (demonstrative) ykn kan biroos yoo ta'e seerichi wanti daangesse kan hin jirree fi garuu haalli gaa'ilaan ala dhirsaa fi niitummaan waliin jiraachuu kan jiru ykn kan hin jirre ta'uu sadarkaa gahaa ta'een amansiisuu danda'uun kan irra jiru akka ta'e ifaan kan hubatamudha[18].

Fakkeenyaaf, haalli walqunnamtichaa jiraachuu isaa akkaataan waliin jiraattonni walqunnamtichaa ittiin jiraatan kan warra dhirsaa fi niitiitiin (gaa'ila raawwataniin) tokko ta'uu fi firootni ykn hawaasnis akka dhirsaa fi niitii ta'anitti kan isaan fudhatu ta'uu ragaan dhiyaate gahatti yoo amansiise walquunnamtichi jira jedhamee tilmaamni ni fudhatama. Kunis, waajjiraalee adda addaa keessatti dhimmoota adda addaatiif galmeeffama raawwatamu irratti dhiirri yookin dubarri tokko niitii kiyya jedhee ykn isheen inni dhirsa kooti jettee kan galmeessan yoo ta'e, qaamni biratti galmeeffames dhirsaa fi niiti jedhee kan beeku yoo ta'e walquunnamtichi jira jechuudhaaf gahaadha jechuun ni danda'ama.[19]

Egaa tooftaalee walquunnamtiiwwan lameen barruun kun irratti xiyyeeffate mirkaneessuuf seerri diriirse kanneen armaan olitti gabaabinaan ibsaman yoo ta'an, bu'uuruma kanaan rakkoo yeroo waraqaan ragaa gaa'ilaa hin jirre walquunnamtiin falmii kaase gaa'ila ta'uu fi

[16] Olitti yaadannoo lakk.1, kwt. 93(1)

[17] Olitti yaadannoo lakk.1, kwt.136 (1 fi 2): haalli kun jiraachuun yoo mirkanaa'e walquunnamtichi jira jechuudhaan tilmaamni seeraa ni fudhatama (keewwatuma kana kwt xinnaa 3).

[18] Olitti yaadannoo lakk.1 kwt.136(3 fi 4): ragaaleen kun walquunnamtichi jiraachuu yoo mirkaneessan tilmaama fudhatamu diiguudhaafis ragaa bifa kamuu gahaa ta'een fashaleessuun nidanda'ama.

[19] Olitti yaadannoo lakk. 3, F127: waliin jiraattonni dhirsaa fi niitii jechuun afoosha (iddirii) keessatti kan hirmaatan yoo ta'e, afooshichis kanuma kan beeku yoo ta'e ykn bulchiinsi gandaa akkisitti kan isaan fudhatu yoo ta'e kan jedhan fakkeenyumaaf kaasuun nidanda'ama.

ykn gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu ta'u addaan baasuu irratti rakkoo qabatamaa mul'atuu fi rakkoo kanas SMO fi SMF haala kamiin akka ilaalan itti aansinee haa xiinxallu.

1.1.3, Ragaan Gahaa fi Amansiisaan Walquunnamtiiwwan Lameen Addaan Baasuu Danda'aa? Garaagarummaa SMO fi SMF

Yeroo waraqaan ragaa gaa'ilaa hin jirre tooftaan ragaa gahaa fi amansiisaa dhiyeessuun gaa'ilicha mirkaneessuun haala addaatiin kan raawwatamu akka ta'e olitti ibsamee jira. Haala kana keessattis falmii ka'u irratti walfalmitoota keessaa tokko walquunnamtiin isaanii gaa'ila akka ta'e yommuu falmu inni kuun immoo gaa'ila akka hin qabne kaasuun yommuu mormu qabatamaan ni mul'ata. Yeroo kana gareen inni gaa'illi akka jiru falmu ragaa gahaa fi amansiisaa qaba jedhu dhiyeessuun kan dhageessifatu yoo ta'u, gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuunis tooftaa kanaan mirkanaa'uu waan danda'uuf walquunnamtichi kam akka ta'e qabatamaan addaan baasuun rakkisaa ta'a.[20]

Rakkoo kana furuudhaafis kallattiin hiikkoo SMO fi kan SMF garaagarummaa guddaa kan qaban yommuu ta'u garaagarummaan kunis maalummaa ragaa kallatti kanaan dhiyaatuu irratti osoo hintaane ijoo dubbii ragaan kun mirkaneessuu qabu irrattii dha. Kunis akka SMO' tti waraqaa ragaas ta'ee ragaan biroo gahaa fi amansiisaan ijoon dubbii isaan mirkaneessuu qaban raawwatamuu gaa'ilichaa akka ta'e kwt.92 fi 93 irraa ifaan yommuu hubatamu, akka SMF' tti garuu yeroo waraqaan ragaa hin jirre ragaan biroo kan mirkaneessuu qabu haalli dhirsaa fi niitummaa (possession of status) jiraachuu isaa akka ta'e agarsiisa[21].

Bal'inaan ibsuufis, haala olitti ibsuuf yaalameen namni gaa'ila ragga'e qabaachuu isaa himatu tokko ragaa gahaa fi amansiisaa bu'uura SMO kwt.93(1)tiin dhiyeessuudhaan mirkaneesuun kan irra jiru ofii isaatii fi isa waliin fuudhaa fi heeruma nan-qaba nama jedhu wajjiin *gaa'ila raawwachuu* isaati. Kun yoo mirkanaa'e manni murtiitis gaa'illi

[20] Seera Maatii Federaalawaa (SMF), Lab. Lakk.213/1992, kwt 96, 97 fi 106 (1 fi 2), Walitti yeroo dubbifamu.
[21] Akkuma lakk.20ffaa, kwt.96. Dabalataanis kanuma kan jabeessu olitti yaadannoo lakk.2 F 116 ilaaluun ni danda'ama.

raawwatamuu tilmaama fudhata jechuu dha[22]. Gaa'illi raawwatame tokkos diigamuun isaa hanga hin hubachiifamnetti ni jira jechuu dha.

Ragaan "gahaa fi amansiisaa" jedhame kun yeroo hedduu qabatamaan akka beekamutti ragaa namaa yoo ta'u (tarii kan biraa yoo ta'es), ragoonni kunis ga'illi ragga'u raawwatamuu isaa haala gahaa fi amansiisaan mirkaneessan kan jedhamu, gaa'ilichi yoom, eessatti, fi sirna kamiin akka raawwatame yoo agarsiisan ta'us, haala biroo raawwatamuu gaa'ilichaa agarsiisu kamuu bifa gahaa ta'een ibsuudhaan akka ta'e akkaataa ibsa keewwatichaa irra ifaan ni hubatama. Sababiin isaatis, seerichi boqonnaa 3[ffaa] kwt.19-23 jalatti gaa'illi seera duratti ragga'u ykn beekamtii seeraa qabu sirnoota sadeen ibsaman keessaa tokkoon yoo raawwatame qofa akka ta'ee, fi sirnoota kanneeniin ala kan raawwatamu kamuu bu'aa seeraa kan hin qabne ta'uu kwt. 24 jalatti waan tumameef akka ta'e tilmaamuun ni danda'ama. Kana malees, ragaan gahaa fi amansiisaan akkuma barbaadametti bal'atee kan hiikamuu fi kan hayyamamu yoo ta'e barbaachisummaa waraqaa ragaa kan laaffisuu fi galmeeffama gaa'ilaatis kan hin jajjabeessine waan ta'eef kaayyoo seerri galmeeffama gaa'ilaa tumeefis kan fashaleessu ta'a[23]. Kana waan ta'eef, ragaan gahaa fi amansiisaa jedhame kun haala raawwatamuu gaa'ilichaa agarsiisuun dhiphatee hiikamuu akka qabu SMO kan yaade fakkaata.

Gama biraatiin SMF kwt.95 jalatti akka tumametti, yommuu waraqaan ragaa gaa'ilaa hin jirre (hin galmoofne ykn bade) gaa'illi ragga'u jiraachuun walquunnamtii haala dhirsaa fi niitummaa (possession of status) mirkaneessuudhaan akka ta'e ibsa. Kunis dhiirri tokko dubartii tokko waliin akka dhirsaa fi niitiitti wal ilaaluun akka dhirsaa fi niitiittis waliin kan jiraatanii, fi maatii fi hawaasni bal'aanis akkasitti ilaaluun kan isaan fudhatu yoo ta'e walquunnamtii haala dhirsaa fi niitii (possession of status) akka qabanitti lakkaa'amu jechuun kwt.96 jalatti ibsa kenneera. Haaluma kanaan, ragaa bifa kamuu dhiyeessuudhaan haalli ibsame kun jiraachuun yoo mirkanaa'e manni murtiitis gaa'illi kan raawwatame ta'uu tilmaama akka fudhachuu qabu seerichi kun kwt. 97(1) jalatti ifaan kaa'eera. Garaagarummaa

[22] Olitti yaadannoo lakk.1, kwt.93(2).

[23] Olitti yaadannoo lakk.2, F 117: haala dhirsaa fi niitummaa hubachiisuun gaa'illi jiraachuu mirkaneessuun kan danda'amu yoo ta'e namoonni gaa'ila raawwachuuf kaka'uumsa dhabuu danda'u, isaan raawwatanis galmeeffachuurraa of qusachuu danda'u. Akkasumas; Richard Frimston, Relationships and Property – Marriage, Registered Partnerships and Co-habitation and their Effects on Property rights (2011), F 22 irratti ilaalaa.

seerota maatii kana lameen jidduu jiru ifaan hubachuudhaaf tumaalee isaanii kanneen akkuma jiranitti asitti lafa kaa'uun gaarii ta'a.

Federal revised family code

Article 95, Proof in Default of Certificate of Marriage

> '*When it is difficult to prove marriage by producing the certificate of marriage due to the fact that the marriage has not been registered or such register has been lost, it shall be proved by possession of status of spouse'.*

Haaluma kanaan seerichi kun "Possession of status" gaalee jedhuuf kwt.96 jalatti hiikkaa yoo kennu immoo:

Article.96, possession of status (1) definition

> *A man and a woman are deemed to have the possession of status of spouses when they mutually consider themselves and live as spouses and they are considered and treated as such by their family and the community.*

Bu'uruma hiikkoo kenname kanaan walqunnamtiin akkasii jiraachuun yoo mirkanaa'e gaa'illi raawwatamuu isaa tilmaamni akka fudhatamu seerri kun ammas kwt 97(2) jalatti akkasitti tumee argama;

Article 97-(2) Proof of Marriage by Possession of Status

> *1) Where a person alleging the existence of marriage proves the possession of status of spouse in accordance with the preceding article, the court may presume that marriage has been concluded.*

Gama biraatiin Seera Maatii Oromiyaa keessatti keewwanni dhimmichaaf rogummaa qabu keewwata 93 yoo ta'u innis akkasitti tumamee jira;

SMO Keewwata 93

(2) Waraqaan Ragaa Fuudhaa-heerumaa Yeroo Hin Jiraannetti Fuudhaa-heerumni Raawwatamuu Isaatiif Ragaa Dhiyaatu.

1) Galmeessuun fuudhaa-heerumaa osoo hin raawwatamin yoo hafee yookiin sababa galmeen badeef fuudhaa-heerumichi raawwatamuu isaa waraqaa ragaa fuudhaa-heerumaatiin mirkaneessuun kan hin danda'amne yoo tahe, fuudhaa-heerumni raawwatamuu isaa ragaa gahaa fi amansiisaa dhiyeessuudhaan hubachiisuun ni danda'ama.

2) Akkaataa keewwata kana keewwata xiqqaa (1)tti namni tokko ofii isaatii fi isa wajjiin fuudhaa-heeruma nan qaba nama jedhu wajjiin fuudhaa-heeruma raawwachuu isaa mirkaneessuu yoo danda'e, manni murtichaa fuudhaa-heerumni raawwatameera jechuun tilmaama seeraa ni fudhata.

Egaa haala olitti ibsame kanaan yommuu xiinxalamu, 1[ffaa] akka SMO' tti ijoon dubbii mirkanaa'uu qabu jiraachuu walquunnamtii haala dhirsaa fi niitummaa (possession of status) osoo hin taane, raawwatamuu gaa'ilichaa yommuu ta'u akka SMF' tti immoo garagaltoo kanaati[24]. 2[ffaa], ragaan gama kanaan dhiyaatus akka SMO' tti iddoo, yeroo fi sirna gaa'ilichi itti raawwatame kan ibsuu dandaa'u yoo ta'u, akka SMF tti garuu ragaan kun walfuutonni jedhaman kun akka dhirsaa fi niitiitti of ilaaluun kan waliin jiraatan ta'uu fi ragoonni kunis akkasitti iaaluun kan fudhatan ta'uu yoo mirkaneesse, raawwatamuu gaa'ilichaa ykn, iddoo, yeroo, fi sirna ittiin raawwatame beekuun ykn ibsuun dirqamaa miti[25].

---

[24] Tumaalee seerota maatii lameen kana walcinaa qabuun yommuu xiinxalamu SMO gaa'ila ragga'u walqunnamtii biroo irraa adda baasuuf ijoon mirkanaa'uu qabu raawwatamuu gaa'ilaa akka ta'e itti yaadee kan tume fakkaata. SMF immoo "possession of status" gaalee jedhu irraa hubachuun akka danda'mutti haalli dhirsaa fi niitummaa yoo hubachiifame raawwatamuu gaa'ilaa agarsiisuu osoo hin barbaachisiin gaa'illi ragga'e jiraachuu isaa tilmaamni fudhatamuu akka qabu kan ibsu dha. Kun immoo raawwatamuun gaa'ilaa yoo ijoo hin ta'iin haalli dhirsaa fi niitummaa jiraachuun walqunnamtii gaa'ilaan ala akka dhirsaa fi niitiitti waliinjiraachuu (irregular) ta'e keessattis waan mul'atuuf qabatamaan walqunnamtiiwwan kanneen adda baasuuf rakkisaadha.

[25] Haata'u malee, tumaaleen SMF kunniinis dhiphatanii akka raawwii gaa'ilichaa guyyaa, iddoo, fi sirna raawwii isaa mirkanaa'uu gaafatanitti hiikamuu akka qaban kan hubachiisan yaadonni hedduun ni jiru: fakkeenyaaf; Olitti yaadannoo lakk, 2 FF 118 fi 119, Akkasumas murtiilee filatamoo M/M/W/F/I/ kitaaba 2 [ffaa], fuula 349-351 (1992) ilaaluun ni danda'ama.

Dhumarrattis, SMF keessatti tumaaleen walquunnamtii haala dhirsaa fi niitummaa (possession of status) akka ragaa mirkanaa'ina gaa'ilatti kaa'an keewwatoota 95 fi 97, SMO keessatti bifa hiikkaa addaa qabuun kan tumaman yoo ta'u SMF kwt.96 immoo SMO keessa gonkumaa kan hinjirre ta'uun ifaan hubatama. Bu'uura kanaan akka SMOtti gaa'ilaa fi gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu addaan baasuun kan danda'amu yoo ta'u, akka SMFtti garuu rakkisaa akka ta'e hubachuun ni danda'ama.

Qabxii kana ilaalchisee qabatamni hojii maal akka fakkaatu yommuu xiinxalamu akka naannoo Oromiyaatti manneen murtii aanaalee fi ol'aanaan dhimmoota ilaalan irratti kallattii SMF hordofuudhaan murtii yommuu kennan manni murtii waliigalaa fi dhaddachi ijibbaataa Oromiyaa immoo kallattii SMO irratti hundaa'uun kan murteessan ta'uun ni mul'ata. Gama federaalaatiinis manneen murtii sadarkaa jalqabaa fi ol'aanaa tokko tokko immoo seruma maatii federaalawaa kana akkaataa SMO' tti hiikuun yoo murteessan mula'tu. Manni murtii waliigala federaalawaa dhaddachi ijibbaataa immoo hiikkaa kenneen SMF kan hordofe ta'uutu hubatama[26]. Haaluma kana mirkaneessuuf fakkeenyota muraasa haa ilaalluu[27].

Dhimmichi Mana Murtii Waliigala Federaalawa Itiyoophiyaa Dhaddacha Ijibbaataatti[28] kan dhiyaateedha. Kan jalqabes Bulchiinsa Mootummaa Biyyoolessa Naannoo Amaaraatti M/M/ Aanaa irratti yoo ta'u,iyyattuun ammaa himata dhiyeessiteen D/kennaa waliin bara 1972 eegalee gaa'ilaan waggoota 25'f waliin jiraachuu fi yeroo kana keessattis ijoollee shan walirraa argachuu ibsitee amma garuu D/kennaan gaa'ila hin qabnu jechuudhaan dirqama dhirsummaa waan bahuu dideef waamamee gaafatamee gaa'ilichi akka mirkanaa'u, hinjiru yoo jedhame immoo gaa'ilaan ala dhirsaa fi niitummaan waliin jiraachuun mirkanaa'ee bu'uura kanaan qooda qabeenyaa irratti murtiin akka kennamuuf gaafattee jirti.

D/kennaan immoo deebii kenneen iyyattuu waliin waggoota 25'f waliin jiraachuu fi yeroo kanatti ijoollee shan walirraa uumachuus kan amane yoo ta'u, gama birootiin immoo

---

[26] Galmeewwan Ijibbaataa Lakk.11213, (1999), 11136, (1999) fi, 10477, (1999), Mana Murtii Waliigala Federaalawaa Dhaddacha Ijibbaataa (MMWF) (1999).

[27] Dhimmoota kanaan alattis hojmaanni qabatamaa kun jiraachuu isaa leenjii hojii irraa yeroo dheeraa marsaa 2ffaa - 5ffatti Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qo'annoo Seeraa Oromiyaatti Ammajjii 1/2002 – Gurraan dhala 29/2004tti kennamaa ture irratti abbootiin seeraa fi Abbootiin Alangaa hirmaatan hedduun leenjii seera maatii irratti kenname irratti marii godhameen yaadni dhiyeessan ni mirkaneessa.

[28] Galmee Ijibbaataa Lakk. 33126, MMWF, Dhaddacha Ijibbaataa (2000), (dhimma kana ilaalchisee seerri maatii Naannoo Amaaraa isa tumaa seera maatii federaalawaan kan walfakkaatuudha).

iyyattuun niitii isaa osoo hin taane hojjattuu isaa kan turte ta'uu fi gaa'illi ishii waliin raawwates kan hinjrre ta'uu ibsee waakkatee jira. M/M/ Aanichaatis falmii fi ragaa bitaa fi mirgaa qoratee murtii kenneen gaa'illi raawwatame waan hin jirreef iyyattuun niitii D/kennaatii miti jedhee jira. M/M/ Ol'aanaa fi waliigalaa naannichaatis murtii kana kan cimsan yoo ta'u iyyattuunis murtii kana komachuun dhimmichi dhaddacha ijibbaataa kanaaf kan dhiyaatee dha.

Dhaddachi ijibbaataatis iyyattuun gaaffii ga'illi ragga'e jiraachuu fi filannoodhaanis gaa'ilaan ala waliin jiraachuu dhiyeessite M/M/ jalaa kufaa gochuun isaanii seera qabeessa ta'uun isaa waan qulqullaa'u qabu waan ta'eef iyyaticha fuudhee ilaaluu isaa ibsee jira. Akka ilaalettis, gaa'illi jiraachuu fi dhiisuu irratti dogongorri madaalli ragaa raawwatame komii jedhu bu'uura seeraa hinqabu jechuun kan kuffise yoo ta'u gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu irratti garuu murtiin M/M/ jalaa kenne dogongora kan qabu ta'uu eeruudhaan dhaddachi kun diigee jira.

M/M/Aaanichaatti ragaalee iyyattuun dhiyeessite keessaa tokko ilma walfalmitootaa kan hangafaa yommuu ta'u, innis iyyattuu fi D/kennaan haadhaa fi abbaa isaa akka ta'anii fi kanas dhirsaa fi niitiidha jedhee kan beeku ta'uu isaa ragaa bahuu isaa garagalcha galmee jalaa keessaa dhaddachi ijibbaataa kun hubachuu ibsee jira. M/M/ jalaa garuu gaa'illi raawwatamuu isaa ragaan dhiyaate kan hin mirkaneessiin ta'uun alattis gaa'ilaan ala waliin jiraachuullee mirkaneessuuf ragaan kun gahaa miti jechuuni kan murteesse.

Dhaddachi ijibbaataa garuu murtii kenne keessatti xiinxalaa fi qeeqa kaa'een,1[ffaa] walfalmitoonni kun waggoota 25f waliin jiraachuu fi yeroo kanattis ijoollee shan waliin horachuu isaanii iyyattuun ibsitee D/kennaanis kan amane yoo ta'u, kun immoo haala akka dhirsaa fi niitummaatti waliin jiraachuu dhiira tokkoo fi dubartii tokkoo caalaatti kan agarsiisuu fi, 2[ffaa] immoo jechi ragummaa ilmi isaanii kenne walfalmitoota akka dhirsaa fi niitiitti kan beeku ta'uun isaa walumatti gaa'ilaan ala akka dhirsaa fi niitiitti waliin jiraachuu ilaalchisee ulaagaalee SMF fi Seerri Maatii Naannoo Amaaraa gaafatan guutumatti kan guute ta'ee waan argamuuf iyyattuun D/kennaa waliin gaa'ilaan ala dhirsaa fi niitummaan waliin jiraataniiru,jedhee murtiin M/M/ Naannichaa kennan dogongora qaba jechuun diigeera[29].

[29] Olitti yaadannoo lakk. 26.

Haaluma kanaan dhimma dhirsaafi niitummaa Mana Murtii Federaalaa Sadarkaa[30]Jalqabaatti ilaalame tokko irratti, himattuun aadde Abrahet Akaala abbaa warraa kiyya kan jettu du'aa waliin gaa'ila kan qabdu ta'uu ishee manni murtii akka mirkaneessuuf gaaffii dhiyeessite irratti himatamaan abbaa Taaytaa wabii hawaasummaa waan mormeef, m/murtiichaatis himattuun ragaa akka dhiyeessitu gaafatus, ragaan fuudhaafi heerumaa waan hin jireef himattuun ragaa namaa dhiyeessuun caqasiifterti. Ragoonnis jecha kennaniin himattuufi du'aan yoom akka walfuudhaniifi sirna kamiin akka gaa'ila raawwatan kan hin beekne ta'uu ibsanis dhirsaa fi niitii (possession of status) kan turan ta'uu mirkaneessaniiru. Manni murtichaatis, bu'uura SMF keewwatoota 96 fi 97 tiin gaa'illi himattuu mirkanaa'uu ibsuudhaan nitummaa himattuu mirkaneesseera.

Haata' u malee, himatamaan murtii kana komachuudhaan mana murtii ol'aanaa federaalaatti oliyyata dhiyeesseen, m/murtii jalaatti ragoonni himattuudhaa jecha ragummaa kennaniin gaa'illi jedhame yoom, eessattii fi haala sirna kamiin akka raawwatame osoo hin ragiin gaa'illi tureera jechuun m/murtii jalaa murtiin kenne dogongora kan qabu ta'uu ibseera. Manni murtii[31] oliyyannoo dhagahe garuu murtii kenne keessatti xiinxala kaa'een ragoonni himattuudhaa bu'uura SMF kwt.96 tiin haalli dhirsaa fi niitummaa jiraachuu raguun isaani ifa ta'uun alattis oliyyataanis komiin gama kanaan qabu kan hin jirree ta'uu ibsuudhaan akkaataa kanaanis iddoo, yeroo fi sirna raawwii gaa'ilichaa beekuudhaaf ykn raguudhaaf ragoonnii dirqama hin qaban jedhee murtii m/murtii jalaa cimseera.

Dhimmuma walfakkaatu kan biroo irratti manni murtii sadarkaa jalqabaa federaalaa[32] tokko murtii kenneen "ragoonni himattuu haalli dhirsaa fi niitummaa jiraachuu haa ragan malee raawwatamuu gaa'elichaa waan hin beekneef gaa'elichi hin mirkanoofne." jedhee gaaffii himattu kufaa godheera. Himattuunis gara mana murtii ol'aanaatti yommuu oliyyattu, manni murtii ol'aanaan immoo "ragoonni himattuudhaa himattuu fi du'aan dhirsaafi niitummaan waliin jiraachaa turuu fi isaanis haaluma dhirsaafi niitummaatti kan isaan beekan ta'uu kan ragan bu'uura SMF kwt.96 tiin haalli dhirsaa fi niitummaa (possession of status) jiraachuu mirkaneessanii osoo jiranii m/murtii jalaa gaa'elli raawwatamuu tilmaama fudhachuu osoo

[30] Galmee Ijibbaataa, Lakk. 11477/95, Mana Murtii Waliigala Federaalawaa, Dhaddacha Ijibbaataa (1995)

[31] Olitti yaadannoo lakk.26

[32] Galmee Oliyyannoo Lakk. 79192/95, MMWF (1995)

qabu gaaffii himattu kufaa gochuun isaa sirrii miti."[33] jedhee murtii jalaa diiguun niitummaa oliyyattu mirkaneesseera.

Ta'us dhimmichi oliyyannoon Mana Murtii Waliigala[34] Federaalawaatti dhiyaatee ilaalamun murtiin M/Murtii ol'aanaa diigamee murtiin M/Murtii sadarkaa jalqabaaa cimeera. M/Murtii Waliigalaa kun sababii ibseen "ragoonni himattuudhaa haallii dhirsaa fi niitummaa jiraachuu haa ragan malee himattuu fi du'aa giddutti gaa'elli raawwatamuu waan hin mirkaneessineef gaa'elichi himattuu fi du'aa jidduu ture jira gara jedhutti gahuun hin danda'amu. Raawwatamuu gaa'elaa yoo hin mirkaneessine immoo gaa'elaa fi gaa'elaan ala akka dhirsaafi niitiitti jiraachuu addaan baasuuf hin danda'amu" jedheera.

Gama Manneen Murtii Naannoo Oromiyaatti yoo dhufnu immoo, dhimmuma walfakkaatu kan olitti ilaalame irratti murtiileen adda addaa kan kennaman jiraachuu isaanii hubanna. Isaanis, dhimma Mana Murtii Aanaarratti jelqabee ol'iyyannoon hanga Mana Murtii Waliigala Oromiyaatti ilaalamee boodas Dhaddacha Ijibbaataa gahee achirraayis Mana Murtii Waliigala Federaalawaa Dhaddacha Ijibbataatti[35] xumurame tokko akkuma fakkeenyaatti haa ilaalu.

Dhimmichi iyyattuu aaddee Fallaqachii fi deebi kennaa Ajajaa dhibbaa Taaddasa Ayyalaa namoota jedhaman jidduu kan ture yoo ta'u iyyattuun D/kennaa waliin bara 1995 irraa eegaluun walfuudhanii waliin jiraachuudhaan ijoollee jaha (6) walirraa horachuu ibsitee waldiddaan isaan giddutti kan uumame ta'uu eeruudhaan dhimmichi karaa jaarsota firaatti qajeelfamee furmaanni akka kennamuuf Mana Murtii Aanaa Walmaraatti iyyannoo dhiyeefatteerti. Deebii kennaan garuu, fuudhaa fi heerumicha waan haaleef manni murtii ragaa namaa fi barreeffamaa iyyattuun dhiyeessite dhagaheera.

Ragoonni iyyattuutis, iyyattuu fi D/kennaan abbaa warraafi haadha warraa ta'anii waliin jiraachuu isaanii fi ijoollee jaha (6) akka walirraa horatan kan beekan ta'uu yoo raganis, jarreen kun yoom akka walfuudhanii fi sirna kamiin fuudhaa fi heerumicha akka raawwatan garuu kan hin beekne ta'uu ibsanii jiru. Kana malees, ragaan barreffamaa dhiyaates Abbaa Taaytaa Sooramaa fi Wabii Hawaasummaa(ATSWH) irraa kan barraahe yoo ta'u, foormii D/kennaan afoosha (iddirii) magaalaa Holotaatti guute irratti iyyattuun haadha warraa isaa

[33] Olitti yaadannoo lakk.26.

[34] Galmee Oliyyannoo, Lakk.11477/95, MMWF (1995)

[35] Galmee Ijibbaataa Lakk. 11136/99, MMWF Dhaddacha Ijibbaataa (1999)

ta'uu ishee kan itiigalmeessisiise akka ta'e kan hubachisuu dha. Bu'uruma kanaan Manni Murtii Aanichaa bitaa fi mirga falmisiisee ragaas eega qorateen booda "iyyattuu fi D/kennaa jidduu haalli fuudhaafi heerumaa jiraachuu ragaan waan mirkaneesseef walfalmitonni haadha warraa fi abbaa warraati (gaa'illi ni jira)" jedhe murtii kenneera[36] .

Manni Murtii Aanichaa murtiin kenne kun bu'uura SMO kwt.93 tiin ta'us, haalli keewwaticha ittiin hiike/hubate garuu akkaataa SMF ykn seera hariiroo hawaasaa isa durii keessatti tumameen ta'uu isaatu mul'ata. Haaluma kana irratti hundaa'uudhaan D/kennaan murtii M/Murtii Aanaa Walmaraa kana komatee Mana Murtii Ol'aanaatti ol'iyyatus manni murtii kun garuu "komichi kan dhiyeessisuu miti" jechuun ol'iyyaticha kufaa waan godheef ammas D/kennaan dhimmicha Mana Murtii Waliigala Oromiyaa (MMWO) tti ol'iyyannon dhiyeessee jira[37] .

MMWO ol'iyyannoo kana fuudhee eega ilaalee booda *jechi ragootaa walfuutonni yoom, eessattii fi, sirna kamiin akka walfuudhan kan hin beekne ta'uu fi, ragaan barreeffamaa ATSWH irraa dhiyaates mataa isaatiin fuudhaa fi heerumni raawwatamuu kan hin mirkaneessine* ta'uu akka xiinxalaatti ibsuudhaan, *"haala kanaan fuudhaa fi heerumni raawwatamuun osoo hin mirkanaa'iin gaa'illi ni jira jedhamee murtiin jalatti kenname seeraan ala"* jechuun diigeera. Iyyattuunis, MMWO murtii mana murtii jalaa diigee gaa'elli hin jiru jechuun murtiin kenne dogongora seeraa bu'uuraa kan qabuu dha jechuun MMWO Dhaddacha Ijibbaataatti iyyattus dhaddachi kun garuu *"dogongorri seeraa kan bu'uuraa hin jiru"* jechuun iyyata dhiyaateef kufaa godheera. Kanumaan iyyattuun dhimmicha MMWF Dhaddacha Ijibbataatti dhiyeeffatteerti. Mannii Murtii Federaaalawaa immoo murtii Manneen Murtii Waliigala Oromiyaa ol'iyyannoo fi ijibbata irratti kennan diiguun kan murteesse iyyattuufi D/kennaa jidduu gaa'elli jiraachuu isaati[38] .

MMWF dhaddachi ijibbaataa kun sababii yommuu ibsu, *"haalli abbaa warraa fi haadha warraa jira jechuun kan danda'amu dhiirrii tokkoo fi dubarri tokko abbaa warraa fi haadha warraati waliin jechuun kan waliin jiraatan yoo ta'ee fi namoonni biroo fi firoottan isaaniitis haaluma kana kan beekan ta'uu yoo mirkaneessan akka ta'e seerri ni tuma. Haala abbaa warrummaa fi haadha warrummaa kana bu'uura seerri tume kanaan hubaachiisuun yoo*

[36] Akkuma 35ffaa.

[37] Akkuma 36ffaa.

[38] Akkuma 37ffaa.

danda'ame fuudhaa fi heerumni ni jira jechuun tilmaamni fudhatamuu akka qabu seerrii ifaan kaa'ee jira. Kanaaf, haalli kun jiraachuu hubaachiisuudhaaf fuudhaa fi heerumni yoom akka raawwatamee fi sirna kamiin akka raawwatame ragaan akka itti dhiyaatu/mirkaneessu seerri hin dirqisiisu" jechuun murtii Mana Murtii Aanaa fi kan Ol'aanaa cimseera.

Murtiilee olii irraa akka hubatamutti akka SMO kwt 93tti ijoon mirkanaa'uu qabu *"raawwatamuu gaa'ilaa"* aka ta'e tumuun isaa rakkoo gaa'ilaa fi walquunnamtii gaa'ilaan ala akka dhirsaa fi niititti waliin jiraachuu adda baasuu irratti mudatu hambisuudhaaf kan yaade fakkaata. Hiikkaan SMF kwt.96 irratti hundaa'e garuu rakkoo kana hin furu. SMO kwt 136(2) jalatti gaa'ilaan ala walquunnamtii akka dhirsaa fi niitiitti waliin jiraachuun kan mirkaanaa'u, walfuudhuu baatanillee, dhiirri tokkoo fi dubartii tokko haala dhirsaa fi niitummaatiin kan waliin jiraatani fi hawaasniifi maatiin isaanitis haaluma kanaan kan beekan ta'uu hubachiisuudhaan akka ta'e tumamee jira, seerri maatii federaalawaatis kanuma hima.

Egaa, gaa'ila ragaa amansiisaa fi gahaadhaan mirkaneessuu irratti tumaan SMF kwt.96 kan kaa'e walquunnamtii gaa'ilaan alaa kana mirkaneessuuf kan tumame waliin haala adda baasuuf rakkisaa ta'een walfakkaata[39]. SMO garuu walquunnamtiiwwaan kanneen lameen mirkaneessuu keessatti ijoo dubbii ta'uu qabu ifa godhee tumeera. Kunis, *gaa'ila yoo ta'e raawwatamuun isaa (conclusion) mirkanaa'uu kan qabu* yoo ta'u, *walquunnamtii gaa'ilaan ala waliin jiraachuu yoo ta'e immoo haalli walquunnamtichaa (possession of status) jiraachuu mirkaneessuu* akka ta'e adda bahee jira.

Gama biraatiin muxannoon biyyoota birootis asirratti yoo ilaalamu rakkini walfakkaataan kan jiru ta'uu agarsiisa. Fakkeenyaaf, dhimma biyya Ameerikaatti ka'e tokko irratti iyyattuun "abbaan warraa koo waan du'eef mirgi niitummaa koo naaf haa kabajamu," jechuun yoo gaafattu, maatiin du'aadhaa immoo "iyyattuun du'aa waliin fuudhaa fi heeruma waan hin raawwatiniif mirgi gaafattu hinjiru," jechuun mormaniiru. Manni Murtii dhimmicha ilaale

[39] Olitti yaadannoo lakk, 4 (Gillian Douglas et al), FF 10-11; '*Gillian Douglas'* rakkoo kana yoo ibsan: "A number of qualitative research studies have explored the attitudes of cohabitants in order to determine whether the nature of their commitment to each other is different from that of spouses. For the contingently committed who viewed their relationship as not yet ready or appropriate for marriage, but who also recognised that, with the passage of time, it had become marriage-like in terms of its economic implications for the partners, a protective regime which still does not carry all the same rights and duties as marriage appeared preferable. These researchers have concluded that cohabitation involves the same level of commitment as marriage and as a result no practical difference can be made between these two unions factually" jedhu.

garuu hiikkoo seeraa irratti qajeelfama "juurii"n /jury members/ kenneen "iyyattuun qabiyyee lafa du'aadhaa argachuuf himata dhiyeessiteef ishii fi du'aa jidduu gaa'illi jiraachuu mirkaneessuu keessatti sadarkaa madaallii isa ol'aanaa agarsiisuun ishii irraa hin eegamu, kunis qabatama raawwatamuu gaa'ilichaa mirkaneessuun dirqamaa miti.

Akka dhirsaa fi niitiitti du'aa waliin jiraachaa turuu isaanii gochootaa fi dubbii du'aan akka niitiitti ishee fudhachuu isaa agarsiisan hubachiisuun gahaadha"[40] jechuun gaa'illi yoom, eessattii fi sirna kamiin akka raawwate mirkaneessuun dirqama akka hinta'iin ibseera. Manni Murtii Waliigalaa Naannoo '*Wiskoonsiin*' dhimmicha ol'iyyannoon ilaalee murtii kenneen immoo "gaa'illi jiraachuun iddoo, yeroo fi haala raawwii isaa agarsiisuun mirkanaa'uu qaba"[41] jechuun murtii jalaa diigeera.

Walumaagalatti, rakkoo qabatamaa gama kanaan jiru furuu keessatti kallattiin hiikkoo SMO' tiin fudhatame dhama qabeessa ta'ee mul'ata. Kunis gaa'ila mirkaneessuuf ragaan dhiyaatu kamiiyyuu raawwatamuu gaa'ilichaa hubachiisuu kan danda'u ta'uu akka qabu yommuu ta'u, haalli waliin jireenya dhirsaa fi niitii jiraachuu hubachiisuun immoo walquunnamtii gaa'ila osoo hin raawwatin akka dhirsaa fi niitiitti waliin jirachuu mirkaneessuuf kan oolu akka ta'eedha. Haa ta'u malee kallattii kana hordofuu irratti murtii Murtii Waliigala Federaalaa Dhaddachi Ijibbaataa gama kanaan kenne kallattii SMOn tumame irraa adda ta'uun isaa rakkoo qabatamaa kan biroo uumeera. Kanas akka itti aanutti ilaaluuf yaalla.

1.2, BU'AA MURTIIN MANA MURTII WALIIGALA FEDERAALAA SEERA MAATII OROMIYAA IRRATTI QABU

Manni Murtii Waliigala Federaalawaa Dhaddachi Ijibbaataa murtii abbootii seeraa shanii gadi hin taaneen kennu irratti kallattiin hiikkoo seeraa kaa'u manneen murtii Naannolees ta'e kan Federaalaa hunduma irratti bu'aa dirqisiisu hordofsiisuun isaa bu'uura labsii lakk, 454/97 kwt 2(1)n tumamuun ni beekama. Akkaataa kanaan dhimma qabatamaa armaan olitti

[40] Obboo Xilahun Tashooma, Gaa'ilaan ala akka gaa'ilaatti waliin jiraachuu durii fi barana, Barruu Abukaattota Itiyoophiyaa Jiildii 2^{ffaa}, Lakk.1^{ffaa} (1999), F108 (hiikkoon kan barreessaa ti).

[41] Akkuma 40^{ffaa}, F 109; akka obbo Xilaahun caqasanitti manni murtii ol'iyyannoo kun murtii kenne keessatti sababii kaa'een dhimmoota akkanaa keessatti raawwatamuun gaa'ilaa yoo mirkanaa'uu baate haalli dhirsaa fi niitii jiraachuu qofa hubachiisuun walqunnamtiin falmii kaase gaa'ila ta'uu fi kan gaa'ilaan alaa ta'uu addaan baasuu kan hin dandeenye akka ta'ee fi kanaan olittis ulfinaa fi eegumsa addaa seerri dhaaba gaa'ilaaf godhe kan xinneessu akka ta'e ibsaniiru.

ilaalame galmee ijibbaataa lakk.11136/99 ta'een qabxii ijoo seeraa (SMO kwt. 93 ykn SMF kwt. 96) armaan olitti xiinxalle irratti kallattii hiikkoo tumaa SMF keewwattoota 96 fi 97 deeggaru fi kan SMO kwt 93 irraa faallaa ta'e dhaddichi ijibbaataa kun kennee jira.

Kunis yeroo waraqaan ragaa gaa'ilaa hin jirre gaa'illi ragga'u jiraachuu isaa haala dhirsaa fi niitummaa hubachiisuun (possession of status) mirkaneessuun kan danda'amu ta'uu fi ragaan gama kanaan dhiyaatus haalichi jiraachuu yoo agarsiise gaa'ilichi raawwatamuu isaa ibsuun/beekuun kan irraa hin eegamne akka ta'e hiikkoo akeeku dha. Kallattiin hiikkoo kunis bu'uura seera maatii kamiin akka kenname dhaddachichi ifaan kaa'uu baatus, xiinxala murtii kenname irraa garuu bu'uura SMF kwt.96 fi 97'n akka ta'e tilmaamuun ni danda'ama.

Sababiin isaatis, 1ffaa hiikkaan kun tumaalee SMF eeraman kana keessaatti akkuma jirutti ifaan kan taa'aniidha. 2ffaa, bu'uura Seera Manneen Murtii Federaalawaa dhaabe Labsii Lakk. 25/88 tiin, manneen murtii federaalawaa seerota Federaalawaa fi kan Naannoleetis hiikuu akka danda'an ifaan tumameera. Haata'u malee, yeroo seerri Federaalawaa fi kan Naannoo walitti bu'an/garaagarummaa qabaatan manneen murtii federalaawaa seera federaalawaa fudhachuu akka qabanis labsiin kun tumeera. Tumaan labsichaatis:

Federal Courts' Proclamation no, 25/96

Art 6; Substantive Laws to be Applied by Federal Courts

1) Federal Courts shall settle cases or disputes, submitted to them within their jurisdictions on the bases of:

a) Federal laws and international treaties;

b) Regional laws where the cases relate to same;

2) Regional laws to be applied pursuant to sub-Article 1(b) hereof shall not be applicable where they are inconsistent with federal laws…" kan jedhu dha.

Waan ta'eefis, SMF (keewwattoota 96 fi 97) fi SMO (kwt.93) dhimma amma ilaalle irratti garaagarummaa waan qabaniif, Manni Murtii Waliigala Federaalaa Dhaddachi Ijibbaataatis bu'uura labsii olitti tuqameetiin SMO dhiisee SMFn ilaaluun isaa bu'uura aangoo ijibbaataa Heera Mootummaa Rippaabilika Dimokiraatawa Federaalawa Itiyoophiyaa keewwatoota 80(3(a)) fi labsii lakk, 454/97n kennameefiin yoo ilaalamu sirrii hin fakkaatu.

Sababiin inni duraatis, dhimmichi dhimma hariiroo maatii ta'uu fi hariiroo maatii irratti immoo naannoleen akkaataa qabatama naannoo mataa mataa isaanii irratti hundaa'uun seera maatii naannoo ofii isaanii baafachuuf aangoo hundee heeraa[42] kan qaban yoo ta'u, Seerri Maatii Oromiyaatis bu'uruma kanaan kan bahedha. Kana malees dhimma akkanaa irratti falmiin ka'u jalqabumaayyuu sadarkaa mana murtii waliigala naannichaa dhaddacha ijibbaataa irra darbuu akka hin qabnee fi tumaana heerichaa kwtni 80(3/a) fi labsii lakk, 25/88 kwtni 6(2) dhimmoota aangoo bu'uuraa naannolee jalatti argaman kan hin ilaallanne akka ta'e kaayyoo hundeeffama sirna federaalaa bu'uura heerichaan[43] xiinxaluun hubachuun ni danda'ama.

Gama biraatiin yaada faallaa kanaa irratti hundaa'uun dhimmi maatii kun Naannoo Oromiyaa irra darbee Mana Murtii Waliigala Federaalaa Dhaddacha Ijibbaataa gahuu ni danda'a osoo jedhameeyyuu dhaddachi kun aangoon isaa dogongora seeraa raawwatame sirreessuu waan ta'eef dhimmicha kan ilaaluu qabu bu'uura seera manni murtii dogongora raawwate jedhame dhimmicha ittiin murteesseen ta'uu akka qabu hubachuun nama hin rakkisu. Kanaaf dogongorri manneen murtii Oromiyaa hiikkoo seera maatii Oromiyaa irratti raawwatan sirraa'uu kan qabu bu'uuruma seera maatii Oromiyaan ta'uu qaba malee bu'uura seera federaalawaan ta'uu hin qabu.

Akkaataa kanaan dhimma olitti eerame keessatti dhaddachi ijibbaataa kun murtii laateen SMO kwt.93f kallattii hiikkoo kan kenne osoo hin ta'iin bu'uura SMF keewwatoota 96 fi 97'n tumaa SMO kufaa kan godhe ta'uu isaa kan mul'isu dha. Kun immoo dogongora seeraa sirreessuu osoo hin taane seera mootummaan naannichaa baase fooyyessuun garaagarummaa hin qabu. Kanaaf, yaada sammuu sababa qabeessaa fi "loojikaawaa" ta'een yommuu ilaalamu manneen murtii Oromiyaa kallattii hiikkoo seeraa Dhaddachi Ijibbaataa Federaalaa kenne

[42] Heera Mootummaa Rippaablika Dimokiraatawa Federaalawaa Itoophiyaa (HMRDFI), labsii lakk, 1/87, kwt 52 (1): dhimmoota mootummaa federaalawaaf ifaan ifatti hinkennamin irratti naannoleen aangoo kan qaban akka ta'e kan tumame yoo ta'u, aangoon kunis aangoo seera baasuu, raawwachiisuu fi hiikuu kan hammatu ta'uu isaa sirna 'loogikaawaan' hubachuu ni danda'ama. Dhimmoota akkasii keessaa hariiroon maatii isa tokko dha.

[43] Aangoo ijibbaataa manneen murtii naannolee irratti aangoon ijibbaataa mana murtii federaalaaf kenname dhimmoota bu'uuraan kan federaalaa ta'an (fkn heericha kwt 55) irratti aangoo abbaa seerummaa bakka bu'ummaan heericha kwt 78(2) jalatti naannoleef kenname irratti murtii manneen murtii naannolee kennan qofa akka ilaallatuu fi labsiin lakk, 25/88 kwt 6(2) bu'uruma kanaan hiikamuu akka qabu ejjannoo ogeessonni hedduun qabanidha.

kana hordofuuf kan dirqaman hiikichi SMO'f kan keenname yoo ta'e malee sababa lab. lakk. 25/88'n seerri maatii Oromiyaa hafuun isaa ol'aantummaa seera federaalawaa kan isa irratti fidu miti jechuun falmuun caalatti dhama qabeessa ta'ee mul'ata.

Haaluma kanaan, Heera Mootummaa Naannoo Oromiyaa isa fooyya'e kwt. 47(3(b)) jalatti akka tumametti Caffeen seerota heera ykn seera federaalaan walitti bu'an hin baasu kan jedhu ifaan kan tumame yoo jiraatellee dhimmoota bu'uuraan aangoo federaalawaa ta'an raawwiidhaaf akka mijatuuf aangoo dambiilee fi qajeelfamoota dhimmoota akkasii kanarratti baasuu bakka bu'ummaan caffeef kennaman kan ilaallatu akka ta'etti tumaan heerichaa (kwt.47(3/b)) kun yoo hiikkame malee dhimmoota akka maatii bu'uuraan aangoo naannolee jala jiran irrattis seerota caffeen baasu hunda akka hammatutti hiikuun jufunfula (absurdity) kan hordofsiisu waan fakkaatuuf falmiin tarii gama kanaan ka'uu malus kan deemsisuu miti.

1.2.YAADOTA GUDUUNFAA FI KALLATTII FURMAATAA

Sirnoota hariiroo maatii qajeelchan seerri maatii diriirse keessaa tokko sirna walquunnamtiiwwan maatii kan adda addaa ittiin mirkanaa'an yoo ta'u, sirni kunis tooftaalee walquunnamtiin gaa'ilaa ittiin mirkanaa'uu fi akkasumas kan walquunnamtiin osoo gaa'ila hin raawwatin akka dhirsaa fi niitiitti waliin jiraachuu ittiin hubachiifamu hammatee argama. Haata'u malee tooftaalee kanneen keessaa inni yeroo waraqaan ragaa gaa'ilaa hin jirre hojii irra oolu walquunnamtiiwwan lameen kana adda baasuu irratti qabatamaan rakkoo guddaa kan qabu ta'ee hubatama.

Rakkoon kunis akkaataa seera maatii federaalaa isa fooyya'ee fi seera maatii Oromiyaatti kallattiin garaagaraa akka qabatamu sababii kan ta'e fakkaata. Kunis akka seera maatii federaalaa kwt 96'tti yommuu waraqaan ragaa gaa'ilaa hin jirre gaa'ila ragga'u mirkaneessuun kan danda'amu haalli dhirsaa fi niitummaa jiraachuu hubachiisuun akka ta'e kan tumame yoo ta'u, haalli dhirsaa fi niitummaa immoo maal akka ta'e seeruma kana kwt.97 jalatti ibsi itti kennameera. Haala kanaanis hiikkoon haala dhirsaa fi niitummaaf kenname kun isa hiikkoo walquunnamtii osoo gaa'ila hin raawwatin akka dhirsaaf niitiitti waliin jirachuu jedhamuuf seericha keewwatoota 98 fi 99 jalatti kenname waliin akkaataa garaagarummaa qabatama hin qabneen tokko ta'uun isaa tooftaan kun rakkoo akka qabaatu godheera.

Akka seera maatii Oromiyaatti garuu tooftaan haala dhirsaa fi niitummaa hubachiisuun gaa'ila mirkaneessu jedhu kun gonkumaa kan hin beekamne yoo ta'u yeroo waraqaan ragaa gaa'ilaa hin jirre tooftaan raawwatiinsa qabu ragaa bifa kamiiyyuu dhiyeessuun gaa'illi ragga'u raawwatamuu isaa hubachuu akka ta'e kwt 93 jalatti tumee argama. Kana gochuun isaatis rakkoo yeroo waraqaan gaa'ilaa hin jirre walquunnamtiiwwan lameen adda baasuu irratti qabatamaan mudatu kana hambisuuf kan yaade fakkaata.

Haata'u malee dhimmi bu'uura seera maatii Oromiyaa kwt.93 kanaan ilaalamee manneen murtii naannichaan murtaa'u iyyannoodhaan mana murtii waliigala federaalawaa dhaddacha ijibbaataa kan dhaqu yoo ta'u dhaddachi kun immoo dhimma akkasii kana bu'uura seera maatii federaalawaa kwt.96'n ilaaluudhaan murtiin manneen murtii naannichaa seera maatii Oromiyaa kwt.93 irratti hundaa'uun kennan dogongora seeraa qaba jechuun yommuu murteessu qabatamaan mul'ata. Murtii kenne keessattis kallattiin hiikkoo seerichaa bu'uura seera maatii federaalawaan dhaddachichi akeeke bu'uura Labsii Lakk, 454/97 kwt 2(1)'n manneen murtii hunda kan dirqisiisu waan ta'eef manneen murtii naannichaatis kallattii hiikkoo kana caqasuudhaan tumaa seera maatii Oromiyaa kwt.93 irraa maquun akka hojjatan waan gochaa jiruuf rakkoo walquunnamtiiwwan lameen adda baasuu dadhabuu seera federaalawaa kwt.96 irratti mul'ate kana mudachuuf saaxilee jira.

Kana malees dhaddachi ijibbaataa federaalawaa kun dogongorri manneen murtii naannichaa seera maatii naannichaa hiikuu irratti raawwatan jiraachuu fi dhiisuu isaa bu'uruma seera maatii naannichii murtiin komatame ittiin kenname sanaan ilaaluu osoo qabuu bu'uura seera maatii biroon ilaalee murtii lateen kallattiin hiikkoo kenne karaa naannawaatiin seera maatii Oromiyaa aangoo isaa malee kan fooyyesse ta'ee hubatama.

Walumaagalatti, rakkoolee qabatamaa kanneen dhiphisuudhaaf akka yaada furmaataatti qabxiiwwan barruun kun akeekuuf yaalu keessaa inni duraa yeroo waraqaan ragaa gaa'ilaa hin jirre gaa'ila walquunnamtii osoo gaa'ila hin raawwatin akka dhirsaa fi niitiitti waliin jiraachuu irraa qabatamaan addaan baasuuf tumaan seera maatii naannichaa keewwatni 93 ifa waan ta'eef manneen murtii naannichaa bu'uuruma kanaan osoo hojjatanii caalatti rakkoo kana kan dhiphisu ta'ee argama. Tumaan seera maatii federaalawaa keewwatoota 96 fi 97's akkaataa hiikkoo seera maatii Oromiyaa kwt.93'n osoo ilaalamanii ni filatama.

Sababiinis, akka seera maatii Oromiyaa kwt.93tti kan hubachiifamuu qabu haalli dhirsaa fi niitii jiraachuu osoo hin taane gaa'illi ragga'u akkaataa sirna beekamtii qabuutiin

raawwatamuu isaa agarsiisuu waan ta'eefii dha. Haala kanaan ragaan dhiyaatu gaa'ilichi jedhame yoom, eessatti fi sirna kamiin akka raawwatame hubachiisuu yoo danda'an walquunnamtichi gaa'ila ragga'u akka ta'e tilmaamni seeraa kan fudhatamu ta'a. Gama biraatiin, ragaan dhiyaate haala raawwii kan hin beeknee fi garuu walfalmitoonni akka dhirsaa fi niitiitti kan waliin jiraatan ta'uu, maatiis ta'e hawaasnis dhirsaa fi niitii jedhee kan isaan fudhatu ta'uu isaanii qofa kan beekan yoo ta'e walquunnamtichi osoo gaa'ila hin raawwatiin akka dhirsaa fi niitiitti waliin jiraachuu akka ta'e bu'uura SMO keewwatoota136 fi 137'n ykn SMF keewwatoota 98 fi 99'tiin tilmaamni ni fudhatama.

Dirqisiisummaa kallattii hiikkoo murtii dhaddacha ijibbaataa federaalawaan kenname ilaalchisee dhimmi murtiin irratti kenname dhimma aangoo mootummaa naannoo ta'uu fi manneen murtii naannichaatis bu'uura seera maatii mootummaan naannichaa baaseen kan murtaa'e ta'uun isaa osoo hubatamuu bu'uura seera biroon hiikkoon kennamu dhimma naannoo irratti ni dirqisiisa jedhamee kan fudhatamu hin fakkaatu. Kana malees, osoo jedhameellee dhimmoota naannoo irratti haalli murtiin kun bu'aa akkasii hordofsiisuu ittiin danda'u dambiidhaan ykn qajeelfama addaatiin ifa ta'ee afaan hojii naannoleetti hiikamuun dhiyaachuu akka qabu xiinxaluun nama hin rakkisu. Haallan kun bakka hin jirretti murtichi dhimmoota naannolee irratti dirqisiisaadha jechuun kaayyoo heeraa fi aangoo dhaddacha ijibbaataa kanaatis hin fakkaatu.

THE DEGREE OF COURT'S CONTROL ON ARBITRATION UNDER THE ETHIOPIAN LAW: IS IT TO THE RIGHT AMOUNT?

Birhanu Beyene Birhanu*

INTRODUCTION

A look at the *Ethiopian arbitration law (*Arts.3325-3346, Civil Code (herein after referred as C.C); Arts.315-319 and 350-357 Civil Procedure Code (herein after referred as Civ.Pro.C))[1] reveals that courts in Ethiopia control arbitration by such avenues as appeal, setting aside and refusal. Of the Ethiopian arbitration literatures published over the years, those related to the topic of this work are three. These works are by Aschalew[2], Tewodros[3] and more recently by Hailegabriel[4]. None of these authors' works, directly and systematically, examines whether these avenues lead to excessive or inadequate intervention of courts into arbitration and they all overlook the avenue of refusal, particularly in terms of domestic awards. One of the authors, Tewdros even makes a mistake in his article in taking setting aside as one and the same thing as appeal.[5]

Sadly, the Federal Supreme Court itself makes the same mistake as Tewdros in *Disaster Prevention and Preparedness Commission Vs Feleke Getahun*.[6] In this case the court states that:

* LL.B (Addisa Ababa University), LL.M (Utrecht University),Lecturer at the Law School of Jimma University,Ethiopia.He can be reached by birejana@yahoo.com

[1] Note that Ethiopia, as a federal state, can have multiple arbitration laws enacted by individual states forming the federation. As things stand now, however, the sources of arbitration law of both the federal government and all the 9 states (forming the federation) are the C.C and the Civ.Proc.C. That is why I boldly use the phrase *Ethiopian arbitration law* to simply refer to those provisions of the C.C and Civ.Proc.C.

[2] Aschalew Ashagre, *Involvement of Courts in Arbitration Proceedings under Ethiopian Law*, Journal of Business and Development(2007) vol. 2, no. 2, p.1.

[3] Tewodros Meheret, ''*Beshemeglena medagnet hedet ye fird betoch mena'',* Wonber (July 2008) , vol.1,p1 (July 2008)

[4] Hailegabriel G. Feyissa, *The Role of Ethiopian Courts in Commercial Arbitration,* Mizan Law Review (Autumn 2010.) vol.4, No.2, p297.

[5] Supra note 2, at p24

[6] 2 Report of Arbitral Awards, 291, (Federal Supereme Court, 1999 E.C.)

የግልግል ዳኞች በሚሰጡት ውሳኔ እስማማለሁ በማለት የውል ግዴታ □□ነ ተከራካሪ ወገን በውሳኔው ላይ ይግባኝ በሚያቀርብበት ጊዜ በፍ.ሥ.ሥ.ሕ.ቁ. 356 □ተዘ ረዘ ሩት ምክንያቶች መኖራቸውን የማስረዳት ግዴታ አ ለበት::[7]

A party having given her consent on the finality of arbitrators' decision must prove the existence of the reasons listed under Art.356,Civ.Proc.C to loadge an appeal from the decision.(translation mine)

Similar confusion is also obvious in *Equatorial Business Group vs Sahem ye hizbe ena ye chenit Mamelalesha Aglgelot.*[8] In general, of the three devices by which courts control arbitration, setting aside seems to be misunderstood and refusal overlooked. Even the idea of appeal from awards does not seem well understood .The practice in courts shows that appeal from awards is admitted on most cases on the same ground as appeal from court judgments. For example, from its judgment on The *Ethiopia Amalgamated Limited Kubanya Vs Seid Hamid* [9], it is discernable that the Federal Supreme Court admitted the appeal from the award on the ground that there is a need to examine whether the arbitrators erred in the interpretation of the contract between the parties which the dispute arise from, even if the arbitrator's interpretation of the contract is not "*on its face*" wrong.[10] A look at Art. 351, Civ. Proc. C., however, reveals that such errors-legal or factual- which are not apparent on the face of the awards cannot be grounds of appeal.

Hailegabriel, however, mistakenly holds that such appeal is authorized under Art.351(a)[11]. Actually, Art.351(a) allows appeal from an award if the factual or the legal

[7] Id.at 291.
[8] 1 Report of Arbitral Awards, 272,(Federal Supreme Court,1995 E.C). In this case the court even confuses awards with compromises.
[9] 2 Report of Arbitral Awards, 333, (Federal Supreme Court, 1993 E.C.)
[10] In many more cases, appeal from awards is treated like appeal from judgments: For example,see, *Woldeyohanis Woldemichael Vs Zergaw Hailemariam*, 2 Report of Arbitral Awards 265(Federal Supreme Court,1986E.C);*Mat ye construction Srawoch vs Tambo International*, 2 Report of Arbitral Awards, 405, (Fedral Supreme Court,1997 E.C);*Ye Ethiopia Medhin Derejit vs Ye Ethiopia Chenet Mamelalesha Corporation*,1 Report of Arbitral Awards,114(Federal Supreme Court,1993, E.C)
[11] Supra note 3 at p 326

error is so apparent that it can easily be grasped from a glance at the award. Due attention needs to be given to the phrase "*on its face*" in the provision. This provision does not invite appeal from awards just because the line of interpretation of the laws or facts adopted by arbitrators is found to be arguable. Construing the provision as authorizing courts to review arbitral awards with an arguable holding severely undermines the legislators' intention of limiting the grounds of appeal from arbitral awards.

The discussion so far underscores the necessity of a work which accurately portrays the law on court's control on arbitration and which goes further and tests whether or not the law gets the amount of control to the right degree. This work is up to this task. To achieve the objectives of this endeavour, mainly legal rules are examined and analysed in light of some standards which stand at the heart of arbitration.

This work consists of VII sections. In section I, standards by which we measure the degree of court's control is set. In section II, a general over view of the avenues by which courts control arbitration are outlined. The amount of court's intervention by way of appeal, setting aside and refusal are measured in section III, IV, and V, respectively. Finally there is the conclusion.

To avoid a possible misunderstanding, it is necessary, from the outset, to delineate the boundaries of this work. The conclusions in this work are based on the presumption that standards set in section I are basic arbitration principles. If it is possible to prove that those standards are not that much essential to hold special place in arbitration, then the conclusions arrived at in this work may not be valid. Of course moderate analysis is made to show how the standards sit at the heart of arbitrations.

The other thing that must be noted is that if there is a belief that the standards used in this work were at the forefront of the legislator's mind in drawing the rules of the arbitration law, our conclusion will be different from what we have in this work. This belief may induce us to interpret the exhaustive list of, for example, Art.356, Civ.Proc.C as including, for e.g., the setting aside of awards affected by bribery or fraud, since interpreting the provision otherwise may be held as contrary to what the legislator upholds, *that is courts must intervene, in arbitration, to correct violations of basic principles of procedural fairness.* This work, however, does not inquire whether or not the legislator had the standards in mind in drawing the legal rules on arbitration. In this work, the standards are simply juxtaposed with what the legislator expresses itself literally in such articles as Arts. 351-354,355-357 and 319, Civ.Proc.C.

One may also wonder why this work, setting out to discuss and evaluate court's control on arbitration, is silent on cassation review of arbitral awards, which is clearly another avenue of court's control in Ethiopia.[12] Unlike, other ways of court's control on arbitration such as appeal, setting aside and refusal, there is no an explicit statutory basis for court's control of arbitration by way of cassation. What we have is the practice itself and most importantly a recent case decided by the Federal Supreme Court Cassation Bench.[13]In this case, the bench squarely addresses the issue of the propriety of cassation review of awards, even if there is an agreement between the parties on the finality of awards. And it resolves the issue in favour of cassation review of awards even in the presence of a wavier agreement. This unique position of cassation review of awards gives rise to many questions which call for an in-depth study on its own account.[14] Thus, I reserve cassation review of awards for a separate work.

[12] See, *Beherawe Maedin Corporation vs Dany Drilling*, 10, Fedral Supreme Court Cassation Bench Case Report, 350 (Cassation Bench, Federal Supreme Court, 2003 E.C)

[13] Id. Remember that the decision of this bench has a precedent value.

[14] Such questions are, to name a few: what does cassation review of awards mean? Is there any compelling reason at all for reviewing awards on the merit for basic error of law? What does basic error of law mean in terms of cassation review of awards? Is it the same thing as in cassation review of judgments? Is the bench's reasoning justifiable in holding cassation review of awards even in the presence of a waiver agreement?

1.1. SETTING THE STANDARDS

In this work, what is mainly intended to accomplish is to gauge the courts' control on arbitration and then determine whether the control is to the right degree or not. Such a work, before anything else, requires the setting of standards against which the court's control is measured. This section will just do that.

Parties submit disputes to arbitration to avoid courts for legitimate reasons. Dispute settlement via arbitration provides parties with some benefits which they cannot get when it is resolved via a court process. Speed, cost-effectiveness, privacy, parties' control on the proceeding (for example, on evidence rules) and arbitrator expertise are more often cited benefits of arbitration over litigation[15]. Arbitration can also be preferred to escape the judicial system filled with incompetent and corrupt judges. Therefore, the first standard against which court's control on arbitration should be measured is that *parties submit disputes to arbitration to avoid courts.* Courts' control of arbitration can be considered as it is to the right degree if it upholds, among other things, parties' wish of avoiding courts.

There are fundamental procedural principles which a society requires to be upheld under any circumstance such as the right to be heard and the right to be tried by impartial forum. Since they are so fundamental, the society presumes that individuals always want them and with their sane mind cannot agree to waive them. So the society puts them outside of the domain of those subject-matters that can be subjected to terms of contract. With this background in mind, the second standard is set to be: D*espite parties' waiver of recourses against awards in courts, courts must intervene in arbitration to control if the award is found to be against "pubic policy."*

[15] However, it is not always guaranteed that arbitration gives these benefits. Sometimes in institutional arbitration it could be found more expensive than litigation. If the award is set aside or if an appeal is initiated from the award, the arbitration may happen to be a slower mechanism than litigation for the resolution of disputes.

"Public policy", however, is a very elusive concept which opens itself for a wide-range of interpretations. That is why an English judge in 1824 described public policy as "... a very unruly horse, and when once you get astride it you never know where it will carry you. It may lead you from sound law. It is never argued at all, but when other points fail."[16] Of course, after 150 years, another English judge favoring public policy holds that "[w]ith a good man in the saddle, the unruly horse can be kept in control. It can jump over obstacles. It can leap the fences put up by fictions and come down on the side of justice."[17]

In this work, anyways, the phrase is understood in the same way as it is understood in the *Explanatory Note by the UNCITRAL Secretariat on the 1985 Model Law on International Commercial Arbitration as amended in 2006*.[18] In paragraph 46 it is stated that "violation of public policy" is understood as "serious departures from fundamental notions of procedural justice". I prefer this understanding, because I believe it to be modern and widely acceptable.

Once standards are set, the next step is the evaluation of the degree of court's control in light of the standards. However, before taking a full-swing at that task, a brief description of the avenues by which courts exercise control on arbitration makes sense.

1.2. THE AVENUES FOR COURTS' CONTROL ON ARBITRATIONS

[16] *Richardson -v- Mellish* (1824) 2 Bing. 228; [1824-34] All ER Rep. 258.

[17] *Enderby Town Football Club Ltd v The Football Association Ltd* [1971] Ch 591, 606-607 (Lord Denning MR).

[18] It is available at http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/MLARBexplanatoryNote20-9-07.pdf

The arbitration law now in use in both federal and state jurisdictions is found in the 1960 Civil Code (Arts.3325- 3346) and 1965 Civil Procedure Code (Arts 315-319; 350-357). The fundamental idea underlying this law is the creation of a legal framework in which disputes are resolved privately via arbitration which is obviously alternative to court room resolutions. Of course, the law in lying down the frame work still saves some rooms where courts can play a role in the arbitration. One of the roles, the law bestows on courts is a controlling or supervisory role[19]. There are three ways through which courts can exercise control on arbitration.[20]

The first one is *appeal* (Arts. 350-354, Civ.Proc.C.). Courts can review the decisions of arbitrators (it is known as award) by way of appeal.[21] Of course, the grounds of appeal are limited[22] and the right to appeal can even be waived.[23] Courts reviewing an award by way of appeal can reverse, modify, confirm or remit the award.[24] In other words, courts control the arbitration by reversing or modifying the award which they find disagreeable or by confirming it when they find it to their likings.

The second avenue is *setting aside* (Arts. 355-357 Civ.Proc.). This procedure gives courts to declare awards null and void if they find the procedural errors enumerated in Art.356 Civ.Proc.C are committed in the arbitration process.[25] Therefore, it is easy to see that courts are given the power to oversee the compliance of certain procedural principles in the arbitration process.

---

[19] The other is assistance. Courts assist the arbitration in such ways as in the appointment of arbitrators (Arts, 3332,3334,C.C.) in ensuring the attendance of witnesses(Art.317(3),Civ.Proc.C), in granting provisional measures such as attachment.

[20] Note that if we go beyond legal rules and see the case law, we find the fourth avenue for court's control on arbitration that is cassation review of awards. However, as I put it in the introduction, this avenue is not examined in this work.

[21] Ethiopian Civ.Proc.C, (1965), Art.350.

[22] Ethiopian Civ.Proc.C, (1965), Art. 351.

[23] Civ.Proc..C, (1965), Art. 351(2), Reading Arts, 351(1) & (2) together, it is also possible to infer that the right to appeal can be narrowed down by agreement. However, it does not seem that parties can expand their right to appeal by agreement.

[24] CV.P.C,(1965),Art.353

[25] CV.P.C,(1965),Art.357

As shown in the above two paragraphs, setting aside is a completely different procedure from appeal, though the two procedures are confused to one another.[26] Besides the difference on grounds (grounds of setting aside are enumerated under Art.356,Civ.Proc.C. while that of appeal under Art.351, Civ.Proc.C), the two procedures differ by the degree of interference which they authorizes courts into arbitration. Appeal authorizes courts to examine the merit of the arbitral award and correct the errors, if any, therein. At the conclusion of the appeal, the appellate court gives a judgment conforming, modifying or reversing the award. The judgement will then bind parties as a final resolution on the dispute between the parties unless of course the circumstances allow further appeal and it is pursued by the party unhappy about the judgment. The procedure of setting aside, on the other hand, does not authorize courts to examine the merit of the award. It simply authorizes them to see whether or not some procedural mistakes (enumerated under Art.356, Civ.Proc.C) are committed or not and to declare the award null and void, despite the holdings on the merit if it is given amidst of those procedural irregularities. Unlike appeal, at the end of the successful setting aside action, parties will then find themselves with an outstanding dispute to be yet resolved. If, in the setting aside action, the court finds that the procedural mistakes are not committed, parties will then find themselves that they are still bound by the award itself (unlike appeal , not by a court judgment either modifying ,reversing or confirming the award)

The third way is what is known as *"refusal"* (Art.319(2),Civ.Proc.C). Refusal refers to courts' resistance of the enforcement of awards for some problems in it. Unlike appeal and setting aside, this procedure is not dealt in length in the law. There is even no explicit provision stating the grounds which courts rely on to refuse enforcement of domestic awards[27]. However, a close reading of art.319 (2) Civ.Proc.C reveals that courts can refuse enforcement. This provision requires an award to be homologated before it

[26] See text accompanying notes 5-8.
[27] Regarding the enforcement of foreign awards, we have an explicit provision, Art. 461, Civ. Proc. C.

becomes as executory as court judgement[28]. Obviously, there must be some instances where courts can deny the homologation of awards and thus enforcement[29]. In *Almesh vs Assefa Belete*,[30] the Federal Supreme Court Cassation Bench refuses the enforcement of an award for the reason of irregularity in the appointment of the sole arbitrator. So the procedure of refusal is one of the avenues via which courts exercise control on arbitration in Ethiopia.

To conclude, in the Ethiopian arbitration law (that is in the 1960 Civil Code (Arts.3325-3346) and 1965 Civil Procedure Code (Arts 315-319; 350-357)), there are three avenues (viz., appeal, setting aside and refusal) through which courts can exercise control on arbitration. The next question is: Is the degree of control by the courts via each of these avenues to the right amount, too much or too little by those standards set in section (I)? Or is it difficult to determine due to the absence of a clear formula in the legal rules? The following sections are committed for finding an answer to these questions.

1.3. CONTROL VIA APPEAL

Appeal from awards, as mentioned above, is one of the procedures which give courts an avenue to exercise control on arbitrations. This control is thought as too much of a

[28] The Amharic version does not seem to require the homologation of awards for its enforcement.

[29] Expectedly, courts deny the homologation of an award if it is against public policy. For detail discussion on this point see section V. Also see the case, *Mesfin Industrial Engineering vs Tana Transport*, 2 Report of Arbitral Awards, p.234, (Federal High Court, 1999 E.C.)(the courts holds that "**ይህ ፍርድ ቤት ሊ□ስ□□ም □ማገባው ደግሞ በፍ.ብ.ሥ.ሥ.ሕ.ቁ 319(2) መሠረት □ሕ ውቅና የሰጠውን ማለት □□ሕ ንግሊዝኛው ትርጉም □ሕ ንደማ.ያመለ□ዙ□** (up on the application for the homologation of the award) **በመሆኑ ሕጋዊነቱን ይህ ፍርድ ቤት ያላመነበትን የግልግል ዳኝነቱን ውሣኔ ማስፈጸም ስለማይገባው አመልካች ያቀረቡትን የአ ፈጻጸም ጥያቄ ፍርድ ቤቱ አልተቀበለውም**:: As the clause in the English version of Art.319 (2),Civ.Proc.C. "upon the application for the homologation of the award" illustrates ,this court needs to enforce the award it confirms. As this court does not need to enforce the award its legality it does not believe in, the applicant's application for the enforcement of the award is denied. [The translation is mine]

[30] 2 Report of Arbitral Awards, p.186, (Federal Supreme Court, Cassation Bench,)

compromise on the finality of the arbitration and thus excluded in many countries' arbitration laws.[31] It is argued that parties submit a dispute to arbitration to escape courts. Bringing in courts to arbitration by way of appeal, which means reviewing the merit of the dispute, is compelling parties to stay sticking to the very thing which they exactly need to free themselves from. Of course, on the other side of the spectrum, there are countries with an arbitration law providing the avenue of appeal from awards on limited grounds.[32] The Ethiopian arbitration law is to be categorized with these countries.[33] It is not the ambition, in this work, of the writer, to argue and show that the legislator of the Ethiopia arbitration law is right or not in including the avenue of appeal.

This work (for the sake of convenience) starts concurring with the presumably legislator's general position that appeal from awards on selected limited grounds is compatible with the essence of arbitration. This work rather probes into these selected limited grounds that the legislator singled out as warranting courts' control on arbitration via appeal. Before we embark on that business, let us see the enumeration of the grounds under Art 351, Civ.Proc.C. This provision reads that no appeal shall lie from an award except where:

> (a) the award is inconsistent, uncertain or ambiguous or is on its face wrong in matter of law or fact;
>
> (b) the arbitrator omitted to decide matters referred to him;
>
> (c) irregularities have occurred in the proceedings, in particular where the arbitrator (i) failed to inform the parties or one of them of the time or place of the hearing or to comply with the terms of the submission regarding admissibility of evidence; or (ii) refused to hear the evidence of material witness or took evidence in the absence of the parties or of one of them; or

[31] The UNCITRAL Model Law, which is intended to be a model for countries desiring to modernize their arbitration laws, does not include the avenue of appeal.
[32] For e.g., The English Arbitration Act, (1996), Section, 67- 69.
[33] Civ.Proc.C, Arts. .350 & 351

(d) the arbitrator has been guilty of misconduct, in particular where: (i) he heard one of the parties and not the other; (ii) he was unduly influenced by one party, whether by bribes or otherwise; or (iii) he acquired an interest in the subject-matter of dispute referred to him.

As the first standard we set in section [I] has it, court's control must not defeat the very essence of referring disputes to arbitration, that is avoiding courts. Appeal on the grounds listed above, however, defeats the very essence of party's reference of their case to arbitration. Appeal, as a procedure where decisions are *reviewed on the merit, is not a retrial of a case*. Grounds of appeal given under c-d above are actually grounds entailing retrial[34]. For example, take a look at d (i), the appellate court, under that circumstance, needs to set aside the award and hear both parties. If the courts need to receive and hear the evidence and the arguments of both parties anew, that means the appellate court is really acting like a trial court. So since the so-called grounds of appeal listed under Art.351(c-d) Civ.Proc.C actually turns the appellate court in to a trial court, parties' wish of avoiding court trial is to be defeated completely. This lead to the conclusion that courts control on arbitration via appeal based on the grounds listed under Art.351(c-d) is too much , too inconsiderate to parties' wish of avoiding court for legitimate reasons such as speed, secrecy and others mentioned somewhere else in section I.

One possible counter argument is that the appeal procedure from awards does uphold parties' wish as they can avoid appeal on those grounds listed under Art 351,Civ.proc.C by agreement.[35]. This argument takes us to the second standard which is set in section I. Grounds listed under Art.351(c-d),Civ. Proc .C are gross violations of procedural rights such as fairness and justice. So court's intervention to correct such violations should not be restricted by parties' waiver agreement. It does not even make sense to hold that a

[34] By "retrial" I mean that receiving and hearing of evidences and arguments afresh. Retrial refers to the full-blown involvement of the court in to the case. Appellate courts are not supposed to do this in normal circumstances even in appeals from judgments and for the stronger reason in appeals from awards.
[35] See, Civ.Proc.C, Art. 350(2)

party validly agrees to be bound by a decision given against him, for e.g., without her being heard. That is why it is argued, based on Art.350(2),Civ.Proc.C. that a waiver agreement must not be upheld as valid under such circumstances as it is considered as having been entered without " full knowledge of the circumstances."[36]

To conclude, court's intervention to correct an award spoiled by one or more of those matters listed under (c-d) must not be restricted by parties' agreement as public interest requires it (as they have everything to do with fundamental principles of justice). However, that intervention should not take the form of appeal as it defeats parties' wish of avoiding trial. So court's control via appeal on those grounds listed under *c-d* is not to the right degree when evaluated by both standards set in section I.

As it might already be noticed here, it is not yet said anything as to court's control over arbitration via appeal based on grounds enumerated under Art.351 (1)(a) and(b) Civ.Proc.C. It may not be possible to say that these grounds will turn an appellate court in to a trial court and that they are such mistakes which go against the very fundamental notions of procedural justice. So, appeal on those grounds is to the right degree when evaluated by those two standards set in section I. However, it may not be right to have them as grounds of appeal when seen in light of efficiency. It is more efficient if it is left to arbitrators to correct the mistakes mentioned under 351(1) (a) and (b), Civ.Proc.C. Arbitrators are much better positioned than appellate courts, for example, to clarify ambiguous matters in the award. Mistakes too, which are apparent on the face of the award; need to be corrected by arbitrators themselves.[37] This idea crossed even the

[36] See also, *Dragados J & P Joint Venture vs Saba Construction* , 8 Federal Supreme Court Cassation Bench Case Report 23(Cassation Bench, Federal Supreme Court, 2001 E.C)

[37] This is the case for litigations. So for the stronger reason the same must be the case for arbitral awards. In litigation, the very court rendering the judgment, not appellate courts, corrects such obvious mistakes that can be detected from a glance at the judgment itself. On this point see Order XLVII of the Indian Code of Civil Procedure, 1908, which reads: "Any person considering himself aggrieved …. And who, from the

legislator's mind. That is why remission is allowed in such cases singled out under Art.350 (1)(a) and (b), Civ.Proc.C. [38]

1.4. CONTROL VIA SETTING ASIDE

By the avenue of setting aside, courts are able to declare awards as null and void if they find them affected by one or more of procedural irregularities mentioned under Art.356, Civ. Proc. C.[39] Unlike appeal, in the procedure of setting aside, courts do not review the merits of the dispute and the right to bring an action for the setting aside of awards is not waiveable by agreement, either. Art. 356, Civ.Proc.C lays down the exhaustive list of grounds of setting aside. According to this provision, the procedures are available if and only if one or more of the following irregularities occur in the arbitration: a) where the arbitrator decided matters not referred to him or made his award pursuant to a submission which was invalid or had lapsed; b) where the reference being to two or more arbitrators and where they did not act together; or c) where the arbitrator delegated any part of his authority whether to a stranger, to one of the parties or to a co-arbitrator.

No body can validly oppose the intervention of courts in arbitration when these irregularities occur in the process. The fundamental thing underlying arbitration is the *arbitration agreement*.[40] The power of arbitrators arises from and is defined by this

---

discovery of new and important matter or evidence which, after the exercise of due diligence, was of within his knowledge or could not be produced by him at the time when the decree was passed or order made, *or on account of some mistake or error apparent on the face of the record*, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.(the emphasis is mine).Art.6 of the Civ.Proc.C is the counter- part of Order XLVII of the Indian Code of Civil Procedure, 1908, but it fails to give the court rendering a judgment or an order the power to correct its judgment or order for its error which is apparent on the face of the record. As known to many, many provisions of the Civ.Proc.C, are copied from the Indian Code of Civil Procedure, 1908 but with many ridiculous omissions.

[38] Civ. Proc. C. Art, 354(1)
[39] Id, Art. 357
[40] Arbitration agreement (the terminology used to denote arbitration agreement in the Ethiopian arbitration law is "arbitral submission) is an agreement to arbitrate. Arbitration agreement governs the number of arbitrators, the manner of their appointment, the procedure to be applied, among other things.

agreement. This agreement can also set the identity and number of arbitrators. So it is reasonable to seek the intervention of the court when arbitrators brush aside the wishes of the parties as expressed in the arbitration agreement on such matters and conduct the arbitration differently. In brief, since Art.356 of the Civ.Proc.C warrants the intervention of the court only when arbitrators act outside of the wishes of the parties, it has nothing wrong in it in this regard.

The procedure of setting aside (Arts.355-357, Civ.Pro.C.) allows courts intervention to the extent of setting aside the award; it does not go beyond that and give them the power to look into the merit of the dispute. It means through the procedure of setting aside, arbitrators can be kept in –check not to go beyond the wishes of the parties and at the same time parties' wish of resolving the dispute via arbitration remains in tact. Once courts set aside awards, then parties can start arbitration process afresh.

So far, it is shown that the grounds listed down under Art.356 Civ.Proc.C justifiably warrant the intervention of courts in arbitrations. It is also shown that since the intervention of courts on those grounds does not go beyond setting aside of awards(or does not go to looking into the merit of the case), the procedure of setting aside does not go contrary to parties' original wish of resolving the dispute through arbitration. Now the question is: does all this mean that court's control of arbitrations via the procedure of setting aside (as it is laid down under Arts.355-357, Civ.Proc.C) is to the right amount? (This is the question this paper mainly sets out to answer).

In section II, it is concluded that the irregularities listed under Art.351 (1)(b-d), Civ.Proc.C are serious enough to warrant courts' persistent intervention as these irregularities totally go against parties expectation of arbitration, and fairness and justice. However, it is also concluded that intervention should not take the form of appeal in such circumstances as the appeal avenue defeats parties' wish of keeping themselves out of

court trial for the resolution of disputes via arbitration. The avenue of setting aside is well poised to maintain the balance between the two concerns. If the irregularities were made the grounds of setting aside, then courts could control the arbitrators not to commit those irregularities by declaring awards tainted with the irregularities null and void, with out affecting parties' wish of resolving the dispute via arbitration. Once parties get the tainted award null and void, they could submit the dispute to arbitration again. However, such irregularities are not explicitly made grounds of setting aside under Art.356 , Civ.Proc.C.

Therefore, one may conclude that since Art.356, Civ.Proc.C gives the exhaustive list of ground of setting aside and since the matters listed under Art.351 (1)(c-d) , Civ.Proc.C. are not included in the list while they should have been, the avenue of setting aside does not give courts the right amount of intervention. This may be best illustrated by invoking a scenario where parties waive their appeal right through agreement[41]. In this scenario, a party waiving his appeal right through an agreement at the beginning of the arbitration process will not have any remedy against an award which is entered, say for e.g. without her being heard. So, one may argue that the court's power of controlling arbitration via the setting aside procedures is so insufficient that it allows such deeply flawed awards to stand.

1.5. CONTROL VIA REFUSAL

Art. 319(2) reads that "an award may be executed in the same form as an ordinary judgment *upon the application of the successful party for the homologation of the award* and its execution". (Emphasis added).This provision does not in any way suggest that courts must always enforce awards whatever they are.[42] Rather it prescribes the need of a motion for homologation of awards before they are executed as judgments.[43] The very

[41] Civ.Proc.C ,(1965),Art.350(2), appeal right can be waived.
[42] For example, courts may not enforce an award on non-arbitrable matter.
[43] But in the Amharic version of the provision the requirement of the application for homologation is omitted. However, the English version requiring the application for homologation of awards is obviously more rational than the Amharic one which omits it. To entrust only courts with the enforcement of awards, but to give no power whatsoever to refuse enforcement does not make any sense. To require courts to blindly enforce awards (which are for example, outrageously against public policy) is absurd. So courts must be given the power to refuse the enforcement of awards of some sort. As homologation procedure is

requirement of the homologation process in the enforcement of awards implies that courts can deny the homologation of an award that will result in making the award not-enforceable. However, the law is not explicit when courts deny or grant homologation of awards and in effect refuse or grant the enforcement of awards.[44]

In evaluating the degree of court's control via appeal and setting aside procedures, grounds of appeal as provided in the law are taken and seen in light of the standards set in section I. The same approach would be expected here. The problem, however, is the law does not, as explained above, state the grounds up on which homologation (of awards) is refused or granted. If we, for example, look at the Civil Procedure of Quebec, it reads that "[a]n arbitration award cannot be put into compulsory execution until it has been homologated"[45]. In another place it states that:

> The court cannot refuse homologation except on proof that
>
> 1) one of the parties was not qualified to enter into the arbitration agreement;
>
> 2) the arbitration agreement is invalid under the law elected by the parties or, failing any indication in that regard, under the laws of Québec;
>
> 3) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
>
> 4) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or it contains decisions on matters beyond the scope of the agreement; or

---

there to enable courts exercise this power, so the English version is sounder than the Amharic one, which seems to require the blind execution of awards if it is followed strictly. And note that *homologation of awards*, as used in Art.319 (2), can simply be understood to mean *confirmation, by court, of the validity and thus enforceability of awards*.

[44] Of course, the law is much clearer when the enforcement of foreign awards is granted or refused (See, Art.461,Civ.Proc.C.)

[45] Quebec Civil Procedure Code, Art. 946.

5) the mode of appointment of arbitrators or the applicable arbitration procedure was not observed. In the case of subparagraph 4 of the first paragraph, the only provision not homologated is the irregular provision described in that paragraph, if it can be dissociated from the rest[46].

Art. 946.5 and 946.6 of Quebec Civil Procedure also respectively state that the court cannot refuse homologation of its own motion unless it finds that the matter in dispute cannot be settled by arbitration in Québec or that the award is contrary to public order and that the arbitration award as homologated is executory as a judgment of the court.

In comparing, the 1965 Civil Procedure Code of Ethiopia with that of Quebec Civil Procedure Code, one cannot help noticing that there is a similarity in both codes as both require an award to be homologated before becoming executory as a judgment. The difference is that the Civil Procedure of Quebec lays down the grounds of refusal of homologation, but Ethiopian Civil Procedure Code does not. Therefore, in evaluating the degree of court's control on arbitration via refusal, it is not possible to say that the control via refusal is either too much or too little or to the right degree. All we can conclude is that the law does not provide us with any explicit formula in this regard which can be subjected to evaluation by those standards set in section I.

1.6. CONCLUSIONS AND RECOMMENDATIONS

The Ethiopian arbitration law provides three avenues for courts' control on arbitration, namely, appeal, setting aside and refusal. When each avenue is gauged by such standards as "parties' wish of avoiding courts" and "the necessity of courts' intervention to rectify an award against public policy", at best it is without a clear formula to lend itself for evaluation by the standards and at worst it does not lead to optimal amount of intervention. The avenue of appeal, based on those grounds (listed under Art.351(b-c), Civ.Proc.C), opens the door for too much intervention defeating parties' wish of avoiding courts simultaneously restricting court's intervention to rectify awards against public policy, upholding waiver agreement of appeal. In other words, the avenue of

[46] Quebec Civil Procedure Code, Art. 946.4

appeal is so unbalanced that it consists of grounds which always warrant court's intervention though that intervention must take another form than itself. The avenue providing optimal intervention on those grounds (listed under Art.351(b-c), Civ.Proc.C) would be setting aside. However, the law falls short of providing those grounds as warranting intervention via the avenue of setting aside leaving courts with no sufficient power to rectify awards against public policy. The avenue of refusal is not made (in the Ethiopian arbitration law) clear enough even to see how it looks in light of the standards.

On the basis of the conclusions here, the following modest recommendations are made to the legislator:

- It should discard those matters enumerated, as grounds of appeal, under Art.351(b-c),Civ.Proc.C.
- The grounds of setting aside enumerated under Art.356, Civ.Proc.C should be expanded to include those matters enumerated under Art.351(b-c),Civ.Proc.C.
- It should provide a formula where the application for the homologation of awards (and consequently enforcement of awards) must be refused and/or not.

MADAALLII RAAWWII HOJII (MRH) ABBOOTII SEERAA OROMIYAA: BARBAACHISUMMAA FI SIRNA RAAWWII ISAA

Tafarii Baqqalaa*

ABSTRACT

Both Federal Democratic Republic of Ethiopia and Oromia National Regional State Constitutions clearly stipulate that except under exceptional situations, judges at all levels shall not be removed from their duties before they reach retirement age. One of these exceptions is gross incompetence or inefficiency of judges. To say a judge is grossly incompetent or inefficient, there must be a system known as judges' performance appraisal system through which an assessment is made. Generally speaking, there is no universally accepted performance appraisal system. However, a system which is wholestic and exhaustive in its standards, sources of information and methodologies in general (commonly termed as 360-degree performance appraisal system) is highly preferred. This is also true in case of judicial performance appraisal. Coming to Oromian context, currently, there is no scientific system to appraise the performance of judges. As a result, it is hard for Judicial Administration Council to make decisions on judicial affairs like promotion of judges, and existence of gross inefficiency. This in turn, negatively affects not only independence but also accountability of judges. Hence, it is timely to implement 360-degree performance appraisal system in Oromian courts so as to evaluate performance of judges.

SEENSA

Hojiin madaallii hin qabnee fi fardi cancala hin qabne walfakkaatu yoo jedhame dogoggora hin ta'u. Sababni isaa, isaan lachuu gara itti deeman waan hin beekneefi. Manneen hojii adda addaas raawwii hojii isaanii akka mana hojii fi akka hojjetaa dhuunfaatti kan madaalan kanuma irraa ka'aniiti. Manneen murtiis manneen hojii adda addaa keessaa tokko waan ta'aniif, raawwii hojjettoota isaanii, keessumaa kan abbootii seeraa madaaluutu irraa eegama. Kana gochuuf immoo sirni madaallii raawwii hojii jiraachuu qaba.

Haa ta'u malee, sirni kun akkuma biyya keenyaattuu diriiree hin jiru ture. Kun ammoo faayidaawwan[1] sirnichaan argamuu malan akka hin argamne kan godhe ta'uu bira darbee, dhimmoota Heeraan, labsii fi qajeelfamaan[2] taa'anii jiran tokko tokko hojiitti hiikuu keessatti rakkoon akka uumamu godheera; godhaas jira.

Waggoota muraasa dura, Manni Murtii Waliigala Oromiyaa sirna MRH abbootii seeraa diriirsuun rakkoowwan kana furuuf sochii godhee kan ture yoo ta'ellee, hin milkaa'iin hafeera. Kana boodas, sirna kana diriirsuun barbaachisaa akka ta'e itti amanuun, sadarkaa federaalaa fi naannoo keenyaatti bara 2002 ALI irraa kaasee hojiiwwan hojjetaman ni jiru. Fakkeenyaaf, sadarkaa lamaanittuu, qorannoon geggeeffamee argannoon isaa bakka dhimmamtoonni argamanitti ifa ta'eera.

Haaluma kanaan, yeroo ammaa, sadarkaa naannoo keenyaatti hojiitti galamuuf haal-dureewwan barbaachisan kallattiima qorannoon geggeeffame agarsiiseen hojjetamaa jira. Fakkeenyaaf, leenjiin hubannoo cimsuu abbootii seeraaf kennamaa tureera. Barruun kunis cuunfaa qorannoo fi leenjii sirna MRH abbootii seeraarratti sadarkaa Naannoo keenyaatti hojjetaman yommuu ta'u, gaaffiiwwan gurguddoo lama deebisuuf kan yaalu dha. Tokkoffaa, sirna MRH qabaachuun abbootii seeraa Oromiyaaf ni barbaachisaa? kan jedhu dha. Lammeffaa, sirni MRH kun kan barbaachisu yoo ta'e, sirna attamii ta'uu qabaa? kan jedhu dha. As irratti waanti hubatamuu qabu, barruun kun dhimmoota MRH abbootii seeraan walqabatan hunda gadi fageenyaan kaasee tokko tokkoon kan xiinxalu miti. Sababni isaa, sirni MRH abbootii seeraa yaad-rimee bal'aa waan ta'eef, dhimmoota

---

* LL.B (Yunivarsiitii Addis Ababaa); Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qo'annoo Seeraa Oromiyaatti, Bakka Bu'aa Gaggeessaa Hojii Qo'annoo fi Qorannoo; E-mail: bekele.teferi@yahoo.com
Barruun kun cuunfaa qorannoo bara 2002 gaggeeffamee fi moojuulii leenjii hojiirraa bara 2003 barreessaama kanaan qophaa'e dha. Barreessan kun namoota qorannoo fi moojuulii barruu kanaaf ka'umsa ta'e gulaaluun yaada ijaarsaa kennaniif: Dasaa Bulchaa, Misgaanuu Mul'ataa, Alamaayyoo Taganee, fi Milkii Makuriyaaf galata guddaa qaba.

[1] Madaalliin raawwii hojii abbootii seeraa faayidaawwan kallattii adda addaan ibsamuu danda'aan kan akka beekumsa namoota abbootii seeraa filatanii fooyyeessuu, bilisummaa abbaa seerummaa guddisuu,itti gaafatamummaa abbaa seerummaa cimsuu, fi raawwii hojii abbaa seerummaa fooyyeessuu jedhaman qaba. Maalummaa isaaniis kutaa of danda'e goonee barruu kana keessatti tokko tokkoon kan ilaallu ta'a.

[2] Fakkeenyaaf,hojiirra oolmaa tumaawwan Heera Mootummaa Naannoo Oromiyaa,kwt.63 (4)(a);Labsii Gumii Bulchiinsa Abbootii Seeraa Oromiyaa Irra Deebi'anii Dhaabuuf Bahe,Lab.Lak.142/2000,kwt.8(5) fi 8(6); Qajeelfama Raawwii Guddina Sadarkaa Abbootii Seeraa fi Muudamtoota Gumii Manneen Murtii Naannoo Oromiyaa,Qaj.Lak.2/2001,kwt.7(1),8(1),9 (1) fi 10(1) yoo ilaalle hundi isaaniiyyuu jiraachuu sirna MRH abbootii seeraa akka haal-dureetti barbaadu.

hunda duguuguun barruu gabaabaa kana keessatti hammachiisuun waan danda'amu miti. Xiyyeeffannoon isaa inni guddaan, gaaffiiwwan ijoo lamaan olitti ka'an deebisuun kallattii furmaataa agarsiisuu dha. Kanaafis, kutaawwan shanitti caaseffamuun dhiyaateera.

Kutaan duraa, madaalliin raawwii hojii abbootii seeraa akka waliigalaatti maal akka fakkaatu maalummaa fi seenaa guddinaa irraa ka'uun ibsa. Kutaan lammataa, MRH abbootii seeraa geggeessuu ilaalchisee muuxannoon biyya Ameerikaa maal akka fakkaatu agarsiisa. Kutaan sadeffaa, sirna MRH abbootii seeraa diriirsanii hojiirra oolchuu keessatti yaaddoowwan jiran maalfaa akka ta'an kallattii adda addaan kaasee sakatta'a. Kutaan afraffaa, sirna MRH manneen murtii Oromiyaa keessatti diriirsuun bu'uura seerummaa maalii akka qabuu fi rakkoowwan qabatamoo dhibamuu sirnichaarraa maddan maalfaa akka ta'an ibsa. Dhumarratti, kutaan shanaffaa barruu dhiyaate irratti hundaa'uun yaada gudunfaa fi furmaataa kaa'a.

I. MRH ABBOOTII SEERAA: WALIIGALA

1.1. MAALUMMAA FI SEENAA GUDDINA MRH: GABAABINAAN

Hayyootni bulchiinsaa MRHf hiikkaawwan adda addaa yommuu kennan ni mul'ata. Fakkeenyaaf, hayyootni *P.Subba Rao fi VSP Rao* jedhaman MRH jechuun, mala amala hojjettoonni hojii irratti qaban bifa baay'inaa fi qulqul'ina hojii hojjetame of keessatti hammachuu danda'uun itti madaalan jechuu akka ta'e hiikanii jiru[3]. Hayyootni biroo, *Sexton Adams fi Adelaide Griffin* jedhaman ammoo MRH jechuun mala faayidaa hojjetaan tokko mana hojii tokkoof qabu bifa sirrii fi alloogii ta'een bulchiinsi mana hojii sanaa xiinxaluu itti danda'u dha jechuun hiikaniiru[4].

Hiikkaawwan MRH olitti kennaman lamaanuu haala adda addaan kan ibsamani dha. Haa ta'u malee, haala gadi fageenya qabuun yoo xiinxalaman lamaanuu ergaa walfakkaatu

3 P.Subba Rao $ VSP Rao, Personnel (Human) Resource Management Text, Cases and Games (Konark Publishers PVT LTD, 2000) F.218.

4 Sexton Adams &Adelaide Griffin, Modern Personnel Management (A Self-Instruction Program: Cases and Applications,1987) F.57.

dabarsu. Innis, madaalliin raawwii hojii mala ta'uu isaa fi malli kunis hojiin hojjetaan tokko hojjete hangam akka ta'e bifa sirrii ta'een kan ittiin safaruu dandeenyu dha.

Akka seenaatti, gochi akkasii kun durumaan qabee kan turee akka ta'e bareeffamootni ni mul'isu[5]. Haa ta'u malee, madaalliin raawwii hojii hammayyaa ta'e bifa sirnaawaa, caaseffamaa, idilaa'aa fi karoorfamaa ta'een kan geggeeffamu yommuu ta'u, kun kan eegale Waraana Addunyaa Lammeffaa keessaa fi isaa booda[6]. Deemsa yeroo keessas sirni itti geggeeffama isaa jijjiiramaa fi fooyyaa'aa deeme. Jijjiiramni kunis itti fayyadama jechaan, kaayyoo itti geggeeffamuun, daangaa raawwiin, mala itti geggeessanii fi kanneen biroon ibsamuu kan danda'u dha[7].

Egaa, maalummaa fi seenaa guddina MRH gabaabinaan akka kanatti ibsuun ni danda'ama. Kan abbootii seeraas kanumaan walqabsiifnee ilaaluun barbaachisaa ta'a. Maalummaa irraa yoo eegallu, hiikkoon MRH abbootii seeraa hiikkoo MRHf akka waliigalaatti armaan olitti kennamee jiru irraa kan fagaatu miti. Haaluma kanaan, MRH abbootii seeraa jechuun mala akkaataa abbaan seeraa tokko seera jiru itti hiiku, hojii isaa itti to'atuu, fi mana murtii keessatti namoota itti keessummeessu ittiin madaalan jechuu akka ta'e hayyoonni *Richard fi Sharon* jedhaman ni ibsu.[8]

Gara seenaa guddina isaatti yoo deebinu, madaalliin raawwii hojii abbootii seeraa gosoota MRH ogummaa biroon wal bira qabamee yoo ilaalamu, boodarra hafee dhiheenya kan jalqabe yommuu ta'u, kunis dhuma bara 1970'ootaa fi jalqaba bara 1980'ootaa keessa biyyoota dhihaatti akka ta'e og-barruuwwan tokko tokko ni hubachiisu[9]. Haa ta'u malee, yeroo ammaa kana, manneen murtii keessatti akka meeshaa

[5].Introduction to Performance Appraisal, F.1;http://www.performance.appraisal.com/intro.htm <Onkoloolessa 16,2009 kan ilaalame>

[6].OlittiYaadannoo Lak.3, F.217.

[7].Olitti Yaadannoo Lak.4.

[8] .Richard &Sharon, Judge Not That Ye Be Not Judged: Evaluating the Performance of Judges F.10, http://www.allacademic.com//meta/p-mala-apa-research-citation 2/0/9/16/1.

[9] .Kate Malleson, *Judicial Training and Performance Appraisal: The Problem of Judicial Independence*, The Modern Law Review, Vol.60, No.5, F 655,http://www.jstor.org/pss/1096956.

bulchiinsa tokkootti ilaalamaa fi guddachaa kan jiru akka ta'e hubachuun barbaachisaa dha.

1.2. MRH FI NAAMUSA ABBAA SEERUMMAA: WALITTI DHUFEENYA

MRH abbootii seeraa fi naamusni isaanii dhimmoota walitti dhufeenya qabanidha. Walitti dhufeenya yommuu jennu ammoo garaagarummaa fi/ykn tokkummaan ibsamuu danda'a waan ta'eef, isaaniin addaan baafnee ilaaluun barbaachisaa ta'a. Mee dura, garaagarummaa irraa haa jalqabnu.

1.2.1. Garaagarummaa

Tokkoffaa, garaagarummaan jara lachuu hiikkoo isaaniitiin ibsamuu danda'a. MRH abbaa seerummaa jechuun maal jechuu akka ta'e olitti ilaalleerra. Naamusa abbaa seerummaa jechuun garuu, hojii abbaa seerummaa hojjechuu keessatti qajeelfamoota abbootiin seeraa ittiin hoogganaman jechuu dha[10]. Qajeelfamoonni kun safuu, duudhaa fi hamilee uummataa ykn ammoo seera tumamee jiru ta'uu danda'u. Kanaaf, naamusni abbaa seerummaa waa'ee safuu, hamilee fi duudhaa uummataa waliin walitti waan hidhatuuf irra jireessaan *amala* abbootii seeraan kan walqabatu yommuu ta'u, madaalliin raawwii hojii abbootii seeraa ammoo waa'ee *hubannoo fi dandeettii* abbootii seeraa irratti kan xiyyeeffatu dha.

Lammeffaa, akkaataa raawwannaa isaaniitiin jarri lachuu garaagarummaa agarsiisuu danda'u. Ulaagaaleen naamusa abbaa seerummaa keessatti hammatamanii jiran abbootii seeraa kamirattuu utuu addaan hin baasiin raawwatinsa kan qabaatan yommuu ta'u, ulaagaaleen MRH garuu, akkaataa sadarkaa mana murtiitti ykn gosa dhaddachaatti garaagarummaa qabaachuu ykn qabaachuu dhiisuu danda'u.

Sadeffaa, ka'umsa guddachuu dhimmoota lamaanii yoo ilaalles garaagarummaan kun ibsamuu ni danda'a. Sadarkaa Addunyaatti, jiraachuu naamusa abbaa seerummaaf

[10] .Dikshinaariin Seeraa toora interneetii http://legaldictionary.thefreedictionary.com/Code+of+judicial+conduct irratti argamu, "*A collection of rules governing the conduct of judges while they serve in their professional capacity"* jechuun hiika.

sababni guddaan biyyoota baay'eetti amantaa uummatni qaama abbaa seerummaa irraa qabu sababa malaammaltummaa fi loogiin yeroodhaa gara yerootti hir'achaa dhufeef akka ta'e qorannoowwan adda addaa ni ibsu.[11] Ka'umsa guddina MRH abbootii seeraa yoo ilaallu garuu, bakka baay'eetti sababa hir'ina hubannoo seeraa abbootii seertiin murtiin komii uummataa kaasuu danda'u waan kennameefi[12].

Afraffaa, sadarkaa dhimmoonni lamaan itti ibsaman yoo ilaalles garaagara. Sadarkaan raawwannaa naamusa abbaa seeraa kan bitamu Koodii Naamusa Abbaa Seerummaan (Code of Judicial Conduct) yommuu ta'u, sadarkaan raawwannaa hojii abbaa seerummaa ammoo MRH abbaa seerummaan (Judicial Performance Appraisal) keessummaa'a.

Seerota biyyaa fi naannoo keenya keessatti tumamanii yeroo ammaa hojiirra jiran tokko tokko yoo ilaalles, garaagarummaan MRH abbootii seeraa fi naamusa abbootii seeraa jidduu jiru ifa godhanii nuuf kaa'uu baatanus, dhimmoonni kunniin garaagara ta'uu nutti agarsiisu[13].

1.2.2.Tokkummaa

MRH abbootii seeraas ta'e naamusni abbootii seeraa itti gaafatamummaa abbootii seeraa mirkaneessuu keessatti shoora ol'aanaa taphatu. Kana waan ta'eef, jarri lachuu galmaan walfakkaatu jechuun ni danda'ama. Bakka tokko tokkotti ammoo walirra yeroo bu'an

[11] .Makaashaa Abarraa fi Urgeessaa Ganamoo, Naamusa Ogummaa Abbootii Seeraa fi Abbootii Alangaa,(Afaan Oromootti Alamaayyoo Taganee fi Dasaa Bulchaan kan hiikame,2002), F.22.

[12] Fakkeenyaaf, biyya Ameerikaatti, yeroo tokko abbaan seeraa *White* jedhamtu yakka ajjeechaa irratti murtii kennamee ture akka diigamuuf yaada barreessitee turte. Yeroo kana qeequmsi ishee mudate hubannoo gahaa waan hin qabneef, yakka irratti lallaaftuu *(soft on crime*) dha jechuun madaalliin raawwii hojii jiraachuu akka qabu yaadni uummata biraa ka'aa ture (Olitti yaadannoo lak.8 ilaalaa).

[13] Fakkeenyaaf, Heerri Mootummaa RDFI kwt. 79(4), Heerri Mootummaa Naannoo Oromiyaa Fooyyaa'e, kwt. 63(4) fi Labsiin Gumii Bulchiinsa Abbootii Seeraa Oromiyaa Irra Deebi'anii Dhaabuuf Bahe Lab.Lak.142/2000, kwt.31 jalatti sababootni abbaan seeraa tokko hojii abbaa seerummaarraa itti ka'uu *danbii naamusaa cabsuu, ykn hanqina dandeettii ykn si'oomina cimaa* ta'e agarsiisuu dha jechuun yoo tuman, sababootni kunniin walii lama ta'uu isaanii agarsiisu.

(overlap) ni mul'ata. Kana fakkeenyaan ibsuuf, waa'ee *dandeettii* abbaa seeraa fudhannee akka armaan gadiitti haa ilaallu[14].

Abbaan seeraa dandeettii dhabuu isaatiin raawwannaan hojii isaa gadi aanaa yoo ta'e (fkn: dhimma hanga murteessuu qabu yoo hin murteessine ta'e, ykn deddeebi'ee dogoggora hojii irratti kan raawwatu yoo ta'e), kun hir'ina dandeettii ykn hojii irratti si'oomina dhabuu dha. Gama biraatiin ammoo, abbaan seeraa tokko dandeettiin isaa gadi aanaa ta'uu osoo beekuu dandeettii isaa gabbifachuuf tattaaffii kan hin goone yoo ta'e, kun hir'ina naamusaati[15]. Kanarraa hubachuu kan dandeenyu, dhimmumti tokko, jechuunis *dandeettiin* karaa adda addaa lama: hir'ina dandeettii fi hir'ina naamusaan ibsamuu danda'u isaati.

Dhimmi biraa walirra bu'insa naamusaa fi MRH abbootii seeraa ibsuu danda'u, hir'ina raawwii hojii akka hir'ina naamusaatti fudhachuun adabbii hir'ina naamusaaf taa'e abbaa seeraa irratti akka raawwatamu gochuu dha. Fakkeenyaaf, Afirikaa Kibbaa fi Filippiinsitti dogoggora seeraa abbaan seeraa uumu tokko akka hir'ina naamusaatti fudhachuun tarkaanfiin naamusaa akka irratti fudhatamu ta'a[16]. Itti dabalees, duudhaalee naamusa abbaa seerumma irratti sanadoota sadarkaa Addunyaa irratti beekamtii qaban yoo ilaallee, raawwii hojii madaaluuf ulaagaa baay'ee murteessaa ta'e jechuunis, dandeettii qaamuma naamusaa taasisuun of keessatti hammatanii argamu[17]. Sirna MRH abbootii seeraa biyyoota ambaa tokko tokko yoo ilaalles, dhimmoota guutummaa guutuutti duudhaa naamusaa ta'an akka ulaagaa MRH tti yommuu fayyadaman ni mul'ata.[18]

---

[14] Fakkeenyi kun Dasaa Bulchaa fi Alamaayyoo Taganee, Qabiyyee fi Raawwannaa Dambii Naamusa Abbootii Seeraa Oromiyaa (Moojuulii II, 2000) FF.27-28 irraa fudhatame.

[15] Danbii Naamusa Abbootii Seeraa fi Muudamtoota Gumii Naannoo Oromiyaa Bifa Haarayaan Bahe, Danbii Lak.02/2001, kwt.24, ilaaluun ni danda'ama.

[16] .Olitti Yaadannoo Lak.14[ffaa],F.28.

[17] Fakkeenyaaf, ABA Model Code of Judicial Conduct,February 2007 , Canon 2,Rule 2.5,fi The Bangalore Principles of Judicial Conduct 2002, Value 6 ilaaluun ni danda'ama.

[18] Fakkeenyaaf, mootummaalee naannoo Ameerikaa keessaa tokko kan taate, Utaan akkaataa abbaan seeraa tokko abbootii dhimmaa itti keessummeessu akka ulaagaa MRH tti fayyadamti. Abbaan seeraa tokko abbaa dhimmaa fi namoota biroo isa bira dhufan haala kabaja qabuun keessummeessaa? gaaffiin jedhu ammoo kallattiin waa'ee amala dhuunfaa waliin kan walqabatu waan ta'eef, dhimma naamusaa akka ta'e hubachuun nama hin dhibu.

Walumaagalatti, ibsa olitti kenname kanarraa madaalliin raawwii hojii fi naamusti abbootii seeraa yaad-rimeewwan adda addaa lama ta'anis, waanti walitti isaan hidhu waan jiruuf tokkummaa akka qaban hubachuun ni danda'ama.

1.3. AMALOOTA SIRNA MRH BU'A QABEESSAA

Akka waliigalaatti, adeemsa MRH keessa darbee bu'aa argame irratti hundaa'uun murtiiwwan adda addaa kallattiinis ta'e alkallattiin hojjetaa dhuunfaa fi/ykn mana hojii tokko irratti dhiibbaa qabaatan ni darbu. Kana waan ta'eef, sirni MRH kamiyyuu hanga danda'ametti bu'a qabeessa ta'uuti irraa eegama. Sirni MRH tokko bu'a qabeessa kan jedhamu galma barbaadame kan rukkute yoo ta'e dha. Galma barbaadame rukkuteera kan jennu ammoo amaloota armaan gadii yoo agarsiise dha:

a) *Rogummaa fi Dhugummaa (Reliability and Validity)*

b) *Hojii Madaalamuun Walitti Hidhamuu (Job Relatedness)*

c) *Qabatamaan Hojiirra Ooluu Danda'uu (Practical Viability)*

d) *Seera Jiruun Walsimuu*

e) *Namoota Leenjii Qabaniin Geggeeffamuu Danda'uu*

f) *Bu'aa MRH Hojjetaa Madaalameef Ifa Gochuu*

g) *Walqunnamtii Ifa Ta'e Gochuu Danda'uu (Open Communication)*

h) *Adeemsi Komiin Itti Dhagahamu Jiraachuu (Due Process)*[19]

1.4. FAAYIDAA MRH ABBOOTII SEERAA

Sirni MRH abbootii seeraa faayidaawwan hedduu qaba. Beekumsa namoota abbootii seeraa filatanii fooyyeessuu, bilisummaa guddisuu, itti gaafatamummaa cimsuu fi

[19] Amalootni kunniin P.Subba Rao fi VSP Rao, Olitti Yaadannoo Lak.3, FF.245-246 irraa fudhataman.

raawwii hojii abbaa seerummaa fooyyeessuun warreen hangafaati[20]. Mee isaan kanniin tokko tokkoon kaafnee haa ilaallu.

1.4.1. Beekumsa Filattoota Abbaa Seeraa Fooyyeessuu [21]

Biyyootni adda addaa abbootii seeraa isaanii sirna adda addaan calaluun hojiirratti akkuma bobbaasan mara, itti fufsiisuuf tooftaalee adda addaa hordofu. Sirnoota kana keessaa tokko sirna filannoo yommuu ta'u, kunis namni tokko abbaa seeraa ta'ee yeroo murtaa'eef eerga hojjetee booda itti fufuuf[22] akkuma qaama siyaasaa biroo filannoo uummataatiin sagalee barbaadamu yoo argate dha.

Sirni MRHs adeemsa saayinsaawaa ta'e keessa waan darbuuf, odeeffannoo gahaa fi amanamaa ta'e uummataaf kennuudhaan filannicha gosummaa, saala, gartummaa, siyaasaa fi kkf[23] irraa bilisa gochuun bu'a qabeessa fi haqa qabeessa taasisa jedhamee yaadama. Fakkeenyaaf, qorannoon biyya Ameerikaa keessatti dhiheenya kana geggeeffame tokko kan agarsiisu uummatni % 64 hanga %72 gahu filannoo abbootii seeraa kan geggeessu bu'aa MRH abbootii seeraa ka'umsa godhachuun akka ta'e dha.[24] Kanaaf, madaalliin raawwii hojii abbootii seeraa hubannoo namoota abbootii seeraa filatanii cimsuu keessatti faayidaa akka qabu hubachuun ni danda'ama.

1.4.2. Bilisummaa Abbaa Seerummaa Guddisuu [25]

---

[20] Institute for the Advancement of the American Legal System,Shared Expectations,Judicial Accountability in Context (Universityof Denver, 2006) ;http:// www.du.edu/ legal institute /pubs/shared expectations.pdf FF.13-18 .

[21] Akkuma 20[ffaa], F.13.

[22] Asitti kan ibsuun barbaadame isa afaan Ingiliziin *retention election* jedhamu dha. Fakkeenyaaf, mootummaalee naannoo Ameerikaa keessaa *Tennessee fi New Mexico* sirna filannoo uummataatiin abbootiin seeraa isaanii hojiitti akka fufan ykn hojii akka dhaabachiisan taasisu. Isaan biratti kaayyoon MRH inni jalqabaas kanuma murteessuufidha (Akka waliigalaatti, Olitti yaadannoo lak.20, miiltoo "A" ilaaluun ni danda'ama).

[23] Olitti Yaadannoo Lak.20[ffaa], F.14.

[24] Akkuma 23[ffaa], F.15.

[25] Akkuma 24[ffaa], F.16.

Madaalliin raawwii hojii abbootii seeraa fi bilisummaan abbaa seerummaa walsimumoo walitti bu'u dhimma jedhu irratti yaadawwan adda addaa lamatu jira[26]. Yaadni tokko, madaalliin raawwii hojii abbootii seeraa bilsimmaa abbaa seeraas ta'e, bilisummaa hojii abbaa seerummaa akka waliigalaatti gadi xiqqeessee kan ilaalu waan ta'eef, barbaachisaa miti kan jedhu dha[27]. Namootni yaada kana tarkaanfachiisan yaada isaanii gosoota dhiibbaa bilisummaa abbaa seeraan walqabsiisanii ibsu. Akka isaaniitti, dhiibbaan bilisummaa abbaa seeraa irratti godhamu karaa keessaa fi karaa alaan dhufuu kan danda'u yommuu ta'u, madaalliin raawwii hojii dhiibbaa karaa alaa abbootii seeraa irratti dhufu dha jechuun hojiirra oolmaa isaa mormu[28]. Yaadni kun gara jalqabaa irra, keessumaa dhuma bara 1970'ootaa fi jalqaba bara 1980'ootaa keessa bal'inaan afarfamaa kan turee waan ta'eef, MRH abbootii seeraa hojiirra oolchuu keessatti mormiin mudate salphaa hin turre[29].

Yaadni biraan ammoo yaada olitti ka'ame kanaan faallaa yommuu ta'u, innis madaalliin raawwii hojii abbootii seeraa adeemsa fooyyaa'insaa fi to'annoo qulqul'ina hojiiti malee bilisummaa abbaa seerummaa kan dhiibu miti kan jedhu dha[30]. Yaadni kun booda keessa manneen murtii keessatti baratamaa fi amaleeffatamaa dhufuun yaada duratti ibsame kana bakka dhabsiisaa kan adeemee fi sababoota hedduunis kan deggerame dha. Fakkeenyaaf, hayyuun maqaan isaa *Kenan* jedhamu bareeeffama isaa "*ABA Offers New Way to Judge the Judges*" jedhu keessatti,

> Madaalliin raawwii hojii dhimma tokko ykn lama qofa irratti hundaa'uun kan geggeeffamu osoo hin taane, raawwii waliigalaa akkaataa naamusni hojii abbaa seerummaa barbaaduun raawwatamuu isaa ilaaluun kan geggeeffamu waan ta'eef, qabiyyee murtii dhimma tokko, ykn lama qofa irratti hundaa'uun

[26] Olitti Yaadannoo Lak.9.

[27] Akkuma 26ffaa.

[28] Akkuma 27ffaa.

[29] Akkuma 28ffaa.

[30] Akkuma 29ffaa.

> qeeqama sirrii hin taaneef abbootiin seeraa akka hin saaxilamne kan isaan godhu dha jechuun kaa'a[31].

Akka hayyuu kanaatti, madaalliin raawwii hojii abbootii seeraa qaphxiilee abbaa seeraa tokko "gaarii dha" ykn "gaarii miti" jechisiisuu danda'an hunda uummata barsiisuudhaan bilisummaa isaanii eega jechuu dha. Dhugumayyuu, raawwii hojii abbaa seeraa tokkoo safaruuf murtiin dhimma tokko irratti kennamu gahaa fi sirrii ta'uu baatus, hawaasa bira gahuun waa'ee abbaa seeraa murtii kenne sana irratti akka haasa'amu gochuu keessatti gahee inni qabu salphaa miti. Kun ammoo qeeqama hin taaneef abbootii seeraa saaxiluun bilisummaan isaanii akka hubamu godha. Madaalliin raawwii hojii abbootii seeraa garuu, qaphxiilee ilaalamuu qaban hunda tilmaama keessa waan galchuuf, rakkoo akkasii kana ni hambisa ykn ni xiqqeessa. Kun kan agarsiisu, madaalliin raawwii hojii abbootii seeraa bilisummaa abbootii seeraatti kan hin buunee fi ennumaa kan cimsuu fi kan tiksu ta'uu isaati[32].

Waanti biraa madaalliin raawwii hojii abbootii seeraa bilisummaa abbaa seerummaa waliin waliitti kan hin buune ta'uu agarsiisu,adeemsichi siyaasa irraa bilisa kan ta'ee fi akkaataa abbaan seeraa tokko mana murtii keessatti namoota itti keessummeessu, seera jiru itti hiikuu, fi hojii isaa itti to'atu madaaluu irratti kan xiyyeeffatu ta'uu isaati[33]. Kana gochuun ammoo ciminaa fi dadhabina jiru adda baasanii beekuun cimina jiru itti fufsiisuuf; hir'ina jiruuf ammoo furmaata barbaachisaa kennuuf kan nama dandeessisu malee duudhaa bilisummaan walitti kan bu'u miti.

1.4.3. Itti Gaafatamummaa Abbaa Seerummaa Cimsuu [34]

Itti gaafatamummaa abbaa seerummaa jechuun adeemsa ol'aantummaa seeraa mirkaneessuuf godhamu keessatti itti gaafatamummaa abbootii seeraa fi waajjirri mana

---

[31] American Bar Association (ABA) Offers New Way to Judge the Judges,http://www.law.com.jsp/law/Law Article Friendly.jsp?;Mulu Sendek,Appointment and Evaluation of Judges in Ethiopia:With Special Reference to Federal Judges in Addis Ababa (Ethiopian Civil Service University Library,1997) F.17 (Jijjiirraan kan kooti).

[32] Akkuma 31[ffaa].

[33] OlittiYaadannoo Lak.8 fi 9.

[34] Olitti Yaadannoo Lak.8, FF.6-7.

murtii ogummaa isaanii fi qaama isaan hoogganuuf qaban jechuu dha[35]. Itti gaafatamummaa abbootii seeraa kana mirkaneessuuf manneen murtii tooftaalee adda addaa fayyadamu.Sirna oliyyannoo diriirsuu, itti gaafatamummaa naamusaa kaa'uu, seerotaa fi adeemsota jijjiiruu, fi kkf[36] akka fakkeenyaatti maqaa dhahuun ni danda'ama. Isaan kunniin itti gaaafatamummaa abbootii seeraa mirkaneessuuf shoora ol'aanaa kan qaban yoo ta'an illee, qophaa isaaniitti guutuu hin ta'an. Fakkeenyaaf, itti gaafatamummaan ol iyyannoo irraa maddu hir'ina qabaachuu isaa hayyuun tokko akkas jechuun ibsa:

> *Some Canadian judges believe the first and possibly only form of judicial evaluation is found in the possible appeal of their decisions to higher courts. This keeps the "evaluation process" within the formalities of the courts and focuses on questions of legal process and interpretation. It does not speak, however, to questions of comportment or nuances of judicial behavior in the court room.* [37]

Akkuma hayyuun kun jedhu abbaan seeraa tokko bu'aa ol iyyannoo qofaan kan madaalamu yoo ta'e, kallattii tokko qofaan innis hubannoo seeraan kan ilaalamu ta'a malee, mala ykn akkaataa abbaan seeraa tokko hojii isaa itti geggeessu irratti hin xiyyeeffatu. Kana waan ta'eef, tooftaalee biroo akka dabalataatti qabaachuun barbaachisaa ta'a. Madaalliin raawwii hojii abbootii seeraa dhimmoota hammatamuu qaban of keessatti waan hammatuuf tooftaalee haaraa itti gaafatamummaan abbootii

[35] Rogell Preze Perdomo,Independence and Accountability, (2006) http://www.worldbank.org/legal/efop Judital/jiconf-paper.pdf. < Fulbaana 8,2004 kan ilaalame>.

[36] Shimon Shetreet, Judicial Independence:The Contemporary Debate (Netherland,Martinus nijhoff publishers,1985) F.399.

[37] .Dale H.Pole, *What Do Lawyers Think about Judicial Evaluation? Responses to the Nova Scotia Judicial Development Project*, the Innovation Journal: the Public Sector Innovation Journal Vol-10(2), Article 22, F. 3.

seeraa ittiin to'atamu keessaa isa tokko[38] jechuun ni danda'ama. Kanaaf, madaalliin raawwii hojii abbootii seeraa itti gaafatamummaa abbaa seerummaa cimsuu keessattis gahee guddaa qaba.

1.4.4. Raawwii Hojii Abbaa Seerummaa Fooyyeessuu [39]

Akka waliigalaatti, faayidaan MRH abbootii seeraa kallattii adda addaa lamaan ibsamuu kan danda'u dha[40]. Inni duraa, gama qaama bulchiinsa mana murtiin yoo ilaallu, qaamni kun faayidaa maalii argata kan jedhu yoo ta'u; inni biraan ammoo, kallattii tokkoo tokkoo abbootii seeraan yoo ilaalamu, abbootiin seeraa kun adeemsicharraa maal barbaadu kan jedhu dha.[41]

Bulchiinsi mana murtii tarkaanfiiwwan sirreeffamaa fi fooyyaa'insaa kan akka leenjii qopheessuu, abbootii seeraa hojii isaaniitti caalmaa agarsiisaniif onnachiiftuu adda addaa kennuu , fi kkf fudhachuuf odeeffannoo gahaa fi sirrii ta'e barbaada[42]. Abbaan seeraa tokkos kaayyoo waliigalaa manni murtii hojjetu keessatti gahee maalii akka qabu beekuu fi sadarkaa hojii isa irraa eegamu beekuudhaan waan fooyyaa'uu qabu ofuma isaa akka fooyyeessuuf bu'aan MRH akka dubduubeetti(feedback) gargaara[43].

Kana waan ta'eef, madaalliin raawwii hojii abbootii seeraa hojiiwwan murtii adda addaa dabarsuu kan akka hanga miindaa, guddina sadarkaa fi jijjiirraa, fi humna namaa misoomsuun walqabatanii hojjetaman fiixa baasuuf gahee inni qabu laayyoo miti. Gama bulchiinsaan murtiin qixa sirriin yoo darbe; akkasumas, humni namaa akka barbaadamutti yoo misoome, karaa biraatiin raawwiin hojii abbaa seerummaa akka waliigalaatti fooyyaa'e jechuu dha.

---

[38] Madaaliin raawwii hojii abbootii seeraa tooftaa bilisummaa fi itti gaafatamummaa ittiin walmadaalchisan keessaa isa tokko jedhamuun yeroo baay'ee kan ibsamus kanumaafi (Richard and Sharon, Olitti yaadannoo lak.8, FF 6-7 ilaaluun ni danda'ama).

[39] Olitti Yaadannoo Lak.20, F.18.

[40] Hon.Justice Rosaline P.Bozimo, Performance Evaluation of Judicial Officers and the Role of the National Judicial Council: the Journey So Far, F.17.

[41] Akkuma 40ffaa.

[42] Akkuma 41ffaa,F.18.

[43] Akkuma 42ffaa.

II. ULAAGAALEE FI MALA MRH ABBOOTII SEERAA: MUUXANNOO BIYYA AMEERIKAA[44]

2.1. ULAAGAALEE FI MALAWWAN: WALIIGALA

Sirna MRH kamiyyuu keessatti ulaagaalee fi malawwan madaallii dhimmoota ijoo ta'anidha. Ulaagaaleen madaallii qabatamaan hojii hojjetame sadarkaan isaa hangam akka ta'e meeshaa ittiin safarru ta'ee, hojii hojjetaa madaalamuun kan walsimu, gaarii fi yaraa kan adda baasuu, fi hojiirra ooluu kan danda'u ta'uun irraa kan eegamu dha[45]. Mala madaallii yommuu jennu ammoo ulaagaalee madaallii qabatama godhanii dhiheessuuf toofta fayyadamuu qabnu jechuu dha. As keessatti, waantonni hedduun kan hammataman yommuu ta'u, madda odeeffannoo adda baasuu, akkaataan odeeffannoon madda odeeffannoorraa walitti qabamu murteessuu, akkaataa bu'aan madaallii ifa itti ta'u murteessuu fi kkf maqaa dhahuun ni danda'ama.

Sirna MRH keessatti ulaagaalee fi malawwan akkaataa barbaachisummaa isaaniin walfaana kan deeman yoo ta'ellee, kana jedhamuun tokkoo fi tokko ta'anii kan murtaa'an miti. Kana jechuun, ulaagaanis ta'e malli madaallii biyyaa biyyatti, mootummaa naannoo tokkorraa mootummaa naannoo biraatti garaagarummaa qabaachuu danda'a jechuu dha[46]. Hayyoonni adda addaas karaa adda addaa yoo ibsan argina[47].

---

[44] Sirna MRH abbootii seeraa diriirsuudhaan biyyi biyyoota Addunyaa baay'eef akka *moodelaatti* ilaalamtu Ameeriikaa dha. Sirnichis achii maddee biyyoota biraa dhaqqabe. Itti dabalees, Ameerikaan biyya yeroo jalqabaatiif naamusa abbaa seerummaa koodiitiin qopheessitee hojiirra oolchite dha. Madaalliin raawwii hojii abbootii seeraa fi naamusi abbaa isaaniimmoo walitti dhufeenya akka qaban ilaaluuf yaalleera. Muuxannoo biyya Ameerikaa ilaaluun kan barbaachises kanumarra ka'ameeti.

[45] Olitti Yaadannoo Lak.3, F.220.

[46] Mulu Sendek, Olitti Yaadannoo Lak.31, F.9.

[47] Fakkeenyaaf, hayyuun "*Fanie J. Klien*" jedhamtu, ejjennoo cimaa abbaa seerummaa *(judicial integrity)*, beekumsa seeraa *(legal knowledge)*, dandeettii of ibsuu *(communication skills)*, hojiif qophaa'aa ta'uu *(preparedness)*, gabatee yeroo kabajuu *(punctuality)*, tajaajila ogummaa ofii fi uummataa *(professional and public service)*, fi abbootii seeraa biroo waliin haala bu'a qabeessa ta'en hojjechuu danda'uu jechuun ulaagaalee madaallii abbootii seeraa saddeet (8) tarreessiti. Hayyuun biraa, maqaan isaa *A.Wayne Makey* jedhamu immoo ulaagaalee MRH abbootii seeraa afur: gahumsa ogummaa, dandeettii hojii, falmii irraati yaada fudhachuu fi amala nameenyummaa jechuun eerga adda baasee booda isaan jalatti ulaagaalee

Gara mala madaalliitti yoo dhufnu, madaalliin raawwii hojii abbootii seeraa adeemsa dheeraa keessa kana darbu dha.Adeemsa kana keessas garaagarummaan mala madaallii sirriitti calaqqisa. Fakkeenyaaf, maddii fi malli odeeffannoo dhiphachuu ykn bal'achuu danda'a. Kutaa kana jalattis muuxannoo biyya Ameerikaa ka'umsa godhachuun dhimmootuma kana ilaalla.

2.2. ULAAGAALEE FI MALAWWAN: MUUXANNOO MOOTUMMAALEE NAANNOO AMEERIKAA MURAASA[48]

2.2.1. Koloraadoo

---

xixiqqoo akkaata walfakkeenya isaaniitiin adda baasa. Fakkeenyaaf, ulaagaaleen xixiqqoo kan akka dandeettii seeraa, beekumsa seeraa, muuxannoo hojii seeraa fi qulqul'inni(bilchinni) yaada ulaagaa guddaa "gahumsa ogummaa"jedhu jalatti kufu.Haaluma walfakkaatuun,kaka'umsa qabaachuu,si'oomina qabaachuu fi falmii bulchuu danda'uun ammoo ulaagaalee xixiqqoo ulaagaa guddaa "dandeettii hojii" jedhu jalatti kufu (*Akka waliigalaatti, Mulu Sendek,Olitti Yaadannoo Lakk 33,FF 9-10 ilaalaa).*

[48] Mootummaaleen Naannoo Ameerikaa lakkoofsaan hedduu dha. Nuti sirna calallii abbootii seeraa ka'umsa godhachuudhaan iddattoodhaaf lama qofa fudhannee ilaalla. Akka waliigalaatti, sirna calallii abbootii seeraa isaanii irratti hundaa'uun mootummaalee naannoo Ameerikaa garee sadiitti gurmeessuun ni danda'ama:

1. Gariin isaanii sirna qaama calaluun, yeroo baay'ee Gumii Abbaa Seerummaa jedhamuun beekamuun dhihaachuun qaama biraan raggaasisuun abbootii seeraa hojiitti bobbaasu qabu. Fkn: Koloraadoo, Alaskaa, Tenesii, Utaa, Arizoonaa fi Niwu Mekisiikoon garee kana jalatti ramadamu.

2. Gariin isaanii sirna utuu qaama biraan hin dhihaatiin kallattiimaan qaama bulchiinsaan muuduun hojiitti seensisu diriirsanii qabu. Fkn: Niwu Jersey, Virjiiniyaa, Niwu Hampshirii (New Hampshire), fi Hawwa'i (Hawaii) garee kana jalatti kufu.

3. Gariin isaanii ammoo sirna akkuma abbootii aangoo siyaasaa filannoo uummataatiin abbootii seeraa isaanii calaluun hojiitti bobbaasu qabu. Fkn: Waashingitenii fi Niwu Yoork maqaa dhahuun ni danda'ama.

   Gareewwan sadan kana keessaa garee sadeffaa keessatti sirni MRH abbootii seeraa baay'ee hin guddanne. Kanaaf, nuti kan ilaallu, sirnoota calallii kana sadan keessaa isa 1^{ffaa} fi isa 2^{ffaa} dha. Kanaaf, iddattoon keenya iddattoo kaayyoowaa(purposive sampling) ta'a. Haaluma kanaan, garee duraa keessaa Koloraadoo; garee lammeffaa keessaa Niwu Jersey fudhannee ilaalla.

Koloraadootti, abbootiin seeraa ulaagaalee toorbaan: ejjennoo cimaa qabaachuu, beekumsaa fi hubannoo seeraa, dandeettii of ibsuu, hojiif qophii ta'uu, kabaja hojii abbaa seerummaa eegsisuu (judicial temperament), hubannoo fi xiyyeeffannoon hojjechuu danda'uu, fi falmii godhamuu fi murtii kennamu to'achuu danda'uun madaalamu[49].

Kaayyoon madaalliis walii lama: hubannoo namoota abbootii seeraa filatanii cimsuu,fi akka abbootiin seeraa ofiin of fooyyeessan[50]dha. Qaamni madaallii geggeessuu Gumii MRH Abbaa Seerummaa jedhama[51]. Gumiin kun manneen murtii ol iyyata dhagahaniif sadarkaa naannoorra kan jiru yommuu ta'u, manneen murtii sadarkaa duraan falmii dhagahaniif ammoo sadarkaa jalaatti hundaa'ee jira[52]. Baay'inni isaas, sadarkaa naannootti tokko; sadarkaa jalaatti (at local level) digdamii lama(22); walumatti, digdamii sadii(23) dha[53]. Tokkoon tokkoon Gumii miseensota 10 kan of keessaa qabu yommuu ta'u, gurmaa'inni isaas 4 ogeeyyii seeraa; 6 ammoo ogeeyyii seeraa kan hin taane dha[54]. Kan isaan filus Dursaa Abbaa Seeraa (Chief Justice), Bulchaa (Governor), Pirezidaantii Seenatii, ykn Af-yaa'ii Mana Mareeti[55].

Maddi odeeffannoo danuu dha. Jechuunis, namootni ogeeyyii seeraa ta'anii, fi hin taane kan hammatu dha. Haaluma kanaan, gareewwan walfalman, juurerootni, miidhamtoonni yakkaa, qaamoleen adda addaa seera raawwachiisan, hojjettoonni tajaajila hawaasummaa kennanii fi hojjettoonni manneen murtii madda odeeffannooti[56]. Itti dabalees, sanadootni istaatistikaawaa ta'an kan akka baay'ina galmee maddeewwan odeeffannoo birooti[57]. Malli maddeewwan kanarraa odeeffaannoo itti guuranis akkasuma danuu dha. Haaluma

[49] .Olitti Yaadannoo lak.8, F.19,

[50] .Olitti Yaadannoo Lak 20,Miiltoo "A"

[51] .Akkuma 50[ffaa], F.30.

[52] .Akkuma 51[ffaa].

[53].Akkuma 52[ffaa].

[54].Akkuma 53[ffaa].

[55].Akkuma 54[ffaa].

[56] . Olitti Yaadannoo Lak.8, F19.

[57] .Akkuma 56[ffaa].

kanaan, bar-gaaffiin, af-gaaffiin, akka-tasaa dhaddacha dowwachuun, galmeewwanii, fi barreeffamoota rogummaa qaban ilaaluun malawwan odeeffannoon itti guuramanidha.[58]

Kana waan ta'eef, maddeewwan odeeffannoos ta'an, malawwan odeeffannoon itti guuraman danuu dha.Kun kan agarsiisu, sirni MRH abbootii seeraa Koloraadoo *sirna madaallii digirii 360*[59] ta'uu isaati.

Gara bu'aa madaalliitti yoo dhufnu, qaamni madaallii geggeessu jechuunis, Gumiin MRH Abbaa Seerummaa waan sadii godha[60]. Tokkoffaa, qaphxiin giddu-galeessaa "C" ykn 2.0 fi isaa ol yoo ta'e akka abbaan seeraa sun hojiitti fufu yaada dhiheessa. Lammaffaa, qaphxiin giddu-galeessaa "C" ykn 2.0 gadi yoo ta'e akka abbaan seeraa sun hojiitti hin fufne yaada dhiheessa. Sadaffaa, odeeffannoo MRH geggeeffame irratti amantaa kan hin qabne yoo ta'e ammoo yaada dhiheessuu irraa of qusachuun marsaa madaallii itti aanutti qulqulleeffata. Bu'aan madaallii kunis uummataaf karaa adda addaa, fakkeenyaaf, weebsaayitii mana murtiin, gaazexaa fi waraqaa waa'ee filannoo abbootii seeraaf odeeffannoo kennuun ibsama[61].

2.2.2. Niwu Jersey (New Jersey)

Mootummaan Naannoo Niwu Jersey sagantaa MRH abbootii seeraa kan diriirsite durii kaastee yommuu taatu, kan geggeeffamus kaayyoowwan gurguddoo afuriifi. Isaanis:

1. *Raawwii hojii abbaa seerummaa akka dhuunfaa abbootii seeraa fi akka mana murtiitti fooyyeessuu,*
2. *Sagantaa barnoota abbaa seerummaa haala bu'a qabeessa ta'een adeemsisuu,*

[58] Akkuma 57[ffaa].

[59] .Sirna madaallii digirii 360 jechuun sirna madaallii maddi odeeffannoo isaa fi malli odeeffannoon itti guuramu danuu ta'uun qaamolee rogummaa qaban hunda hammachiisuu fi duguuguu danda'u jechuu dha.

[60] Olitti Yaadannoo lak.8, F.16.

[61] Marla N.Greenstein, Dan Hall, and Jane Howell, Improving the Judiciary through Performance Evaluations,F.12, http://www.ncsonline.org/WC/Publications/KIS_JudPer Judiciary Pub.pdf <Fulbaana 8,2004 kan ilaalame>.

3. *Abbootii seeraa akkaataa dandeettii isaaniitiin bakka sirriitti ramaduun hojjechiisuu, fi*

4. *Abbootiin seeraa irraa deebi'anii akka muudamaniif haala mijeessuu dha* [62].

Madaalliin kan hoogganamu Biiroo Bulchiinsa Manneen Murtii Niwu Jerseyiin yommuu ta'u, hojii teekinikaa kan hojjetu ammoo Koree Raawwii Hojii Abbaa Seerummaa *(Judicial Performance Committee)* jedhamuun beekamu dha[63]. Koreen kun turtii yeroo waggaa sadii kan qabu dha. Miseensotni isaas yoo xiqqaate abbootii seeraa 6, ogeeyyii seeraa 3, uummata keessaa 2, fi miseensota dabalataa Manni Murtii Waliigalaa bakka buusuu danda'u of keessaa kan qabu dha[64].

Ulaagaaleen madaallii baay'inaan **30** ol yoo ta'an *dandeettii seeraa, bulchiinsa abbaa seerummaa (Judicial Management*), fi *amala* jedhamuun bakka gurguddaa sadiitti gurmaa'uu kan danda'anidha[65]. Maddi odeeffannoo ogeeyyii seeraa (attorneys) yommuu ta'an, malli odeeffannoon itti funanamus bar-gaaffii dha[66]. Ogeeyyiin seeraa bar-gaaffii deebisanis ogeeyyii abbaa seeraa madaalamu sana dura dhaabbatanii beekanidha.

Kanaaf, maddi odeeffannoos ta'e, malli odeeffannoon itti guuramu kan Koloraadoon wal bira qabnee yoo ilaallu, dhiphaa dha; sirni isaas sirna madaallii digirii 360 miti.

Gara bu'aa madaalliitti yoo dhufnu, iccitummaan kan qabamu dha[67]. Kana jechuun, Biiroon Bulchiinsa Manneen Murtii bu'aa madaallii (caccabbiis ta'e, cuunfaa isaa) uummataaf ifa hin godhu. Kun ammoo qeeqama baay'ee irratti kan kaase dha. Sababni isaa, sirni calallii abbootii seeraa filannoo uummataan ta'uu baatus, bu'aa madaallii uummataaf ifa gochuun faayidaa mataa isaatii qaba : qulqul'ina tajaajila abbaa

62 Olitti Yaadannoo Lak.20, F.43.

63 .Akkuma 62[ffaa], F.42.

64 Akkuma 63[ffaa], miiltoo "A".

65 Akkuma 64[ffaa], F.42.

66 .Akkuma 65[ffaa].

67 Akkuma 66[ffaa], F.43.

seerummaa mana murtiin kennamu irratti uummatni akka mari'atuuf karaa waan saaquuf fooyyaa'insa kenninsa haqaaf ciicata gaarii ta'a[68].

Walumaagalatti, mootummaalee naannoo Ameerikaa keessatti akkaataa fi bifti madaalliin itti geggeeffamu garaagarummaa kan qabu yoo ta'es, sirna abbootii seeraa ittiin madaalan qabaachuun barbaachisaa fi faayida -qabeessa akka ta'e hubachuun ni danda'ama.

Sirna madaallii irratti garaagarummaan kan jiru yoo ta'es, sirni madaallii caalaatti filatamu sirna isa kam akka ta'e og-barruuwwan dhimma kanaan rogummaa qaban tokko tokko ni ibsu [69].

2.3. QAJEELFAMA MRH ABBOOTII SEERAA WOSATIIN QOPHAA'E

Qajeelfamni MRH abbootii seeraa WOSAtiin qophaa'e kun ulaagaalee madaallii hedduu bakka gurguddaa sadiitti gurmaa'uu danda'an qaba. Isaanis:

a) *Ulaagaa madaallii hojii murtiin (galmee ilaaluun) walqabatu.*

b) *Ulaagaa madaallii hojii bulchiinsaan walqabatuu, fi*

c) *Ulaagaa madallii hojii tajaajila ogummaa adda addaan walqabatu*[70]

Tokkoo tokkoo ulaagaalee kanneeniis deebisuun ulaagaalee xixiqqootti caccabsee kaa'a. Fakkeenyaaf, ulaagaa madaallii hojii murtii jalatti ulaagaaleen adda addaa afur: hojii abbaa seerummaa irraatti ejjennoo cimaa qabaachuu danda'uu (judicial integrity), beekumsaa fi hubannoo seeraa abbaan seeraa qabu, dandeettii of ibsuu abbaa seeraa fi ilaalcha gaarii hojii abbaa seerummaa irratti qabaachuu (judicial temperament) jechuun

[68] Akkuma 67[ffaa], F.44.

[69] Fakkeenyaaf, biyya Ameerikaatti, sirna MRH abbootii seeraa ilaalchisuun qaamoleen adda addaa barreeffama adda addaa qopheessanii jiru; Hawaasa Abbaa Seerummaa Ameerikaa (American Judicature Society), Wiirtuu Biyyoolessa Manneen Murtii Naannolee (National Center for State Courts), fi Waldaa Ogeessota Seeraa Ameerikaa, kana booda,WOSAtiin kan beekamu (American Bar Association) maqaa dhahuun ni danda'ama. Isaan keessaa qajeelfamni MRH Abbaa Seerummaa WOSA tiin qophaa'e baay'inaa fi qulqul'ina hojii waan madaaluuf, caalaatti guutuu ta'uusaarrayyuu Mootummaaleen Naannoo Ameerikaa baay'een akka ka'umsaatti (as a reference) kan itti fayyadaman waan ta'eef, dhimma kana irratti akka "moodelaatti" kan ilaalamu dha. Barruu kana keessattis qabiyyee Qajeelfama kanaa gabaabinaan ibsuun kan barbaachise kanumaafi.

[70] Judging Judges: Securing Judicial Independence by Use of Judicial Performance Evaluations, F.7.

teechisa. Ammas deebi'uun ulaagaalee xixiqqoo kana caccabsee kaa'a [71]. Ulaagaaleen gurguddoo hafan lamaanis akkuma kana caccabanii jiru [72].

Gara sirna madaalliitti yoo dhufnu, qajeelfamichi sirna madaallii digirii 360 jajjabeessa. Kana jechuun, maddi odeeffannoon irraa guuramuu fi malli odeeffannoo ittiin guuran danuu dha jechuu dha. Sirna kanaan, abbootii seeraa madaaluuf, odeeffannoon rogummaa fi amanamummaa hanga qabaatetti olii fi gadiin, bitaa fi mirgaan, namoota ogeeyyii seeraa ta'anii fi hin taane irraa, namoota hojii abbaa seerummaa hojjetanii fi hin hojjetne irraa guurama[73]. Sanadoonni istaatistikaawaa ta'an, galmeewwan abbaa seeraan murtaa'an, galmeewwan kuusaa dhuunfaa abbaa seeraa fi kan kana fakkaatanis akka madda odeeffannootti dhimmoota gargaaranidha. Malli odeeffannoon itti guuramus akkasuma danuu dha[74].

Qajeelfamni kun bu'aan madaallii sirna madaallii digirii 360 keessa darbee argamu ifa ta'uu qaba moo iccitiin qabamuu qaba? Ifa kan ta'u yoo ta'e eenyuuf ifa ta'a dhimma jedhus of keessatti hammateera. Ifa ta'uu fi dhiisuun bu'aa MRH abbootii seeraa kaayyoo madaallichaan walitti kan hidhamu dha[75]. Kaayyoon MRH abbootii seeraa ammoo uummataaf odeeffannoo kennuu ykn ofiin of fooyyeessuu mana murtii ta'uu danda'a[76]. Haaluma kanaan, kaayyoon isaa uummataaf odeeffannoo kennuu yoo ta'e, uummata bal'aaf ifa gochuun dirqama ta'a; ofiin of fooyyeessuu mana murtii qofaaf yoo ta'e ammoo uummata bal'aaf ifa gochuun dirqama akka hin taane ni hubatama. Garuu, kaayyoon madaallii kamis ta'e kam bu'aa MRH abbaa seeraa madaalamee, fi walitti qaba

[71] Fakkeenyaaf, ulaagaan hojii abbaa seerummaa irratti ejjennoo cimaa qabaachuu jedhu ofiisaatii deebi'ee ulaagaalee xixiqqoo afur of jalatti qaba. Ulaagaan beekumsaa fi hubannoo seeraa qabaachuu jedhus akkasuma deebi'ee ulaagaalee xixiqqoo afuritti caccabee jira.

[72] American Bar Association , *Guidelines for the Evaluation of Judicial Performance with Commentar*, kutaa v, www.americanbar.org/content/dam/aba/migrated/jd/lawyersconf/pdf/jpec_final_commentary.authcheckdam/pdf.<fulbaana 8,2004 kan ilaalame> (ammaan booda, Qajeelfama MRH Abbootii Seeraa WOSA jedhamee kan waamamu).

[73] Qajeelfama MRH Abbootii Seeraa WOSA, kwt.6-5-5-1.

[74] Qajeelfama MRH Abbootii Seeraa WOSA, kwt. 6-5-5-3.

[75] Qajeelfama MRH Abbootii Seeraa WOSA,kwt.3-1.

[76] Qajeelfama MRH Abbootii Seeraa WOSA,kwt.2-1.

dhaddachaa, ykn pirezidaantii mana murtichaaf ifa ta'uu qaba[77]. Haa ta'u malee, bu'aa madaallii uummataaf ifa gochuun hojii abbaa seeraa isa sirrii uummata beeksisuun amantaa uummanni mana murtii irratti qabu waan cimsuuf, bilisummaa abbaa seerummaa eegsisuu keessatti faayidaa akka qabu hubatamuu qaba.

Dhimmi biraa Qajeelfama kana keessatti hammatame MRH abbootii seeraa kana eenyu abbummaan hoogganuu qaba kan jedhu dha. Kana ilaalchisuun qajeelfamichi filannoo lama mana murtii hunda caalaa sadarkaa gararraarra jiru, ykn qaama abbaa seerummaa ol'aantummaan bulchuuf Heeraan aangeffamee fi itti gaafatamummaa fudhate jechuun kaa'a[78]. Kanaan alattis qaamoleen biroo kan akka Waldaa Ogeessota Seeraa MRH abbootii seeraa gaggeessuu akka danda'an qajeelfamni WOSAtiin qophaa'e kun ni ibsa[79].

Gabaabumatti, sirni madaallii digirii 360 hunda hammataa fi duguugaa *(holistic and exhaustive)* waan ta'eef, raawwiin hojjetaa tokkoo maal akka ta'ee fi bu'aa inni mana hojii sanaaf buuse sirriitti agarsiisuu kan danda'u dha. Madaalliin sirna kanaan geggeeffamus madaalawaa, sirrii, akkasumas amaloota sirna MRH bu'a qabeessaan yoo ilaalamu madaallii kan kaasu waan ta'eef, tooftaa fooyyaa'insa waliigalaa argamsiisu dha jedhamee jajama. Qajeelfamni MRH abbootii seeraa WOSAtiin qophaa'es manneen murtii sirnuma kana hojiirra akka oolchan jajjabeessa.

III. HOJIIRRA OOLMAA MRH ABBOOTII SEERAA KEESSATTI YAADDOOWWAN JIRAN

Sirna haaraa tokko diriirsanii hojiirra oolchuu keessatti rakkoowwanii fi qaawwonnii adda addaa mul'achuun yeroo baay'ee kan nama mudatu dha. Sirna MRH abbootii seeraa diriirsuun hojiirra oolchuunis rakkoowwan kana irraa bilisa kan ta'e miti. Fuuleffannoon kutaa kanaas rakkoowwan kana irratti ta'a.

3. 1. BAASII HOJIIRRA OOLMAA

[77] Qajeelfama MRH Abbootii Seeraa WOSA, Kwt.3-2.

[78] Qajeelfama MRH Abbootii Seeraa WOSA, Kwt.4-1.

[79] Qajeelfama MRH Abbootii Seeraa WOSA, Kwt.3-4.

Adeemsi MRH odeeffannoo guuruu, qaaccessuu, xiinxaluu fi hiikanii hojiirra oolchuu of keessatti hammata[80]. Kun immoo baasii barbaada. Baasiin kun akkaataa bal'ina ykn dhiphina sagantaa madaalliin ol ka'uu ykn gad bu'uu danda'u. Fakkeenyaaf, sirna madaallii digirii 360 tti fayyadamuun MRH geggeessuunii,fi madda fi mala odeeffannoon itti guuramu dhiphisuun MRH geggeessuu irratti baasiin barbaachisu walqixa hin ta'u. Akkuma sirni madaallii bal'achaa deemu baasiinis duukuma ol ka'aa deema; sirni madaallii kan dhiphatu yoo ta'e ammoo baasiinis akkuma sana xiqqaata[81].

3.2. GURMAA'INA MISEENSOTA KOREE MADAALLII

> *Abbootiin seeraa murtii isaanii haqummaan, alloogummaa fi of-eeggannoon akka kennan akkuma irraa eegnu mara, namoota abbootii seeraa madaalan irraas akkasuma kana. Kanaaf ammoo hanga danda'ametti koreen madaallii loogii irraa bilisa ta'e tokko ijaaramuu qaba. Itti dabalees, koreen madaallii abbaa seeraa tokkoon ulaagaa ni guuta ykn hin guutu jedhee haala ifa ta'een uummata yommuu beeksisu of eeggannoo guddaa gochuu isaa mirkaneeffachuu qaba*[82].

Kun kan agarsiisu, sirna MRH abbootii seeraa keessatti koreen madaallii gahee ol'aanaa kan qabu ta'uu isaati. Dhimmi asitti xiinxala barbaadu, gahee ol'aanaa kana bahachuuf gurmaa'inni miseensota koree madaallii kun maal ta'uuti irraa eegama kan jedhu dha. Muuxannoo mootummaalee naannoo Ameerikaa baay'ee yommuu ilaallu, gurmaa'inni

[80] Qajeelfama MRH Abbootii Seeraa WOSA, Kwt 6-1.

[81] Fakkeenyaaf, sagantaan yaalii MRH abbootii seeraa bara 2001 Waashingitenitti madda odeeffannoo isaa ogeeyyii seeraa fi juureroota qofa godhachuun geggeeffame abbaa seeraa tokko madaaluuf $300 qofa kan fixe yommuu ta'u, mootummaalee naannoo biroo MRH abbootii seeraa isaanii sirna madaallii digirii 360n geggeessan kan akka Koloraadootti ammoo abbaa seeraa tokko madaaluuf $2,400 fixeera jedhamee tilmaamama (Akka waliigalaatti, Olitti yaadannoo Lak. 22, F.63, miiljalalee 290 ilaalaa).

[82] Olitti yaadannoo Lak.20, F.63.

kun namoota ogeeyyii seeraa ta'anii fi ogeeyyii seeraa hin taane irraa kan ijaarame yoo ta'ellee, bakka guutummaa guutuutti ogeeyyii seeraa itti ta'u ni jira[83].

Ibsa olitti kenname kana irraa gurmaa'inni miseensota koree MRH abbootii seeraa walfakkaataa (uniform) kan hin taane ta'uu isaati. Kanaaf, Koreen MRH abbootii seeraa haala kamiin yoo gurmaa'e bu'a qabeessa ta'uu danda'a dhimma jedhu murteessuun salphaa hin ta'u waan ta'eef, sirna MRH hojiirra oolchuu keessatti yaaddoo dha.

3.3. QULQUL'INA ODEEFFANNOO

Yaaddoon biraa hojiirra oolmaa MRH abbootii seeraa keessatti mul'atu odeeffannoon guuramu qulqul'ina dhabuun kan walqabatu dha. Yaaddoon kun MRH abbootii seeraa geggeessuu qofa keessatti kan mul'atu osoo hin taane, rakkoodhuma sirna MRH hundaati. Fakkeenyaaf, namootni madda odeeffannoo ta'an namoota madaalaman wal qixxeessanii ilaaluu dhabuu danda'u. Kun, tarii, jibba dhuunfaa, hojii abbaa seeraa keessaa isa gaarii ykn isa yaraa ta'e tokko fudhachuudhaan kaanis bifumaa sanaan ilaaluu, hojii abbaa seeraa keessaa isa yeroo dhihoo qofa fudhachuudhaan hojiiwwan kanaan duraa hojjetamanis bifuma sanaan ilaaluu[84],fi kkf irraa madduu danda'a. Kun ammoo dhuga-qabeessummaa fi amanamummaa madaallichaa gaaffii keessa kan galchu waan ta'eef, yaaddoo dha.

3.4. RINCICA ABBOOTII SEERAA (JUDGES' RESISTANCE)

Abbootiin seeraa tokko tokko MRH geggeessuun bu'aa isaa ifa gochuun addunyaa abbaa seerummaa siyaasaan booressuudhaan bilisummaa abbaa seerummaa dadhabsiisuu dha

[83] Fakkeenyaaf, Koloraadootti, qaamni MRH abbootii seeraa geggeessu, Gumii Raawwii Hojii Abbaa Seerummaa jedhamuun beekamu, miseensota 10 kan qabu yommuu ta'u, gurmaa'inni isaas 4 namoota ogeeyyii seeraa ta'an; 6 namoota ogeeyyii seeraa hin taane of keessatti kan hammate dha. Masaachuuseettisitti (*Massachusetts*) garuu, Koreen MRH Abbaa Seerummaa miseensota 12 kan qabu yommuu ta'u, hundi isaaniiyyuu ogeeyyii seeraa dha (Akka waliigalaatti, yaadannoo lak.20, miiltoo "A" ilaalaa).

[84] Isaan kunniin ibsa saayinsii bulchiinsaatiin walduraa duubaan *personal prejudice, halo effect, and recency effe*ct jedhamuun dhimmoota beekamanidha (Akka waliigalaatti, P.Subba Rao&VSP Rao, olitti yadannoo lak. 3, F.247 ilaalaa).

jedhanii amanu[85]. Haa ta'u malee, madaalliin raawwii hojii abbootii seeraa bilisummaa abbaa seerummaa kan dadhabsiisu osoo hin taane kan dagaagsuu fi kan tiksu akka ta'e olitti agarsiisuuf yaalleerra. Kanaaf, madaalliin raawwii hojii bilisummaatti waan bu'uuf hin barbaachisu kan jedhu sababa aguuggiiti malee kan dhugaa hin ta'u. Sababni inni dhugaa, abbootiin seeraa jechuma "madaallii" jedhutti kan hin gammanne ta'uu dha.[86] Kana waan ta'eef, rincicni abbootii seeraa hojiirra oolmaa sirna MRH keessatti yaaddoo tokko dha.

3.5. ADEEMSA MADAALLII KEESSATTI UUMMATA HIRMAACHISUU

Abbootiin seeraa akkuma qaama mootummaa kamii tajaajiltoota uummataati[87]. Kanaaf, keessumaa sirni madaallii diriiree jiru, sirna madaallii digirii 360 yoo ta'e, MRH keessatti uummata hirmaachisuun waanuma sirrii dha[88]. Haa ta'u malee, hanqina hubannoo irraa kan ka'e bar-gaaffiiwwan qophaa'anii raabsaman qulqulleessanii guutuun deebisuu keessatti rakkinni yeroo baay'ee mudachuu mala[89]. Koree madaallii geggeessuufis odeeffannoo bifa kanaan guurame calalanii xiinxaluun yeroo qisaasessuu danda'a[90].

Hir'inni hubannoo rakkoo biraas uumuu danda'a. Fakkeenyaaf, madaallii gaggeeffameen abbootiin seeraa baay'ee gahumsa qabu yoo jedhaman, sirni madaallii sun abbaa seeraa "gaarii" abbaa seeraa "yaraa" irraa adda baasuu akka hin dandeenyeetti ilaaluun sirnicha *meeriitii* dhabeessa godhanii fudhachuun ni jira[91]. Garuu, sababa abbootiin seeraa baay'een gahumsa qabu jedhamaniif, sirna MRH tokkoon *meeriitii* dhabeessa jedhanii gudunfuun fudhatamummaa kan qabu miti. Sababni isaa, durumaan abbootiin seeraa

85. Olitti Yaadannoo Lak 20, F.76.

86 Olitti Yaadannoo Lak.37, F.7.

87 Olitti Yaadannoo Lak.20, F. 71.

88 Akkuma 87^{ffaa}.

89 Akkuma 88^{ffaa}, F.72.

90 Akkuma 91^{ffaa}.

91 Fakkeenyaaf, MRH abbootii seeraa Kolaraadoo bara 2006 keessa geggeeffame ilaalchisee, koreen madallii abbootii seeraa *108* keessaa *3* qofti akka hojiitti hin fufneef yaada dhiheessee ture. Kun uummata biratti "adeemsichumati rakkoo qaba malee,108 keessaa namni 3 qofti attamitti gahumsa hin qabu jedhama?" yaada jedhu uume ture (Akka waliigalaatti,olitti yaadannoo lak.20,F.67-68 ilaalaa).

yommuu calalaman gahumsi isaanii sirriitti kan mirkanaa'e yoo ta'e, gara hojiittis yoo dhufan bu'a qabeessa ta'uu waanti dhorku hin jiraatu.

3.6. BU'AA MRH HAALA SIRRII TA'EEN IFA GOCHUU

Hojiirra oolmaa sirna MRH abbootii seeraa keessattis dhimmi biraa akka yaaddootti ilaalamu bu'aa MRH haala kamiin fi mala kamiin ifa gochuu qabna kan jedhu dha. Haala kamiin ifa gochuu qabna yommuu jennu, waantota baay'ee keessaa tokko, qabiyyeen bu'aa MRH ifa ta'uu bal'achuu moo dhiphachuu qaba yaada jedhu kan agarsiisu dha. Odeeffannoon ifa ta'u yoo bal'ate ykn yoo dhiphate rakkina mataa isaatii qaba. Yoo bal'ate, namni dubbisu fedhii dhabuu waan danda'uuf akka barbaadametti hubatamuu dhiisuu danda'a; yoo dhiphate ammoo ergaan guutuu ta'e darbuu hin danda'u. Kanaaf, dhimmoota kanniin lamaan wal-madaalchisanii adeemuun barbaachisaa ta'us, wal-madaalchisuu kana keessatti tokko guutuun isa biraa hir'isuun jiraachuu waan maluuf, yaaddoo dha[92].

Bu'aa MRH abbootii seeraa ifa gochuun wal-qabatee rakkoon biraa mul'atu, karaa maalii ifa ta'uu qaba kan jedhu dha. Yeroo kana gaaffiin deebii argachuu qabu, *kaayyoon madaallii gaggeeffamee maali* kan jedhu ta'uu qaba. Mootummaaleen Naannoo Ameerikaa tokko tokko kan akka Kansas mala uummata bal'aaf qaqqabasiisuu danda'u hunda duguuganii fayyadamu[93]. Kanas ta'u, malli sirrii kam kan jedhu murteessuun hojii salphaa waan hin taaneef yaaddoo dha.

---

[92] Rakkoon akkasii kun qabatamaatti mootummaalee naannoo Ameerikaa keessaa Arizoonaa mudatee ture. Achitti, bara 1994 ALAtti, bu'aan MRH abbootii seeraa inchii kudha-tokko- kudha-toorbaan *(11by 17-inch*) ta'ee, *fuula 12n* ifa ta'ee ture. Barreeffamni kun *ulaagaalee madaallii, gurmaa'inaa fi ergama qaama madaallii geggeessuu fi adeemsa madaallii* guutummaatti bal'inaan kan ibsu ture. Haa ta'u malee, durduubeen uummata biraa argame "baay'ee waan bal'ateef, hin dubbifne!" kan jedhu ture. Kana irraa ka'uun bara 1996 ALAtti ammoo qabiyyee bu'aa madaallii kana inchii saddeetii fi walakkaa-kudha-tokkoon (*8 1/2 by 11 inch*) gara *fuula tokkootti* gadi xiqqeesse. Yeroo kana ammoo uummatni," raawwii hojii abbootii seeraa irratti qaamni madaallii geggeesse oddeeffannoo gahaa ta'e hin kennine!" jechuun qeeqe (Akka waliigalaatti olitti yaadannoo lak. 22, FF.72-73 ilaalaa).

[93] Kansas Commission on Judicial performance, Rule 14, http://www.kansasjudicialperformance.org/index.cfm?Page=Rules <Adoolessa 26, 2010 kan ilaalame>.

Walumaagalatti, yaaddoowwan olitti ka'an kanniin MRH abbootii seeraa hojiirra oolchuu keessatti kallattiinis ta'e, alkallattiin kan calaqqisani dha. Kana irraan kan ka'e, barbaachisummaa fi faayida qabeessummaa isaa irratti Addunyaan hedduu kan dubbate, kan xiinxalee fi kan barreesse yoo ta'ellee, sirnicha diriirsuun hedduu hojiirra oolcheera jechuuf iji nama hin jabaatu. Haa ta'u malee, yaaddoowwan kana maqsuunii fi sirnicha diriirsuun hojiirra oolchuun kan danda'amu akka ta'e dhimma guddaa hubatamuu qabu.

IV. MRH ABBOOTII SEERAA OROMIYAA: BU'UURA SEERUMMAA FI RAKKOOWWAN QABATAMOO

4.1. Bu'uura Seerummaa

Sirna tokko diriirsuun dura, gaaffiin ijoo deebii argachuu qabu, sirnichi bu'uura seerummaa ni qabaa? kan jedhu dha. Seerummaa yommuu jennu ammoo Heeraa fi seerota biroo Heera bu'uureffachuun bahan mara dabalata. Kutaa kana jalattis, sirna MRH abbootii seeraa Oromiyaa diriirsuun bu'uura seeraa qaba moo hin qabu; yoo qabaate seera attamii? dhimma jedhu xiinxalla.

a. Heera

Biyyoota baay'ee keessatti, sirni MRH abbootii seeraa Heeraan beekamtii argatee hin jiru.[94] Heerri Mootummaa Naannoo keenyaa garuu, dhimma kanaaf beekamtii kennee jira. Heerri kun, keewwata 63 (4) jalatti, haalawwan abbaan seeraa tokko hojii abbaa seerummaarraa ka'uu itti danda'u tarreessa. Isaan keessaa tokko, Gumiin Bulchiinsa Abbootii Seeraa akka seera naamusa abbootii seeraatti badii raawwateera *ykn hanqina dandeettii hojii fi si'oomina cimaa qaba jedhee yoo murteesse dha.*[95] Hanqinni dandeettii hojii fi si'oominaa jira ykn hin jiru jedhanii murteessuun kan danda'amu ammoo sirni MRH abbootii seeraa yoo jiraate dha. Kun hin jiru taanaan akkanumaan lafaa ka'uun abbaan seeraa tokko hir'ina dandeettii hojii qaba ykn hin qabu jechuun bilisummaa abbaa seerummaa waliin walitti waan bu'uuf, sirrii hin ta'u. Kun kan agarsiisu, sirna MRH abbootii seeraa Oromiyaa diriirsuun deggersa Heera mootummaa kan qabu ta'uu isaati.

94 Fakkeenyaaf, mootummaalee naannoo Ameerikaa keessaa Arizoonaa qofati sirna MRH abbootii seeraaf beekamtii Heeraa kenne.

95. Heera Mootummaa Naannoo Oromiyaa, kwt. 63 (4) (a); Heera Mootummaa RDFI, kwt79 (4) (a).

b. Labsii

Bu'uura Heera mootummaa naannoo Oromiyaa, kwt. 66tiin Gumiin Bulchiinsa Abbootii Seeraa qaama bulchiinsa abbootii seeraa isa ol'aanaa ta'uun Labsii Lak.142/2000n hundaa'eera. Labsiin kun kwt. 8 jalatti, aangoo fi hojii Gumii Bulchiinsa Abbootii Seeraa tarreesseera. Aangoowwan fi hojiiwwan tarreeffaman keessaa tokko MRH abbootii seeraa ilaalchisuun dambii fi qajeelfama baasuun raawwii isaas hordofuu dha[96]. Haaluma wal-fakkaatuun, qaamni kun abbootii seeraa *hanqina dandeettii cimaa agarsiisan fi gahumsa hin qabne* bu'uura dambii MRH tiin hojiirraa geggeessuu akka danda'u kwt 8(5) jalatti aangeffameera. Kun kan agarsiisu, akkuma Heeraa, Labsiin Gumii Bulchiinsa Abbootii Seeraa Oromiyaas jiraachuu sirna MRH abbootii seeraa kan deggeru ta'uu isaati.

c. Qajeelfama

Bu'uurri seerummaa MRH abbootii seeraa inni biraa Qajeelfama Raawwii Guddina Sadarkaa Abbootii Seeraa fi Muudamtoota Gumii Manneen Murtii Naannoo Oromiyaa Lak 2/2001 dha. Qajeelfamni kun kwt. 17(1) fi 18 (1) jalatti ulaagaalee dorgommii guddina sadarkaa keessa tokko bu'aa MRH yommuu ta'u, ulaagaa kanaaf qaphxiin kennames *% 60* akka ta'e ni ibsa. Haaluma kanaan, abbaan seeraa tokko gara Pirezidaantii Mana Murtii Aanaatti, gara Mana Murtii Ol'aanaatti, gara Pirezidaantii Mana Murtii Ol'aantti guddachuuf ulaagalee taa'an keessaa tokko bu'aa MRH *quubsaa ykn sanaa o**l*** ta'u argachuu dha[97]. Gara MMWO tti guddachuuf ammo bu'aan MRH *quubsaa fi sanaa o*l ta'uu barbaada[98]. *Quubsaan* meeqa kan jedhu murteessuun kan danda'amu ammoo sirni MRH abbootii seeraa yoo jiraate dha. Kunis kan agarsiisu, Qajeelfamni Lak. 2/2001 jiraachuu sirna MRH abbootii seeraaf bu'uura seerummaa isa biraa ta'uu isaati.

---

[96] Labsii Gumii Bulchiinsa Abbootii Seeraa Oromiyaa Irra Deebiidhaan Hundeessuuf Bahe, Lab.Lak. 142/2000, kwt.8 (6).

[97] . Qajeelfama Lak.2/2001,kwt.7 (1), 8 (1) fi 9 (1) walfaana yoo dubbifnu.

[98] Qajeelfama Lak.2/2001,kwt.10 (1).

Gabaabumatti, hundeen seerummaa sirna MRH abbootii seeraa Oromiyaa *Heeraa, labsiiwwan fi qajeelfama* armaan olitti ibsaman kana akka ta'e hubachuun ni danda'ama.

4.2. RAKKOO QABATAMAA YEROO AMMAA MUL'ATU

Akka waliigalaatti, madaalliin raawwii hojii abbootii seeraa faayidaalee adda addaa kan qabu ta'uu isaa kutaa tokkoffaa barruu kanaa jalatti ilaalleerra. Sirni MRH abbootii seeraa diriiree kan hin jirre yoo ta'e ammoo, faayidaaleen kunniin kan hin argamne ta'uu hubachuun nama hin dhibu.

Rakkoon qabatamaa manneen murtii naannoo Oromiyaa keessatti mul'atu garuu, irra caalaa kan inni ittiin ibsamu seerota sirna MRH abbootii seeraaf bu'uura ta'an (Heera, labsii fi qajeelfama) hojiirra oolchuu dadhabuun ta'a. Fakkeenyaaf, bu'uura Heeraa fi labsii jiruun sababa hir'ina dandeettiin Gumiin Bulchiinsa Abbootii Seeraa tarkaanfiiwwan tokko tokko abbootii seeraa irratti yommuu fudhatu, hir'ina dandeettii kana sirni qabatama godhee dhiheessu waan hin jirreef, tarkaanfiiwwan fudhataman irratti komiin akka baay'atu ykn ammoo tarkaanfii fudhachuuf odeeffannoon gahaan akka hin jiraanne godhaa jira[99]. Kana irraan kan ka'e, abbaa seeraa dirqama isaa sirriitti bahatu kan hin ba'anne irraa adda baasuun rakkisaa dha. Kun ammoo hamilee abbootii seeraa ciminaan hojjetanii kan hubu ta'uusaarrayyuu amantaa uummanni murtii kennamu irratti qabu gadi akka xiqqaatu waan godhuuf, rakkoo biraaf, fakkeenyaaf, baay'achuu ol iyyannoo dhimmootaaf kan nama saaxilu dha[100].

Rakkinni dhibamuu sirna MRH abbootii seeraa Oromiyaa gama guddinaa fi jijjiirraanis ni mul'ata . Haala qabatamaa manneen murtii Oromiyaa hanga bara 2001 ALI tti ture yoo ilaallu, adeemsi sadarkaa guddinaa fi jijjiirraa abbootii seeraa, seera qabeessaa fi iftooma taasisu hin turre. Kana irraan kan ka'e guddinni abbootii seeraa muuxannoo, dandeettii fi gahumsa raawwii hojii irratti kan hundaa'e osoo hin taane, naannummaa,

[99] Af-gaaffii Ob. Mohaammad Jimaa,Priezidaantii Mana Murtii Ol'aanaa Godina Shawaa Lixaa, Mudde 6, 2002 ALI waliin adeemsifame.

[100] Af-gaaffii Ob. Efereem Hayilee, A/Seeraa Mana Murtii Ol'aanaa Godina Shawaa Lixaa, Mudde 6,2002 waliin geggeeffame

wal-beekumsa fi hariiroo abbootiin seeraa miseensota Gumii fi Pirezidaantota waliin qaban irratti dha[101].

Qajeelfamni sadarkaa guddinaa yeroo ammaa bahee jiru (Qaj.Lak.2/2001), sadarkaa guddinaa murteessuuf bu'aa MRH abbootii seeraa akka ulaagaa tokkootti kan kaa'ee fi kan barbaadamus quubsaa *fi/ykn* isaa ol akka ta'e kan ibsu ta'uu isaa dhimma gararraatti ilaalle dha[102]. Quubsaan meeqa akka ta'e murteessuuf ammoo sirni MRH jiraachuu qaba. Sirni kun waan hin jirreef, yeroo ammaa ulaagaa bu'aa MRHf xiyyeeffannoo osoo hin kenniin ykn xiyyeeffannoo kennamuu qabu osoo hin kenniin ulaagaalee biroo qofa[103] tilmaama keessa galchuun itti hojjetamaa jira. Kun ammoo tattaaffii abbaan seeraa tokko hojiirratti godhu gadi kan xiqqeessu ta'uurra darbee, gumgummii manneen murtii keenya keessaatti baay'isaa kan jiru waan ta'eef, rakkoo qabatamaa dha.

Walumaagalatti, rakkoowwan qabatamoo olitti ibsaman kun hundi dhabamuu sirna MRH abbootii seeraa irraa kan maddani dha.Kun ammoo hojiirra oolmaa sirnichaa gaaffii yeroo taasisu.

V. YAADA GUDUNFAA FI FURMAATA

Sirni MRH abbootii seeraa faayidaawwan hedduu qaba. Beekumsa namoota abbootii seeraa filatanii fooyyeessuu, bilisummaa guddisuu, itti gaafatamummaa cimsuu fi raawwii hojii abbaa seerummaa fooyyeessuun warreen hangafa. Sirni madaallii kun deeggersa Heeraa fi seerota biroo kan qabu yoo ta'ellee, hanga yoonaatti manneen murtii Oromiyaa keessatti diriiree hojiirra hin oolle. Kanaaf, seerota jiraachuu sirna kanaa yaaduun tumaman hojiirra oolchuu keessatti, fakkeenyaaf tarkaanfiiwwan hir'ina dandeettiin walqabatan fudhachuu, guddinaa sadarkaa fi jijjjiirraa abbootii seeraa murteessuun walqabatee qaawwonni adda addaa uumamaa jiru. Kun yeroo ammaa

[101] Af-gaaffii Ob. Efereem Hayilee, Olitti yaadannoo lak.100 waliin gaggeeffame.
[102] . Qajeelfama Lak.2/2001, Kwt.7 (1), 8(1), 9(1), 10(1) fi 11(1) ilaalaa.

[103] .Ulaagaaleen biroo kunniin sadarkaa barumsaa, muuxannoo hojii, fi qulqul'ina kuusaa akka ta'an Qajeelfama Guddina Sadarkaa Lak 2/2001, kwt 17 (2, 3, fi 4) jalatti ibsamanii jiru.

rakkoo qabatamaan mul'achaa jirudhas. Kana waan ta'eef, sirna MRH abbootii seeraa manneen murtii Oromiyaa keessatti diriirsuun baay'ee barbaachisaa dha.

Sirni diriiruu qabus sirna amanamummaa fi fudhatamummaa bu'aa madaallii cimsuu danda'u ta'uu qaba. Kun kan ta'u odeeffannoon baay'inaa fi qulqul'inaan mala rogummaa qabuun duguugamee yoo guurame fi xiinxalame dha. Sirni madaallii kana gochuu danda'u ammoo sirna madaallii digirii 360 jedhamuun beekamu dha. Kanaaf, manneen murtii Oromiyaa keessattis sirna madaallii digirii 360 kana diriirsuun hojiirra oolchuun kan jajjabeeffamu dha. Kana gochuuf, muuxannoo biyya Ameerikaa ka'umsa godhachuun akka haala qabatamaa naannoo keenyaatti saxaxuu barbaachisa. Keessumaa, sanadni MRH abbaa seerummaa WOSAtiin qophaa'e dhimmoota barbaachisoo ta'an kan akka kaayyoo, ulaagaalee, madda odeeffannoo, mala odeeffannoon ittiin guuramu, qaama abbummaan hoogganu, bu'aa madaalliin hordofsiisuu fi kkf haala ifa ta'een of keessatti hammatee waan jiruuf, akka ka'umsaatti fayyadamuun waan baay'eef gaarii ta'a.

Qaphxiin biraa barruun kun ibsuuf yaale yaaddoowwan sirna MRH abbootii seeraa hojiirra oolchuu keessatti mul'atanidha. Sirni kun akkuma faayidaa hedduu qabu mara, hojiirra oolmaarratti yaaddoowwan qaba. Haaluma kanaan, baasiin, gurmaa'ina koree madaallii murteessuun, odeeffannoo qulqul'ina qabu argachuun, rincicni abbootii seeraa fi bu'aa madaallii haala sirrii ta'een ibsuu dadhabuun yaaddoowwan beekamoo ta'anidha. Haa ta'u malee, yaaddoowwan kunniin baay'een isaanii hir'ina maallaqaa fi hubannoorratti kan rarra'an waan ta'aniif, maquu danda'u. Fakkeenyaaf, yaaddoo gama maallaqaan jiru baajatuma mootummaan jalqabuun irratti madda mallaqa biraa maddisiisuun furuun ni danda'ama. Yaaddoo gama hir'ina hubannoon mul'atus tooftaalee adda addaatti fayyadamuun itti fufiinsaan hubannoo uumuun maqsuun ni danda'ama.

Manneen murtii Oromiyaa keessattis sirna MRH abbootii seeraa hojiirra yommuu oolchinu yaaddoowwan kana tooftaama walfakkaatutti fayyadamnee maqsuun barbaachisaa ta'a. Itti dabalees, guutummaa guutuutti sirnicha hojiirra oolchuun dura, sadarkaa yaaliitiin ilaaluun ciminaa fi hir'ina jiru adda baafachuun yaaddowwan kanaaf furmaata laachaa deemuun gaarii ta'a.

MEDIATING CRIMINAL MATTERS IN ETHIOPIAN CRIMINAL JUSTICE SYSTEM: THE PROSPECT OF RESTORATIVE JUSTICE SYSTEM

Jetu Edossa*

1. INTRODUCTION

The use of traditional dispute resolution methods practiced outside the rubric of formal criminal justice system is important in maintaining close and continuing relationships in every community. [1] Typically, the use of mediation process, falling within the realm of Alternative Dispute Resolution (ADR), plays pivotal role as it emphasizes on the role of parties themselves to reach at mutually satisfactory resolutions. Its advantage in restoring the relationships of the victim and the offender, its essence in maintaining social fabric and its potential as an alternative option to dispose disputes promptly is becoming increasingly recognized. However, while claiming mediation was not a panacea for every kinds of dispute, its proponents increasingly push it as a serious contender for resolving disputes in criminal matters in the context of criminal justice. For this reason, recently much focus was given to it primarily in criminal matters as a reinforcement of restorative justice principle which empowers crime victims, offenders and communities to take an active part in the formulation of the public response to crime and to increase public trust in the justice system.

In Ethiopia, the use of mediation process as a traditional method of dispute resolution has been practiced for centuries. Even today in rural areas, particularly criminal dispute resolution processes dealing with victims and criminal offenders are widely practiced and deep rooted with varying degrees among the different ethnic groups in the country. For instance, the use of mediation process through *Jaarsa Biyyaa* or *Jaarsa Araaraa* among the Oromo and the other ethnic groups has been used. [2] However, despite the potential applicability of these institutions as an Alternative Criminal Dispute Resolution process in the local community, it has not yet attained any significant position of usage and acceptance in the formal criminal justice system. In other words, despite its

* Jetu Edossa got his LLB degree from Mekelle University and he is currently LL.M candidate at Addis Ababa University. He has been serving Gondor University as Assistant Lecturer of law.

[1] Melissa Lewis and Les Mc Crimmon, The Role of ADR Processes in the Criminal Justice System: A view from Australia. Available at; http://www.justice.gov.za/alraesa/conferences/.../ent_s3_mccrimmon.pdf *(*accessed April 6, 2011*)*

[2] S M Gowak, *Alternative Dispute Resolution in Ethiopia- A Legal Framework*, African Research Review (2008), Vol. 2 (2) p. 265.

wide practice and importance in resolving criminal disputes, Ethiopian formal criminal justice system failed to integrate mediation process as an alternative criminal dispute resolution process.

Therefore, the aim of this article is to deal with interrelated issues of integrating mediation process as a criminal dispute resolution program in to the formal criminal justice system, and its importance in consolidation of the ideas of restorative justice in the administration of Ethiopian criminal justice system. The article also aims to provoke legislatures, policy makers and social workers to work towards promoting, adapting and applying compatible traditional criminal dispute resolution process in a criminal justice context as part of an overall package of Ethiopian Criminal Justice Reform.

This article first introduces the theoretical frameworks of mediation process and its potential applicability in criminal matters. Then it continuous to articulate the fundamental principles and reasons behind the espousal of mediation process and uniquely treats its importance to the criminal justice system. In the first part, it tries to elucidate the theoretical frameworks of ADR and its role in resolving criminal disputes as a paradigm shift in the administration of criminal justice. In the second part, an attempt will be made in scrutinizing mediation as a unique ADR process that fits criminal dispute resolution process. Particularly, its potential application in consolidating restorative justice, including its limitations will be elaborated. Part three is devoted to discuss how Restorative Justice Principles could be legally entrenched in a way that is compatible with community traditions and customs of dealing with conflict, yet maintaining the oversight of the State to ensure that human rights and due process are respected. The *Jaarsummaa* institution of mediating criminal disputes as practiced among the Oromo will be discussed as a legitimate extension of traditional dispute resolution process to explore restorative justice in Ethiopian criminal justice system and as an archetype of Ethiopian traditional dispute resolution process among the array of diverse culture. Also, comparisons will be made with the experience of Western countries criminal restorative justice programs specifically by reference to criminal mediation programs. In part four, analyses will be made on whether the existing legal framework within Ethiopian criminal justice system sheds light on the ideas of restorative justice and accommodates mediation process in criminal disputes. The article finally concludes by suggesting

some points on what can be done in order to effectively integrate mediation process in Ethiopian criminal justice administration as a prospect of restorative justice.

2. ADR IN GENERAL

In any state-based formal justice system involving civil and criminal justice, institutions like police, public prosecution, and courts form the basic foundation of justice administration.[3] However, despite its well organization and establishment as formal machineries of justice, it is increasingly clear that the formal justice system is becoming inadequate, wasteful, inflexible and inefficient in contrast to the more accessible and speedy alternative dispute resolution system.[4] In other words, dispute settlement within the formal court procedures will take time to build the necessary effect of justice and may not be opted by individuals and community at large. However, this does not mean that the idea of ADR will substitute the formal Court procedures as the venue for justice.[5] Rather, particularly, ADR process will provide a set of different options for the offenders or victims of crime in criminal justice. The formal justice system will always be present, in adjudicating cases in which either the defendant /offender or the plaintiff/victim does not wish to participate in the alternative dispute resolution process, or also serving as a default for the cases in which the parties fail to reach a resolution in the ADR process.[6] Therefore, dispute resolution processes through ADR can be seen as a critical element of efforts to maintain community harmony by maintaining the relationship of disputing parties in a more flexible option.[7]

Traditional dispute resolution mechanisms today designated as a variety of ADR were practiced since time immemorial in Africa, Asia and Western societies.[8] Hence, the idea of developing and introducing ADR process is not a new concept but rather has been re-discovered, as informal justice mechanisms which have long been the dominant method of dispute resolution in many societies, and in indigenous communities in particular.[9] Therefore, the robustness of this

[3] Ewa Wojkowska, *Doing Justice: How informal justice systems can contribute* (Oslo, 2006), p.9.
[4] *Ibid*.
[5] Ric Simmons, *Private Criminal Justice*, Wake Forest Law Review (2007) Vol. 42, p. 912.
[6] *Ibid*.
[7] Thomas Barfield, Neamat Nojumi, and J Alexander Their, The Clash of Two Goods: State and Non-State Dispute Resolution in Afghanistan available at; http:/www.usip.org/files/file/clash_two_goods.pdf, (accessed at April 6, 2011)
[8] *Ibid*.
[9] *Supra note, 1*

traditional dispute settlement mechanism could be harnessed to improve dispute resolution and increase the capacity of the state to maintain order, peace and harmony.[10]

In a nutshell, the re-birth of ADR is often associated with the development of community justice centers to resolve neighborhood disputes. However, its use in a variety of dispute contexts has grown rapidly in recent years, and has been institutionalized to a large extent through the introduction of legislative schemes and through the development of professional bodies which have fostered the use of ADR processes.[11] Therefore, it could also be adapted to serve the effective administration of criminal justice system by involving victims, offenders and the community in the dispute resolution process.

2.1. UNDERSTANDING THE MEANING OF ADR

There is no consensus as to what the acronym 'ADR' signifies, or as to what it constitutes.[12] The term 'Alternative Dispute Resolution' has become deep-rooted despite the fact that the description of such processes as 'alternative' attracted significant criticism.[13] There are two conceptual criticisms of the use of the word 'alternative'. First, it is incorrect to suggest that such processes can replace the formal court litigation. A legal scholar, Laurence Street, said in this regard that;

> "It is not in truth 'Alternative'. Nothing can be alternative to the sovereign authority of the court system. We cannot tolerate any thought of an alternative to the judicial arm of the sovereign in the discharge of responsibility of resolving disputes between state and citizen or between citizen and citizen. We can, however, accommodate mechanisms which operate as Additional or subsidiary processes in the discharge of the sovereign's responsibility."[14]

Accordingly, different definitions have been proffered including additional dispute resolution; appropriate dispute resolution; assisted dispute resolution and amicable dispute resolution.[15] For

[10] *Ibid*.
[11] H. Astor and C. Chinkin, Dispute Resolution in Australia (2nd Ed, 2002), p.8.
[12] See supra note 1, p.2
[13] L Street, *The Language of Alternative Dispute Resolution*, Alternative Law Journal (1992) p. 194.
[14] *Ibid*.
[15] *Supra note 11*, p.78.

instance, International Chamber of Commerce (ICC) has chosen to refer to ADR as 'Amicable Dispute Resolution' rather than the more traditional 'Alternative Dispute Resolution.'[16] Therefore, it is important to take notice of the difficulty that what the acronym 'ADR' signifies, what processes it includes and the precise nature of those processes as it has been conceptually and terminologically problematic. It is beyond the reach of this article to explore these issues in more profundity.

A second criticism is that the term 'alternative' is socially and historically inaccurate, bestowing an undeserved primacy on court litigation where in reality the majority of 'disputes' have traditionally been resolved without the use of formal legal processes.[17] In other words, prior to the use of formal legal process, dispute resolution mechanisms were rooted in the customs and traditions of the society. It can be even argued to the contrary in the sense that it is court litigation that was alternative to the formal legal process and not vice versa.[18] Notwithstanding the existing debate on the terminological meaning and primacy issues posed by the acronyms of ADR, understanding its meaning would be important for all intent and purpose of this article.

Black's Law Dictionary defines ADR as: "*a procedure for settling a dispute by means other than litigation such as arbitration, mediation or mini-trial"*[19] In this sense ADR is understood to mean the resolution of disputes outside the auspices of formal judicial system with the help of mediators, arbitrators and legal practitioners. Therefore, the definition constitutes recognition of the fact that 'ADR' is an umbrella term for a variety of processes which differ in form and application. Differentials include: levels of formality, the role of the third party (for example, the mediator) and the legal status of any agreement reached.[20] Generally, ADR can be broadly defined as processes or techniques, other than judicial determination, in which an impartial person/s (an ADR practitioner or traditionally, local elders) assists those in a dispute to resolve the issues between them.[21] In conclusion, ADR can be understood as a process that saves time and money of

[16] Fekadu Petros, *Underlying Distinctions Between ADR, Shimgilina and Arbitraration: A Critical Analysis* Mizan Law Review (2009), vol.3. No. 1, p.115

[17] *Supra note 11*.
[18] *Ibid*
[19] Black's Law Dictionary, West Group, 7th ed. (1999)
[20] *Supra note, 11*
[21] *Ibid*.

disputing parties, eases the burden on an overloaded formal court procedures and above all in its focus on negotiation and compromise rather than confrontation and fault.

2.2. ADR IN CRIMINAL JUSTICE CONTEXT: SHIFTING THE PARADIGM

As already noted, the role of ADR process in dispute resolution was understood in the spirit of settling disputes to sustain community harmony functioning parallel to the duties of regular courts. In the formal justice system, ADR procedures are accustomed to be applied in disputes of civil nature.[22] However, despite its wide application in informal criminal justice, the role of ADR in formal criminal justice system is marginal as criminal acts are perceived as an offense against the state. This assumption confers power on the sate to determine guilt and punish wrongdoers. It is assumed that parties to the criminal dispute are the state and the offender. Alternatively, it is increasingly viewed that crime is understood as it is committed against people and a disturbance of the peace of the community. So, can we think of any jurisprudential insight by which the values and principles of ADR so discussed could be applied in disputes of criminal nature to mend this disruption?

Most of the literatures dealing with ADR contain little or no reference to its use in the criminal justice context. This situation has occurred for two reasons. First, ADR is usually ascribed as a method of resolving civil disputes between parties without resorting to formal court-based adjudication. Second, the public perception of criminal justice within the formal criminal justice administration viewed that criminal offending is largely a matter between the offender and the state.[23] For these reasons the role of ADR process was largely marginal in criminal disputes within the formal criminal justice system. As noted before, the multiple delays inherent in the formal criminal justice system caused huge pendency of criminal cases. Most importantly, lack of victims ultimate control over the adjudicative process and the outcomes of the dispute, hampered the need to address the psychological needs of the victim in restoring the status quos.[24]

---

[22] For instance see the Civil Procedure Code of the Empire of Ethiopia, *Negarit Gazeta* No. 3/ 1965, Article 315-319.

[23] R Sarre and K Earle, *'Restorative Justice'* in R Sarre and J Tomaino (eds), *Key Issues in Criminal Justice* (2004) pp. 144-145.

[24] S Kift, *Victims and Offenders*: *Beyond the Mediation Paradigm* Australian Dispute Resolution Journal (1996) p.71.

In general, the shift in paradigm of ADR in criminal context should be understood in the sense that there are values and ideals of ADR process that should be appraised and applied in criminal disputes which potentially impact the formal criminal adjudicative process and the resolution stage. It does not mean that the whole system of formal criminal justice should be totally replaced by the ADR procedures. It is rather to mean that if it combines the ideals and institutions of ADR process to that of formal criminal justice operation, criminal justice system can achieve more effective result,

As noted above, whether the term ADR process can be appropriately applied in a criminal context is elucidated. However, such deliberation is relevant in that it examines the theoretical bases for the development of ADR processes and prompts discussion as to which ADR types can and should be applied in a criminal context. Therefore, the following discussion will try to shed light on applying the appropriate ADR prototype in criminal matters, primarily, its unique feature as podium to the nature of criminal disputes.

3. MEDIATION AS AN ALTERNATIVE DISPUTE RESOLUTION PROCESS IN CRIMINAL MATTERS

As already noted, the potential appliance of ADR processes in criminal disputes is discussed. But, not all types of ADR process fits to the rubric of criminal dispute resolution. Thus, it is vital to identify and justify which appropriate dispute resolution process best suits the nature of criminal disputes resolution in the particular case.

In any discourse of ADR discussion there are three commonly used categories of ADR processes. It includes Mediation, Negotiation and Arbitration. To begin with, Mediation refers to a method of nonbinding dispute resolution involving a neutral third party who helps the disputing parties reach a mutually agreeable solution.[25] According to this definitional element, mediation is a voluntary process in dispute resolution whereby a person who is independent of the disputing parties, called the mediator, assists them to reach an agreement. It seeks to achieve the best outcome for all parties through collaboration, procedural flexibility, interest accommodation, contextualization,

[25] *Supra note, 19*

active participation, and relationship preservation.[26] The mediator develops options or offers some guidance or 'light path' towards a mutually satisfying objective. For instance, the mediator may suggest ways of resolving the dispute but does not impose a settlement. Hence, the mediator may make suggestions and point out issues that the parties may have disregarded but the final outcome depends on the parties. Therefore, mediation offers the advantages of informality, with reduced time and expenses.[27]

The other category of ADR is Negotiation. It refers to a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potential disputed matter. Negotiation usually involves complete autonomy for the parties involved without the intervention of third parties.[28] Lon L. Fuller describes it as: "*a road the parties must travel to arrive at their goal of mutually satisfactory settlement*."[29]

Finally, Arbitration refers to a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding.[30] Here, from this definition, unlike the case of mediation, a neutral third party is entrusted with the power of passing binding decisions. In other words, in arbitration, like court adjudication, the arbitrator declares the winner of the game. For this reason, some legal writers try to exclude arbitration from the ambit of ADR and treats arbitration as a variant of dispute resolution within the formal legal process, mainly adjudication. What makes arbitration pragmatically different from adjudication is its non judicial facet in the sense that arbitrators are private appointees and judges are government pen pusher.[31] In fact, arbitration shares basic features of ADR with mediation since it offers more flexible process, more party autonomy and cheaper and swifter dispute settlement options.[32]

Consequently, one can pinpoint the following key and unique features of mediation as a dispute resolution process in criminal matters when compared with the other two ADR variants. First, unlike, negotiation, mediation creates a congenial forum by a neutral third party whereby a victim

[26] *Ibid.*
[27] L Boulle, Mediation: Principles, Process, Practice (1996) p.35
[28] *Ibid*
[29] Lon Fuller, *Mediation - Its Form and Its Functions,* s. California Law Review (1971), Vol. 44, pp. 305-327.
[30] *Ibid*
[31] *Supra note* 16, p.109
[32] *Ibid*

and offender gets the opportunity to reconciliation on the conflicts. Negotiation will not offer such forum as it requires an equal consensual motive on both parties to the conflict or dispute to settle their disputes which is unlikely, in criminal disputes given the grieve and suffering of the victim at least for a while. Second, in arbitration the arbitrator ultimately determines the loser and winner in the dispute. Hence, applying the principles and rules of arbitration in criminal disputes has no relevance in pacification despite the transfer of criminal dispute resolution to private arbitrator, which amounts to shifting the prime responsibility of criminal prosecution from the state to a private individual. In other words, neither adjudication nor arbitrations do contribute to the amicable settlement of criminal dispute as dictated by the principles of mediation is supposed to do. Therefore, it is safe to argue that mediation, in contrast to negotiation and arbitration process, process plays pivotal role in criminal dispute resolution process as it creates a congenial forum between the victim and offender through the help of neutral third party.

So much so that, in the following discussion an attempt will be made to explore the ideas of mediation and its theoretical and practical relevance. Its relationship with the basic features of restorative justice in the context of criminal justice will also be looked at.

3.1. MEDIATION PROCESS: A PRECURSOR IN RESTORING JUSTICE

The idea of 'Restorative Justice' was first introduced in the contemporary criminal justice literature and practice in the 1970's. However, evidences suggest that the roots of its concept trace back into the traditions of justice as old as the ancient Greek and Roman civilizations.[33] The term restorative justice was coined by Albert Eglash who sought to differentiate between what he saw as three distinct forms of criminal justice.[34] The first is concerned with retributive justice, in which the primary emphasis is on punishing offenders for their wrong deeds. The second relates to what he called 'distributive justice', in which the primary emphasis is on the rehabilitation of offenders. The third is concerned with idea of 'restorative justice', which he broadly equated with the principle of restitution. He claimed that the first two focuses on the criminal act, deny victim participation in the justice process and require merely passive participation by offenders.[35] The

[33] Theo Gavrielides, Restorative Justice Theory and Practice: Addressing the Discrepancy (Criminal Justice Press , Helsinki, 2007), p, 21
[34] *Ibid*
[35] Jim Dignan, Understanding Victims and restorative Justice, (Open University Press,2005), p. 94

third one, however, focuses on restoring the harmful effects of the the act of crime, and actively involves all parties in the criminal process.

Restorative Justice according to Eglash is a deliberate opportunity for offender and victim to restore their relationship, along with a chance for the offender to come up with a means to repair the harm done to the victim.[36] Accordingly, Eglash tried to link restorative justice with an approach that attempts to address the harmful consequences of an offender's actions by seeking to actively involve both parties in a process aimed at securing reparation for victims and the rehabilitation of offenders.[37]

Furthermore, Hans von Hentig and Benjamin Mendelsohn considered as the fathers of Victimology, without reference to Restorative Justice directly, identified the deficiencies of the modern criminal justice system particularly with regard to victims' rights.[38] Particularly, Margery Fry, a British reformer, claimed that victims were being ignored by the criminal justice system, and proposed a formal use of restitution.[39]

It is clear from the above discussions that there is a general consensus between scholars on the conceptual underpinnings of restorative justice in its potential application to the context of criminal justice as a new alternative panacea to the defects of both retributive and rehabilitative criminal justice. However, the task of defining restorative justice presents a seemingly persistent challenge as none of many attempts made in the past have proved to be universally acceptable.[40] The most widely accepted definition was formulated by an early advocate of restorative justice, Tony Marshall, in the following terms: "*Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of that offence and its implications for the future."*[41] Similarly, Howard Zehr, a leading proponent of the restorative justice movement, has defined restorative justice as "*a process to involve . . . those who have a*

[36] See *Supra note* 33
[37] *Ibid*
[38] See *Supra note* 33 at p, 22
[39] *Ibid*
[40] See *Supra note* 33 at p, 2
[41] *Ibid* at pp, 2-3

stake in a specific offence and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible."[42]

At the institutional level, the Handbook on Restorative Justice Programmes prepared under the auspices of United Nations Office on Drugs and Crime defines the term Restorative justice as "a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict.[43]

A closer look at the three definitions portrayed above generally defines restorative justice similar to Eglash definition which attempted to define it by indicating in opposition to Retributive Justice.[44] That is, while retributive justice as a model of criminal justice system tries to take in to account that crime is viewed chiefly as a violation of the state, and punishment is premised on deterrence and retribution,[45] the theory of restorative justice is not to punish the offender, but rather to guide him/her to repent for his/her crime, strive to mend the injury he/she has done, and reintegrate him/her into the community.[46] Thus, while restorative justice focuses on both the offender and the injured party, seeking to restore the affected individuals to their previous status quo; retributive justice system focuses on the offender in imposing a sentence upon him in order to punish him for past wrongdoing and to deter him from future criminal actions.[47] This idea was also propounded by John Braithwaite, the leading restorative justice theorist, that restorative justice is about restoring victims, restoring offenders, and restoring communities. Hence, the philosophy is quite distinct from the existing formal criminal justice mentality; as proponents of restorative justice put it, the goal is to find hope, meaning, and healing in the process of creating justice and promoting accountability.[48]

---

[42] See *Supra note* 5 at p. 945
[43] United Nations Office on Drugs and Crime, Handbook on Restorative Justice Programmes; (Criminal Justice Handbook Series, New York, 2006), p. 6
[44] *Supra note* 23
[45] *Ibid*.
[46] *Supra note* 5, p.945.
[47] *Ibid*
[48] *Ibid*.

Furthermore, the notable tenets of restorative justice like Howard Zehr has set out in which restorative justice differs from retributive criminal justice among other things includes the fact that restorative justice creates opportunities for crime victims, offenders and community members who want to do so to meet to discuss the crime and its ramification; expects offenders to take steps to repair the harm they have caused; seeks to restore victims and offenders to whole, contributing members of society (reintegration); and provides opportunities for parties with a stake in a specific crime to participate in its resolution (inclusion).[49]

From the forgoing discussions the common definitional elements worth emphasis are the characterizations of restorative justice as a particular type of process involving victim, offender and the community which can accommodate variants of restorative justice programs such as victim-offender mediation, different forms of conferencing and circle sentencing. What is intended here is not to discuss the variants of restorative justice programs. But, as it is clear from the title, it is to show that the process involved in the concepts and theories of restorative justice are flexible to accommodate mediation process i.e. the use of mediation as a dispute resolution process is a perfect platform to attain the ideals of restorative justice and could be harnessed as a new approach in the criminal justice system. Here, I'm not claiming that application of mediation process as a traditional dispute resolution process is a new discourse. I simply mean that the values of restorative justice that were deep rooted in the local community could be re-introduced to same in formal, systematic and coordinated way to bear the fruits of what the restorative justice theory is craving for. In this regard, discussion will be made particularly on the importance of the *Guma* (blood price) program in *Jaarsumma* process among the Oromo's and find out whether this traditional dispute resolution process profess the ideals of restorative justice.

In conclusion, mediation process can be linked with the essence of restorative justice as an instrument which seeks to shift the emphasis from the ideas of violation of the state and chastisement towards amends and inculcating in the offender a sense of responsibility to the victim and the community.[50] In this approach crime is understood as a violation of people and relationships and a disruption of the peace of the community. It is not simply an offence against

[49] *Ibid.*
[50] D Schmid, *Restorative Justice: A New Paradigm for Criminal Justice Policy, (*Victoria University of Wellington Law Review, 2003) p. 4.

the state. Restorative justice is collaborative and inclusive. It involves the participation of victims, offenders and the community affected by the crime in finding solutions that seek to repair harm and promote harmony. In this sense, mediation process as a precursor of restorative justice becomes a perfect platform in bringing the victim and the offender to restore their relationship through apology and forgiveness. Therefore, in order to facilitate the process of restorative justice, mediation process plays pivotal role in creating a congenial forum based on consent of the victim and the offender to amicably solve their conflict through the help of mediator.

3.2. THE LIMITS OF MEDIATION PROCESS IN CRIMINAL MATTERS

As noted before and repeated below, the concept of mediation as a driving engine of restorative justice in criminal matters had gained momentum as victims, community and offenders have been dissatisfied with the malfunction of the formal criminal justice litigation system to meet their needs.[51] But, the applicability of mediation process to the rubric of criminal justice system is not without limitations.[52]

The first limitation is derived from an extension of the principle of formal criminal justice system that declares criminal dispute, as a public wrong contrary to criminal law affecting the peace and order of the society thereby mandating the state to prosecute criminal matters on behalf of individuals and the general public. Second, mediation as an alternative dispute resolution process will not replace the formal criminal justice system in all criminal matters as we shall see below. Rather, the process of mediating criminal disputes within the ambits allowed by the formal criminal justice system will provide a diverse alternative or, more precisely, there is a set of different options for the individuals who commit or are victims of crime. In other words, the public criminal justice system will always be present, adjudicating cases in which either the offender or the victim does not wish to participate in the mediation process, or also serving as a default for the cases in which the parties fail to reach a resolution in the mediation system[53] Third, it is argued that there are factors specific to the criminal context which renders mediation process unlikely to succeed because, a kind of mediation supposed to be applicable in criminal context is somewhat different from our understandings of mediation process in civil matters. That means,

[51] *Supra note* 43, p. 5
[52] *Ibid*.
[53] *Ibid*.

there is an assumption that in mediating civil disputants, both sides contributed to the conflict at hand, while in victim-offender mediation process there is an innocent victim, likely to be highly emotionally charged due to criminal injury, and an offender who has usually already admitted to the crime. This puts the parties at different positions when dialogue begins.

In general, while an attempt to balance rights has been a driving force behind the implementation of mediation process as a restorative justice scheme, concern has arisen as to whether the interests of both parties can be reconciled. Nonetheless, as we have noted before, this is not a problem, as the focus of mediation process is not on reaching a fair bargained resolution, but instead on communication, confrontation, accountability, healing, and restoration between the victim and offender. So much so that, harmonizing of rights of both offenders and victims thereby restoring the preexisting relationship is clearly a challenge facing the use of mediation process in a criminal context.

4. WHAT CRIMINAL DISPUTE RESOLUTION PROCESSES ARE IN PLACE? THE PRACTICE FROM WITHIN AND THE LESSON FROM ABROAD

Once again, in Ethiopia, traditional criminal dispute resolution techniques were practiced in different ethnic groups with varying degrees in reflecting the ideas of restorative justice. So, it is possible to explore the tenets of restorative justice as many of these alternatives provide the parties involved, and often also the surrounding community, an opportunity to participate in resolving conflict and addressing its consequences. However, due to space limitations, it is difficult to deal with all the diverse traditions of criminal dispute resolution process which are practiced across a wide range of the Ethiopian territory. Indeed an attempt will be made to highlight the traditional criminal dispute resolution process of *Jaarsummaa* through the mediators of *Jaarsaa Araara* as practiced among the Oromo as an example of enduring Ethiopian traditional criminal dispute resolution process. Here, the criminal *Jaarsumma* process varies from place to place in Oromiya. But, a focus will be made to explore the criminal *Jaarsumma* process as it existed today as a common and shared value among the Oromo Nation. Furthermore, lessons from the practice of western countries which succeed in applying mediation process as a restorative justice scheme in the criminal justice system will be consulted for the benefit of Ethiopian criminal justice system. Hence, concentration will be made only on mediation process as a criminal restorative justice scheme.

4.1.THE PRACTICE OF *JAARSUMMA* AS A TRADITIONAL CRIMINAL DISPUTE RESOLUTION PROCESS AMONG THE OROMO NATION

In every society, regardless of the yearning for harmony and people will often fall short of the ideal, will default on their obligations, will disappoint, and will come into conflict with their neighbors, kin, and compatriots.[54] It is then necessary to heal the breach, find reconciliation, and restore the peace between and among its members. In the following discussion I will describes the manner in which the Oromo attempt to maintain peace and restore harmony through the use of *Jaarsumma* institution when disputes arise between individuals in the local community.

The *Jaarsummaa,* literally mean Mediation Council is a group of 3 to 8 reputable local elders which gathers to resolve disputes peacefully. The *Jaarsummaa* process presiding over a single case is formed in different ways and varies from place to place.[55] Generally, the formation of *Jaarsummaa* institution commonly practiced among the Oromo in Ethiopia could be categorized in to three alternative processes.

First, it happens when the offender who admits his offense takes the initiative to start reconciliation. In this process, the offender chooses his own elders and requests the victim or his family for settlement of the matter through local custom. If the victim or his family wants to resolve their disputes through *Jaarsummaa*, they may independently nominate their own *Jaarsa araara (*literally meaning, reconciliation elder*)* whom they think would favor them. In this process, both parties comment on the nominee of the opposite side. The group to be set is however, the one in which both parties put their trust.[56]

The Second alternative is taken by the initiatives of the local elders for the reconciliation process in order to maintain harmony in the community. These local mediators may or may not be concerned with a particular dispute. It simply emanates from their desire to help the victim, the offender and their families to live in harmony by restoring their previous relationships in the

[54]Herbert S Lewis, *Some Aspects of Oromo Political Culture*, The Journal of Oromo Studies, vol.1, No.2 (1994), p.56.

[55] Dejene Gemechu**,** *Some Aspects of Conflict and Conflict Resolution Among Waliso Oromo of Eastern Macha, With Particular Emphasis on the Guma,(*2002),(Unpublished Master's Thesis), Addis Ababa University p, 72.

[56] *Ibid*

community. This process mostly occurs where there is no chance of communication between the quarreling parties or if any contact between the two exacerbates the conflict. The elders, called *jaarsa bitaaf-mirgaa* (literally mean 'the elders of the left and the right'), tries to reconcile both disputing parties and their families independently. If the mediator on the either side of respective party to the conflict succeeded in persuading them for reconciliation, the *Jaarsummaa* process will commence immediately. These elders may or may not constitute the new *Jaarsummaa* process unless both parties agreed. In this process too, both parties may commonly choose elders whom they think are neutral and would handle their case efficiently and impartially.[57]

The third alternative process involves a condition in which the victim or his family may forward their claims to the local elders before resorting to formal criminal dispute resolution through state-based court. However, this process is likely to happen mostly in crimes affecting the personal interests of the victim such as minor crimes and crimes relating to property. Sometimes resort to formal court litigations is disadvantageous in terms of resource, time and preservation of sense of friendship. Therefore, the victim may opt for *Jaarsummaa* institutions to accommodate these interests. Research findings show that the role played by the *Jaarsummaa* institution influences the outcome of the dispute resolution process by facilitating dispute resolution promptly and efficiently as compared to the formal criminal dispute litigation system, where cases remain unsettled for years.[58]

Generally, the *Jaarsummaa* institution is mainly characterized by the presence of local elders who are selected by virtue of their good reputation, their extensive and good knowledge of custom, precedent and *seera* (law) of the Oromo, their individual talent and experience in dealing with conflict, altruism, their good sense and willingness to give his time to reconcile the disputants and help solve their neighbors problems and restore the peace.[59]

The *Jaarsummaa* deliberation, on the other hand, starts to operate when elders at a gathering demand the disputants to be honest in providing information and to be reasonable in claiming and counter claiming. The victim and the offender are supposed to provide information by narrating

[57] *Ibid*
[58] *Id* at p.75
[59] *Ibid*

history of the dispute and probe into their former relationships. The elders listen to the opinion, information and claims of each party in the presence of the opponent. Then, the elders gather full information from the disputants themselves. The elders as a group of mediators often consult the victim and the offender by referring to norms, values, and rules to move them to an acceptable proposed solution.[60] Finally, based on the information from the disputants, the elders propose decision after assessing the amount of injury sustained by the victim or his families and encourage the disputants in dispute to make joint decision. Therefore, the only decision to which both agree would be final. The mediators would not dictate the disputants to accept their recommended decision. But they try their best to avert the feeling of the contenders as a looser and urge them to accept the decision. Wherever the *Jaarsummaa* proceedings are successful in settling a dispute, reconciliation is symbolically marked by shaking and kissing hands with each other as a sign of maintaining the pervious relationships.[61]

Despite all the efforts, the role of *Jaarsa araara* in *Jaarsummaa* institution in determining the outcomes of the dispute varies in degree depending on the nature of the case and the nature of the relationships of persons in the dispute.[62] For instance, where the disputing parties have no serious problem in negotiating through face-to-face discussion, but are unable to settle their own case on their own, the role of *Jaarsa araara* is limited to facilitating the process so that the disputant parties arrive at a decision on which both parties agree.

On the other hand, in some criminal cases, the local elders play the role of rendering binding decisions as an arbitrator. For instance, in homicide cases, the offender must compensate the family of the victim often called *guma (*blood price) as restitution. The *guma* intends to pacify the feelings of the injured through payment of compensation, which is set by the local custom and practice. It helps to achieve a rapprochement between the parties at feud and avoid the sense of retaliation that would in turn lead to another vengeance.[63] As one of the principal motives for payment of *guma* is fear of retaliation, the decisions of local elders on the amount of blood price assessed by reference to the local custom, must be respected by the offender and his family. In

[60] *Ibid*
[61] *Ibid*
[62] *Id,* at p.70
[63] *Id,* at p.88

such case, the offender is forced to accept the decisions of the local elders as binding decision. The decision is a form of punishment for his wrong deeds not only to the victim and his family, but also to the general public. However, once *guma* is paid, the relationship between the families of the victim, the offender and his family lineage will be restored. They are said to be of one flesh, the hurt of any member amounts to the hurt of the family.[64] Generally, decisions rendered by *Jaarsumma* process are enforced through the criticism of public opinion and ostracism. Lack of respect for the *araara* (or peace) decision is believed to be lack of respect for the community's value and culture.

In conclusion, the *Jaarsummaa* institution as practiced today among the Oromo of Ethiopia, entrenches the values of restorative justice in a deeper and compatible sense. As pointed out, the *Jaarsummaa* institution involves the promotion of accountability of the offender and the participation of the victim and the local community in addressing the current and future effects of the crime. The use of *Jaarsummaa* institution and its mediating role played by *Jaarsa araara* to attempt to restore the relationships of the victim and offender *could be harnessed as a* victim-offender mediation scheme in reinforcing the principles of restorative justice in Ethiopian criminal justice system. Once again, similar practices of informal criminal dispute resolution processes, embedding the values of restorative justice could be explored through a systematic way from the array of diverse cultures rooted in Ethiopian diverse ethnic groups. Therefore, it is safe to argue that, if the schemes are introduced in to the formal criminal justice administration in a more systematic and coordinated way, it will indisputably contribute to the effort of the state to maintain peace and tranquility of the public.

4.2. LESSONS FROM ABROAD

To mention but few, countries like South Africa, Germany, France, and Canada applied mediation process as restorative justice scheme in the context of criminal disputes.[65] Victim-Offender Mediation Programs, Private Complaint Mediation Service and Victim Offender Reconciliation

[64] *Id*, at p.87
[65] John R. Gehm, *Victim-Offender Mediation Programs*: *An Exploration of Practice and Theoretical Frameworks*, Western Criminology Review1(1).Available at: http://wcr.sonoma.edu/v1n1/gehm.html, (visited 22, April, 2011)

Programs are among the various mediation programmes that were used in criminal matters in a varying degrees.

The idea of victim-offender mediation, as the oldest and most widely developed expression of restorative justice[66], programme was started in Canada and was first introduced in 1988.[67] The programme was aimed to be applied at all stages of criminal justice process which provide substantial support to victims through effective victim services and encourage a high degree of community participation. In the 1996, criminal code of Canada, declared that the purposes of sentencing should include reparation of harm to the victim and the community and promoting a sense of responsibility in offenders.[68] The importance of the aforementioned legislative amendments is reflected in the jurisprudence of the Supreme Court of Canada, and particularly in the landmark decisions: *R v. Gladue and R. v. Proulx case* said: "Restoring harmony involves determining sentences that respond to the needs of the victim, the community, and the offender."[69] The Canadian 'Youth Criminal Justice Act of 2003 also provides principles, rules and procedures for young persons who come into conflict with the law. It applies to laws about criminal conduct issued by the Government of Canada and is based on a number of restorative ideas like accountability, responsibility, meaningful consequences for youth crimes, support for long-term/sustainable solutions, consistency with national and international human rights, and promotion of a more flexible and streamlined youth justice system.[70]

In South Africa also, Victim-offender mediation scheme, started to develop in the early 1990s.[71] The Child Justice Bill issued by the South African parliament in the end of June 2008, is the first regulation to mention Victim-Offender Mediation. Victim-Offender Mediation in South Africa is therefore used as an alternative, a complement and a sentence.[72] The decision whether or not Victim-Offender Mediation is appropriate is made by the prosecutor or the court. The seriousness

[66] Mark S. Umbreit and Robert B.Coates, *Victim-Offender Mediation: Three Decades of Practice and Research*, Conflict Resolution Quarterly, (2004) vol. 22, No. 1–2, p. 281
[67]Theo Gavrielides (2007), Restorative Justice Theory and Practice: Addressing the Discrepancy, available at http:/www.heuni.fiuploads8oiteshk6w.pdf (Assessed at April 2, 2011) p. 59.
[68] *Ibid*.
[69] *Ibid*
[70] *Ibid*
[71] Frida Eriksson, *Victim-offender mediation in Sweden and South Africa, (*Unpublished Master's Thesis, University of Gottenberg), (2008), p. 3
[72] *Ibid*.

of the crime does not automatically exclude a case from the use of Victim-Offender Mediation scheme altogether. Instead the nature of the offence only influences the decision as to how it would be best applied, at pre-trial, pre-sentence or sentence stage.[73]

The Victim-Offender Mediation programs also referred to as Victim-Offender Reconciliation ("VOM") programs in Germany is also recognized by the German Penal Law, as a constructive social alternative to the field of penal sanctions.[74] The majority of cases handled through Victim-Offender Reconciliation (VOR) programs are bodily injury offenses, theft, and crimes against person and, to some extent, robbery.[75] The German Penal and Criminal Procedure Code introduced compensation scheme which enables the offender to avoid punishment for offenses carrying prison terms not exceeding one year. In such cases the judge may, in his discretion, refrain from punishment if VOR has taken place. The prosecutor may withdraw the charge under same conditions. Generally, VOR program in Germany has become an integral part of the system of *penal* sanctions, making it necessary to explore how conflict resolution may be incorporated into state control of crime. Nearly four hundred VOR service institutions in Germany mostly carried out by social workers settle conflicts through personal contact between victim and offender in cases of minor crimes and offenses against person.[76]

Furthermore, criminal alternative dispute resolution processes in France, being called as *médiation pénale* model is widespread which is however, far from being equivalent to truly restorative Victim-Offender Mediation due to lack of community participation.[77] Indeed, the médiation pénale, when accepted, allows victims and offenders to come together and find an arrangement, but under no circumstances external parties such as community or family members, neighbors or friends may ever be included in such process. Mediation may be proposed to victim and offender

[73] *Ibid*
[74] Dieter Rössner, *Mediation as a Basic Element of Crime Control: Theoretical and Empirical Comments*, Buffalo Criminal Law Review, (1999), Vol.3. p, 212
[75] *Ibid.*
[76] *Ibid.*
[77] L. Carpentieri, *Restorative Justice in France: Obstacles for the Application of a Truly Restorative approach to French Dispute Resolution*, available at hppt:/www.restorativejustice.org/10fulltext/carpentier/at_ download/file, *(*Assessed on April 5,2011)

by court entities, namely prosecuting authorities and the whole proceeding always remains under judicial supervision and monitoring.[78]

In general, from the preceding discussion, one can learn from these countries that integration of mediation scheme into the formal criminal justice system is important for Ethiopian criminal justice administration for several reasons. First, it is naïve to think that Ethiopian criminal justice system should standstill as the western criminal justice systems from which our criminal justice system was borrowed is evolving and accommodating the needs of the society. Therefore, we must adapt 'our criminal justice system' to the emerging needs of our society, basically by integrating traditional criminal dispute resolution processes in a systematic and coordinated way as an auxiliary process. Second, we can adjust the best practices of their restorative justice schemes that are compatible with the reality of our country by taking Ethiopian traditional dispute resolution processes capable of expressing restorative justice in to account. Finally, the application of mediation process as a restorative justice scheme in Ethiopian formal criminal justice context is a new phenomenon. Therefore, we can harness and re-shape Ethiopian traditional mediation processes in line with the basic principles of restorative justice in a systematic and coordinated way. Particularly, the role of government and community in Restorative Justice Schemes, the effects of victim's participation and appropriate offences for restorative justice process, accountability issues, training and standards of practice are some major lessons we should learn from abroad and inculcate to Ethiopian criminal justice system.

Therefore, we must carefully select and weigh the merits and de-merits of traditional and modern criminal mediation processes practiced in Ethiopian diverse ethnic groups and foreign countries which are capable of expressing the ideals of restorative justice respectively before introducing the system as a fast and hard rule.

5. LEGAL FRAMEWORK OF MEDIATION PROCESS IN ETHIOPIAN CRIMINAL JUSTICE SYSTEM

Needless to mention it, Ethiopia is a nation of diverse languages, religions, and cultures. Each group has its own traditional methods of resolving civil and criminal conflicts. As already noted,

[78] *Ibid*

these dispute resolution mechanisms involve an elder of the community investigating and facilitating the resolution of disputes. The majority of these conflicts are settled, as the fear of social isolation that may otherwise ensue is a strong motivating factor. In a country where 85% of the population lives in rural areas, survival often depends on belonging to a community. However, modern Ethiopian criminal justice failed to accommodate customs of dispute resolution process. It entirely disregarded indigenous customs and transplanted western criminal justice system. This could be understood from the words of Rene David who is member of Ethiopian laws codification commission in 1960's. His statement is quoted as follows.

> "Ethiopia wishes to modify her structure completely even to the way of life of her people. Consequently Ethiopians do not expect the new code to be a work of consolidation, the methodical and clear statement of actual customary rules, they wish it to be a program envisaging a total transformation of society and they demand that for the most part it set out new rules appropriate for the society they wish to create.[79]

Therefore, it is easy to understand why Ethiopian criminal justice system failed to reflect customary practices of criminal dispute resolution, despite the enduring legacies and contemporaneity among different ethnic group in Ethiopia. As noted before, Ethiopian criminal justice system was largely modeled in the western criminal justice system reflecting retributive justice.[80] It was structured with the assumption that criminal matters are by and large the concerns of the state rather than the concerns of private individuals and the community. This assumption undeniably affects the core values of traditional dispute resolution mechanisms practiced informally with in the local community since time immemorial.[81] It rather reflects legal paternalism in disregard to the values, norms of a given society which at some time become more efficient and reliable than what the state deems good for its citizens through its legislative intent. In fact often there exist a higher ideals which in no case be compromised and which the state must

[79] Rene, David, *A civil Code for Ethiopia: Consideration on the Codification of the Civil Law in African Countries*, Tulane Law Review (1963), p.193
[80] Julie Macfarlane, (2007), *Working Towards Restorative Justice in Ethiopia: Integrating Traditional Conflict Resolution Systems with the Formal Legal System,* available at; http:/ www.cojcr.orgvol8no2487-510.pdf (Assessed on April 10, 2011)
[81] *Ibid.*

protect. On the other hand, it is also absurd to prohibit a society to resolve its disputes as its inherent problems by its own well established and even more accepted values of protecting the status quo that exists.

Generally, an appeal to time, resource, efficiency and values dictates society to furnish the delicate balance through its long practiced norms of dispute resolution in restoring its relationships which should be relied and nurtured persistently as a matter of social policy. Against this background, I will scrutinize whether the existing legal regime accommodates the likelihood applicability of mediation process as a restorative justice scheme in Ethiopian criminal justice system and if any, the limits and opportunities of applying it.

5.1. FINDING THE RELEVANT LAWS: OPPORTUNITIES TO EXPLORE MEDIATION PROCESS

Until the present day, Ethiopia enacted three penal legislations: The Penal Code of the Empire of Ethiopia 1957, the Revised Special Penal Code of the Provisional Military Administration Council 1982, Proclamation No. 214/1982, and currently The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Proclamation No.414/2004. The aims of all penal legislations are to prevent crimes and to punish the wrong doers for their misdeeds. All penal legislations failed to recognize the role of victim, offender and the community in the criminal justice system. The development in the FDRE criminal legislation is its allocation of rehabilitative justice which helps wrongdoers to take vocational training and participate in academic education *while in prison* to lead peaceful life and benefit them upon release from prison.[82] (*Emphasis added*)

Generally speaking, the concept of restorative justice was disregarded to the point of dismay even under the current criminal code which purported itself as if it properly consulted foreign countries experience[83] in the wake of 21st century. If ideals of restorative justice are not introduced in to the criminal justice system, it is impractical to explore the opportunities of mediation process as a

[82] The FDRE Criminal Code, Proclamation No. 414/2004, preface and Article 1
[83] *Ibid*. See the Preface

criminal dispute resolution process. As noted before, much attention was not paid to the agenda of restorative justice as a community response to the consequences of crime as a new paradigm shift in the administration of criminal justice in the eyes of academicians in the fields of criminal justice, including parliamentarians and policy reformers. Beyond that, some countries had unequivocally introduced the purposes of restorative justice in to their formal criminal justice administration.[84] Thus, which countries foreign experience are we talking about? For sure, the answer could not be the experience of western criminal justice system as their experience before 2004 reveals and consults more than that! So, which legal regimes am I going to assess if Ethiopian penal legislations from the outset failed to incorporate mediation process as the expressions of the ideals of restorative justice? Let me try to assess and find out what Ethiopian substantive and procedural law can afford. Particularly, a focus will be made on the current criminal code of Ethiopia since the previous penal legislations are repealed by same.

The FDRE Criminal Code clearly permits consent of the victim as a defence to the commission of crimes punishable upon complaint[85] which is prohibited under the repealed penal code.[86] Crimes punishable upon complaint are crimes that are predominantly private in nature and solely affect individual interest.[87] Therefore, consent of the victim is a condition precedent to try and punish offenders committing crimes punishable upon complaint which give an opportunity to victims and offenders to reconciliate freely with the help of mediation services by local elders. Under FDRE Criminal Code, around 47 articles are labeled as crimes punishable up on complaint. This fortune could create an opportunity to apply mediation process to restore the relationships of the victim and the offender.

In a similar way, under the Criminal Procedure Code setting justice in motion on complaint crimes is only possible on consent of the injured party or his legal representatives.[88] So, as crimes punishable only upon complaint requires a formal complaint by the injured party a police officer must take care of arresting offenders of complaint crimes without securing the prior consent of the

[84] See my discussion on "lessons from abroad".
[85] Supra note 82, Article 70
[86] See The Penal Code of the Empire of Ethiopia, Proc. No. 158 of 1957, *Negarit Gazetta*, Extraordinary issue, 23 July of 1957, Article 66
[87] *Ibid*, Article 216(2)

[88] Criminal Procedure Code of Ethiopia, Proclamation No. 185/ 1961, Article 13

victims concerned.[89] This caution is important as it creates a chance to the victim, offender and the community to initiate mediation process to maintain their relationships before throwing the offender in to pretrial detention. The criminal procedure also stipulates that crimes punishable upon complaint can be prosecuted by private prosecution on the authorization of the public prosecutor.[90] Therefore, there is a tendency to own criminal prosecution by private individuals in Ethiopian criminal justice system in cases of crimes punishable upon complaint. So, the victim may opt for court litigation with a view of criminal prosecution privately or with the help of public prosecutor or settle his disputes amicably through mediation with the help of local elders.

Does this entire mean that Ethiopian criminal and procedural laws are professing the ideals of restorative justice by permitting the victim to opt for reconciliation process rather than prosecution at its own peril? Alternatively, can we think of any other ideal of what the law wants to protect other than this? In my opinion, of course there are ideals that Ethiopian Criminal and Procedural law wants to protect. But, this time not to promote restorative justice rather primarily to promote privacy of individuals. Here, the *raison d'être* behind this assertion and the requirement of consent in complaint crimes is twofold. First, it is aimed to protect the will and interest of the injured party as the crime affects his interest at large. In other words, if a criminal proceeding is instituted against the will of the injured party, it may be more harmful to him/her than the commission of the crime. Criminal prosecution before a court of law may draw the attention of the society to certain facts, and this might be harmful to the injured party if he wants confidentiality. For instance, a victim of crime whom his wife committed a crime of adultery may opt for secrecy as it ruins the reputation of his marriage in the eyes of the public if the public is aware of the unfaithfulness of his spouse. In such situations, the institution of criminal proceedings is conditional upon a complaint first being made by the individual concerned. Second it emanates from the inherent nature of complaint offence itself. As noted before, complaint offences expressly provided by criminal law are predominantly private in nature and their effect does not transcend victims at least directly. In this sense, one also might explain complaint offences, at least in part, in terms of a legislative intent to converse scarce prosecutorial resources by not compelling state prosecution

[89] *Id,* at Article 21(1)
[90] *Id,* at Article 44(1)

in relatively minor cases unless the injured party is sufficiently disturbed to file a complaint.[91] Viewed in this way, prosecuting compliant crimes which do not merit expenditure of public resource is injudicious unless the victim is seriously upset, and might disturb public order by revenge behavior if the state does not act.[92]

In general, paradoxically, Ethiopian substantive and procedural laws currently in force provides the opportunity to the victim, the offender and the local community to resort to mediation process in order to maintain their relationships. At least, it does not hinder local elders an opportunity to gear their efforts to restore peace and harmony, for example, in crimes punishable upon complaint if they are able to win the consent of the victim to their side. Therefore, its total reliance on the discretion of the victim and its limit only to crimes punishable upon complaint and above all, lack of intent to profess restorative justice are the limitations of Ethiopian criminal laws as it stands now.

5.2. DETERMINING THE APPROPRIATE CRIMES FOR RESTORATIVE JUSTICE

As explained earlier, the concept of mediation process as a restorative justice practice is not limited to crimes affecting individual interest or minor crimes. For instance, while traditional restorative justice practices like *Jaarsummaa* push further to the extent of homicide cases, victim-offender mediation programs in western criminal justice system is limited to misdemeanour and juvenile offences. However, we have to take notice of the fact that the appropriateness of applying mediation programs or similar programs either to minor or serious crimes is dependent on the effectiveness of that program or system to reinforce the ideals of restorative justice as it is meant to be.

In Ethiopian criminal justice system, crimes are categorized depending on the gravity and heinous of the injury it left behind and the dangerous dispositions of the offenders.[93] This is a corollary understanding of the fact that public prosecutions of crimes as a primary duty of the state is required to keep the peace and order of the general public.[94] In recognition of this fact, the *''New*

[91] Graven Phillips, *Prosecuting Criminal Offences Punishable Only Upon Private Complaint* Ethiopian Law Journal, (1965), Vol. II, No. I, p.121.
[92] *Ibid.*
[93] See the expressions of Article 89, 106, 109 of the FDRE Criminal Code of minor crimes, petty offences, serious crimes and crimes of grave nature.
[94] See the *Expose de motifs* of the 2004 FDRE Criminal Code, 1993 (pp 116-119)

Draft Criminal Procedure Code" currently under deliberation, tried to specifically categorized crimes by scheduling as *"minor", "medium"* and *"serious"* crimes.[95] However, what and what not crimes are to be included in the schedules is not yet determined and nor the draft law attached as such to that effect. The question to answer at this time is which categories of crimes fall under the ambit of criminal ADR which the Draft Criminal Procedure purport to introduce? In order to answer this question I will try to analyze the base for such classifications by reference to Ethiopian substantive and procedural criminal law including the current draft criminal procedure.

Obviously as mentioned before, crimes punishable upon complaint, predominantly affect private interest for which their prosecution and punishment require the consent of the injured party.[96] This crimes are less serious and do not endanger public peace. Therefore, it is more effective and appropriate to refer such crimes to criminal dispute resolution process as a restorative justice scheme not only by the consent of the victim but also by the discretion of the court or public prosecutor.

The other classification of crimes under Ethiopian criminal code is branded as crimes punishable upon accusation. Under the current criminal justice system, this brand of crimes simply includes the rest of crimes which are not expressly stipulated as compliant crimes under the criminal code including the petty code. As already mentioned, this category of crimes includes minor, medium and serious crimes under the New Draft Criminal Procedure Code.[97] According to this understanding, these crimes affect individual and public interest and are punishable under the patronage of public prosecutor. Once again, the new draft criminal procedure code in section four, integrated criminal ADR as "Alternative resolution procedures outside the formal litigation process". It clearly set out the very purpose of alternative resolution process which among other things considers time and resource of the formal litigation process, the need to re-integrate the offender with the community, the need to maintain the relationship of the offender and the victim and re-establish the status quos, the willingness of the offender to take full responsibility and repentance to the crime and to reduce recidivism.[98]

[95] See Draft FDRE Criminal Procedure Code, Article 2(1)
[96] See *supra note* 80 at Article 212.
[97] See *supra note* 90, at Article 222.
[98] *Ibid* at article 223(1, 2, 3)

However, if the new criminal procedure code is to be enacted in the future, only minor and medium crimes can be resolved through criminal ADR processes on two conditions, first, the court or public prosecutor must deem necessary that out of court alternative resolution method is better and effective provided that such process does not adversely affect public interest. Second, diverting such criminal matters must inculcate consent, rights and special circumstances of the victim and offender in to account.[99] Specifically, Alternative criminal dispute resolution process may be opted in minor and medium crimes in cases where the offender is young, women and physically disable, where prosecution of the crime by court has a tendency to create physical and psychological effect on the victim, where the offender is under mental illness while commission and prosecution of the crime, where the offender is willing to make damage good proportional to the injury sustained by the victim or take corrective measures to that effect or where the public prosecutor simply opted to direct such criminal dispute to be entertained by alternative resolution processes.[100]

Furthermore, the draft criminal procedure empowered the public prosecutor to determine types of crimes which must and must not fall under alternative resolution process, the requirements under which the offenders are selected for reference of their criminal case to such alternative process and the institutional set up entrusted with resolving such criminal matters so directed by the public prosecutor for amicable resolution.[101] In other words, the reference of minor and medium crimes to out of court system for amicable settlement presupposes the establishment of criminal ADR centers designed to fulfill its purposes either with in the office of the public prosecutor or by outside ADR service providers after their establishment is duly recognized by an appropriate office of the public prosecutor.[102]

However, the types of ADR services which is/are appropriate as an alternative amicable settlement and the procedures and rules under which such ADR service centers function to capably run amicable settlement of criminal dispute in minor and medium crimes is not provided. Hence, we

[99] *Ibid*
[100] *Id*, Article 224
[101] *Id*, Article 229 and 230
[102] *Ibid*

need to clearly articulate the rules and suitable ADR prototype to amicably settle criminal matters in Ethiopian traditional ADR context. In fact an attempt under the draft criminal procedure code was made to articulate the obligations of ADR organizations established under the recognition of the public prosecutor including their roles, obligations and their relationships towards the court or public prosecutor.[103] Indeed the discussion on the *Jaarsummaa* institution is a good example of traditional mediation practice and the consulted foreign literatures on mediation is a suitable ADR process in criminal context capable of reinforcing restorative justice. Therefore, *it is necessary to primarily adapt indigenous mediation process* capable of consolidating the ideals of restorative justice. As noted before, this is useful to safeguard traditional values of restorative justice and thereby attach the profound sentiments of the people with the scheme to be adopted.

Eventually, it is important to also discuss the legal effect of such out of court amicable settlement process and its relationship with the formal criminal prosecution system. The Draft Criminal Procedure Code authorizes the public prosecutor to follow up on the overall process including checking whether the resolutions are enforced or not.[104]

Lastly, inspired by the new draft criminal procedure code, as a reform to criminal justice system, both at Federal and State levels, Business Process Re-engineering (BPR) was already launched as a core process of criminal investigation and decision making.[105] In this process use of amicable dispute settlement mechanism as an alternative to criminal prosecution in compliant crimes and minor crimes is incorporated in the BPR document. But, what is meant by minor crime is not clearly identified by BPR document like the New Draft Criminal Procedure Code. Likewise, Institutions dealing with amicable dispute settlement in public prosecutor's office and their functions are also not well articulated in the document and neither established under the auspices of public prosecutor's office.[106]

[103] *Id,* article 232
[104] *Id,* Article 235
[105] BPR Manuals and Documents and TO-BE's for Core Process in Criminal Investigation and Decision making prepared both at Regional and Federal levels reveal this fact.
[106] For instance, I have tried to interview public prosecutor in Gondar Zonal Justice Office and personally observed that there is no such service centers nor organizations accredited to run such ADR Services

In general, the aforementioned discussions tried to shed light on the legal framework and limit of integrating ADR process in Ethiopian criminal justice system. As the law stands now, Ethiopian criminal justice system is devoid of restorative justice ideals, despite the strict interpretation of possibilities of applying mediation process in complaint crimes. This is also not without limitations as it utterly depends on the consent of the victim. Ample literatures and state practices show that mediating minor and complaint crimes are considered as a priority of criminal justice reform due to its importance compared to formal criminal prosecution system. In fact, the tradition of our local community and our experience shows that this country used to practicing mediation process in criminal disputes since time immemorial, despite its seriousness let alone of being dubious on mediating minor and complaint crimes as an old fashioned informal criminal justice system. Ultimately, as far as Ethiopian criminal justice system is concerned, one can firmly argue black and white that mediation as an alternative criminal dispute resolution mechanism could be applicable without any legal and procedural difficulty as long as complaint crimes are concerned. But, in order to achieve the very purposes of criminal ADR, complaint crime mediation service centers or organizations must be established in a systematic and well organized way under the recognition of courts or office of the public prosecutor in addition to voluntary mediation services by local elders. Yet, most importantly, the process of integrating criminal ADR process in minor and medium crimes under the upcoming criminal procedure code is another milestone in the milieu of criminal justice system reform and should be maintained as a prospect of implanting restorative justice in the future Ethiopian criminal justice system.

CONCLUSION

Generally, I have tried to sketch the picture within which the rubric of mediation process could be embraced as a panorama of restorative justice in criminal justice context. The article also attempted in exploring the theoretical and practical frameworks within which mediation process as a traditional and western restorative justice scheme is appraised. In this article the possible options from within and abroad are clearly articulated. While the article admits the limitations of mediation process to the context of criminal justice as an expression of restorative justice ideals, it also contends that the deep rooted ideals of traditional criminal mediation processes practiced among the diverse Ethiopian ethnic groups could be harnessed in a systematic and coordinated way to bear the fruits of restorative justice. In so doing I have tried to unfold the fruits of

Jaarsummaa institutions practiced among the Oromo's as a single example of Ethiopian traditional criminal mediation process worth attention. The *Jaarsummaa* institution almost embedded the ideals of restorative justice in the context of criminal justice administration in its contemporary sense. Therefore, the *Jaarsummaa* process should be consolidated as an epitome in order to develop its shared values of restorative justice.

The article further, explored the practices of western criminal mediation process, and its place in their criminal justice administration. Accordingly, an effort was made to draw the important lesson basically on how their criminal mediation process functions to effectively integrate restorative justice in to the formal criminal justice administration. The appropriateness of victim-offender mediation program as restorative justice scheme, in particular, the role of government and community in Restorative Justice Schemes, restitution of victim and accountability of offender and appropriate offences for restorative justice are elucidated based on the experience of western criminal justice system.

On the other hand, the discussion on Ethiopian legal frameworks and limits on the applicability of mediation process in criminal matters unfolds the search for legislative intent as to whether the solid basis of criminal law and procedure is promoting restorative justice. In addressing this issue, the purposes of Ethiopian criminal code and procedure is assessed. The finding reveals that criminal law and procedure as it stands now does not promote criminal mediation process as an expression of restorative justice in Ethiopian context. It was unfortunately that the permission of consensual prosecution upon the request of the victim leaves the room for both victim and offender to opt for criminal mediation process in crimes punishable up on complaint. Around 47 articles in Ethiopian criminal code are crimes punishable up on complaint. But, in spite of using traditional criminal dispute resolution process as an alternative, the victims of crime punishable upon complaint tends to prosecute their case through the formal criminal court litigation process for several reasons. First, as Rene David pointed it out, Ethiopian formal justice system ignored traditional customs including mediation process in criminal matters under the guise of modernity. This perception created lost sense of belongingness and confidence on traditional mediation process as outdated and futile as viewed today. Second, the formal criminal justice administration itself is futile as it failed to incorporate provisions that mandate reference of crimes punishable

upon complaint to alternative dispute resolution process. That is, Ethiopian criminal law and procedure failed to discourage trial of at least crimes which are predominantly private in nature. Finally, there is no systematic and coordinated criminal dispute resolution programs such as victim-offender mediation programs that able promote and facilitate victim and offender reconciliation process.

Currently, the meager of legal framework that purports to shed lights on the concept of restorative justice at *the end of the dark tunnel* is the potential applicability of mediation process in crimes punishable upon complaints through the only consent of the victim. Of course I have tried to elucidate the recognition given to criminal dispute resolution process under the Draft Criminal Procedure Code basically for minor and medium crimes labeled under Ethiopian criminal law. However, there are no clear provisions in the 'Draft' which defined minor or medium crimes. Despite its innovation to incorporate out of court dispute resolution process as alternative criminal dispute resolution method, it does not clearly provide the appropriate dispute resolution process that fits the context of criminal justice administration. More precisely, as the Draft Criminal Procedure Code is not yet crystallized as a governing procedural law, it is difficult to rely on such soft law to apply alternative criminal dispute resolution process in minor and medium crimes in its present context.

It has to be re-called that it is useful to safeguard traditional values and thereby attach the profound sentiments of the people with the administration of criminal justice. To the contrary, the codification process of modern Ethiopian criminal law disregarded a full prior study of the local customary practices related to the administration of criminal justice. In lieu of that Ethiopian criminal justice system adopted western system of criminal justice and borrowed so many elements from it. Of course there was a paradigm shift in the administration of western criminal justice system. Hence, as a replica of western criminal justice system, Ethiopian criminal justice should accommodate itself through adjustments that are equally important in the eyes of western criminal justice system as failure of the criminal justice system in western criminal justice system is equally important to Ethiopia. It is also a critical juncture to recognize compatible customary practices of criminal dispute resolution process with national and international human rights, and

promote it in a more flexible and streamlined justice system which was previously disregarded by the past regimes. Accordingly, the writer suggests the following recommendations;

1. The current Ethiopian criminal justice system is devoid of appraising principles of restorative justice. It is not conveyed from the criminal legislation that the law aims to secure restorative justice through application of alternative dispute resolution process nor encourages parties to criminal dispute to opt for such process. Therefore, it is recommended that the current criminal code should be amended so as to incorporate the purpose of restorative justice and should clearly provide catalogs of crimes that fall under dispute resolution scheme.
2. The "New Draft Criminal Procedure Code" should be enacted in such a way to provide an appropriate criminal dispute resolution process that is capable of reinforcing restorative justice program within the context of Ethiopian criminal justice. Therefore, legal recognition should be given to traditional criminal dispute resolution processes that are compatible with the FDRE Constitution and International Human Rights Law as an auxiliary to the formal criminal justice system.
3. The government should introduce victim-offender mediation program directly accountable to justice offices and other compensation schemes which guarantee restitution of victim, and accountability of the offender.
4. A further wide-ranging research must be conducted by federal and state legal research institutes on traditional criminal dispute resolution process practiced in different Ethiopian ethnic groups that are capable of consolidating the values of restorative justice.

GITA MIRKANEESSA RAGAA DHIMMA YAKKAA: YAADRIMEEWWANII FI XIINXALA DHIMMAA

Milkii Makuriyaatiin*

Seensa

Manneen murtii keessatti Sadarkaa ragaan tokko balleessummaa nama yakkaan himatamee itti mirkaneessuu qabu irratti hubannoon walfakkaataan hin mul'atu. Yaadrimeewwan gita mirkaneessa ragaa sirnoota seeraa *koman loo* fi *kontineentaalii* gidduutti akkasumas biyyoota sirna seeraa walfakkaataa hordofan keessattillee hojiirra oolmaa fi hiikkaa gara garaa qabu. Seerotnii fi heerri keenyas ragaan seeraa dhiyaatu balleessummaa himatamaa sadarkaa kanatti mirkaneessuu qaba jechuun ifatti waanti kaa'an hin jiru. Ibsa biraatiin, dhimma yakkaa irratti ragaan abbaa alangaa dhiyaatu milkaa'uudhaaf baay'inas ta'e qulqullina /gahuumsa/ qabaachuu qabu seerri bitu hin jiru. Kun immoo ogeessotni qaamolee haqaa naannichaa, keessattuu abbootiin seeraa, gita mirkaneessa ragaa yakkaa kana kallattii gara garaatiin akka ilaalan godheera. Kunis amanamummaa sirna haqaa naannichaa irratti akkasumas mirgootaa fi bilisummaawwan bu'uuraa lammiilee irratti dhiibbaa mataa isaa fidaa jira.

Galmeen Mana Murtii Olaanaa Godina Arsii Lixaa lakkoofsi isaa 10695[1] ta'e falmii yakka ajjeechaa cimaa hammeenyummaan raawwatame jedhame kan ilaallatu dha. Dhimmi xiinxalamuuf yaadame kun rakkoon armaan olitti ibsame hangam hammaataa akka ta'e agarsiisuu ni danda'a yaada jedhuun kan filatame dha. Haaluma kanaan, xiinxalli dhimmaa kun muuxannoo manneen murtii biyyoota gara garaa, hiikkaa fi qabiyyee yaadrimeewwanii fi bu'uura qajeeltoowwan gita mirkaneessa ragaa kanneenii, heeraa fi seerota biyya keenyaa akkasumas barmaatilee jiru gabaabinaan kan dhiyeessu ta'a.

Dhimmicha Gabaabbinaan

Dhimma xiinxalame kanaaf ka'uumsi himannaa abbaan alangaa godina Arsii lixaa gaafa 14/03/2003 himatamtoota nama lama irratti Mana Murtii Olaanaa Godinichaatti dhiyeessee dha.

* Abbaa Seerummaatiin kan tajaajilee fi yeroo ammaa Qorataa Seeraa ILOQHQSO (LL.B); I-meelii: milkiiw@yahoo.com

[1] A/Alangaa Godina Arsii Lixaa fi Mangashaa Xilaahunii fi Tuujii Kadaa, Lakk.G/M/M/O Arsii Lixaa 10695, 2003, Kan Hin Maxxanfamne.

Himannoon abbaa alangaa akka ibsutti himatamtootni nama Raamatoo Galatoo jedhamu gaafa 12/11/2002 guyyaa keessaa sa'a 9:00 irratti himatamaan 1ffaan gajaraan mormaa fi cinaacha irra rukutee, himatamaan 2ffaan gajarumaan mogolee bitaa irra rukutuun waliin ta'uun harka,lukaa fi qaama isaa haala gara jabina qabuu fi saalfachiisaa ta'een cicciruun itti yaadanii ajjeesaniiru. Dabalataanis abbaan alangaa yeroo ibsu ''reenfi du'aa akka hin fudhatamnee fi hin qoratamne waan godhaniif himatamtootni kun yakka ajjeechaa cimaa hammeenyummaan raawwataniiru'' jechuun S/Y bara 1996 bahe kwt 32(1 (A)) fi 539(1(A)) jalatti himateera. Manni murtii dhimmicha ilaales himatamtootni gochaa jedhame raawwachuu waan waakkataniif, ragaa abbaa alangaa dhagaheera.

Ragootni abbaa alangaa 1ffaa fi 2ffaan jecha ragummaa kennan keessatti, du'aa fi himatamtootni lola akka hin qabaannee fi guyyaa fi sa'aatii himata irratti caqasame kana irratti osoo afur ta'anii karaa deemaa jiranii bakka himata keessatti caqasame kanatti himatamtootni lamaan bosona keessaa isaanitti bahanii, himatamaan 1ffaan morma du'aa mirgaa gajaraan dhahee kuffisee, bakka kufetti cinaacha mirgaa gajaraan dhahuu fi himatamaan 2ffaan mogolee du'aa bitaa gajaraan dhahuu raaganiiru. Sana boodas gajaraan harkaa fi miila du'aa tumanii gara qe'ee isaaniitti harkisanii deemuu ibsaniiru.

Ragooleen kun himatamtootni waan gajaraan isaanitti fiiganii fi harka duwwaa waan turaniif halaala dhaabbatanii akka ilaalan ragaa bahaniiru. Ragooliin kun waliin dhaabbatanii kan ilaalaa turan ta'uu yoo dhugaa bahan illee gaaffiiwwan mana murtiitiin gaafatamaniif yeroo deebii kennan ragaan 1ffaan metra 50, ragaan 2ffaan immoo metra 20 irraa fagaatanii kan ilaalan ta'uu dubbataniiru. Reenfi du'aa akka hin argamnes rageessaniiru. Ragaan abbaa alangaa 3ffaan jaarsummaa taa'uun alatti waanti beeku kan hin jirre ta'uu ibseera. Abbaan alangaa, ragaan hafes kanuma beeka waan jedhaniif ragaan abbaa alangaa 4ffaan osoo hin dhagahamiin hafeera. Galmicha keessaa akka hubatamutti ragaan bareeffamaas ta'e ragaan biraa miidhamaan du'uu agarsiisu dhiyaate yookin akka dhiyaatu ajajame hin jiru.

Manni murtichaas ragaa namaa abbaa alangaa erga dhagahee booda himatamtootni ragaa ittisaa akka dhiyyeeffatan ajajeera. Manni murtii kunis ragaan himatamaa 1ffaa waan hin dhiyaatneef bira darbuudhaan ragaa ittisaa himatamaa 2ffaa dhagaheera. Ragooleen ittisaas jecha ragummaa kennaniin guyyaa himatamaan du'e jedhame caqasuudhaan himatamaan 2ffaan sa'a 8:00-11:00'tti isaan waliin awwaala kan oole ta'uu dubbataniiru. Ragaan ittisaa 1ffaan gaaffilee gaafatameef deebii yeroo kennu awwaalcha waliin deeman kana irratti reeffi bakka awwaalaa

kan gahe sa'a 9:30 tti yoo jedhu, ragaan ittisaa 2ffaan reeffi bakka awwaalaa kan gahe sa'a 10:30'tti jedheera. Gama biraatiin ragaan ittisaa 2ffaan gaaffii qaxxaamuraa abbaan alangaa 'yoo jidduun deemee ajjeesee dhufe hoo beektaa' jedhee gaafateef ''hin beeku'' jechuun deebiseera.

Manni Murtiis, ragaa dhiyaatan madaaluudhaan ragooleen abbaa alangaa himatamtoota lameenittuu mirkaneessanii osoo jiranii ragooleen himatamaa 2ffaa dhiyaatan irraa ittisanii waan hin jirreef himatamtoota lameenirrattuu murtii balleessummaa kennuun tokkoon tokkoon isaanii irratti adabbii hidhaa waggaa 15 dabarseera. Himatamtootnis murtii kenname irratti komii qaban M/M/W/O Dhaddacha Kibbaatti oliyyata dhiyeeffataniiru. Dhimmichis oliyyannoon dhiyaatee osoo jiruu namni himatamtootni gara jabummaan cicciranii ajjeesan jedhame /du'aan/ lubbuun jiraachuu isaaafi yakki himatamtoota kanaan irratti raawwatame tokkollee kan hin jirre ta'uu irra gahameera. Manni murtii oliyyata dhagahus iyyatni argamuu du'aa ibsu erga dhiyaatee booda ijoo kana mirkaneeffachuudhaan gara falmiitti osoo hin galiin himatamtoota bilisaan gaggeeseera.

Himatamtootni kunneen badii isaanii tokko malee balleessaa jedhamuun adabbiin itti murtaa'ee jira. Sababa seeraan ala yakkamtoota ajjeechaa lubbuu taasifamaniif miidhaa hamilee isaanirra gahuu fi hidhaa itti murtaa'e raawwachuuf mirga bilisummaa qaamaa sarbaman irraa himatamtoota bayyanachiisuuf furmaatni seeraa tokko taa'uu hin qabuu laata? Manneen murtii dhimmicha oliyyataan ilaaluu danda'an oliyyatni dhiyaate kan dhiyeessisu miti jechuun erga murteessanii yookin murtii mana murtii olaanaa erga cimsan booda himatamaan kan argamu osoo ta'ee, carraa fi furmaatni seeraa himatamtootni qaban maal ta'uu danda'a ture? Gaaffileen kunneen dhimma qabatamaa kana waliin walqabatanii sammuu nama hundumaa keessatti kan uumamanii dha. Dhimmootni kunneen bilisummaawwan bu'uuraa dhala namaatiin waan walqabataniif xiyyeeffannaa fi uwwisa seeraa argachuu akka qaban ni amanama. Haa ta'u malee, akkuma seensa keessatti ibsamuuf yaalame, fuulleffannaa xiinxala dhimmaa kanaa kan ta'u 'manni murtichaa himatamtoota kanaan ofirraa ittisaa' jechuu fi murtii balleessummaa kennuuf ragaan dhiyaate balleessummaa himatamtootaa gita /sadarkaa/ barbaadamutti mirkaneesseeraa? gaaffii jedhuun dhimmoota walqabatani dha.

Qajeeltoowwan Mirkaneessa Ragaa Beekamoo fi Xiinxala Sirna Seeraa Keenya

Gita mirkaneessaa /degree or standard of proof/ jechuun hanga humna ragaan dhiyaate tokko mana murtii amansiisuuf qabu jechuu dha[2]. Sadarkaan ragaan dhiyaatu balleessummaa nama yakkaan himatamee itti agarsiisu garagara[3]. Biyyoota gara garaa keessattis sadarkaan ragaan abbaa alangaa balleessummaa himatamaa yakkaa itti mirkaneessuu qabu adda adda yoo ta'u sirni seeraa (legal system) biyyi tokko hordoftus ka'uumsa gargar baatee kanaaf sababa isa tokko dha. Sirni gahuumsi sadarkaa ragaa itti madaalamu kun biyyoota sirna seeraa 'koman loo' hordofan keessatti Dh.K D jaarraa 4ffaa irraa jalqabee kan ture akka ta'e ragooleen ni mul'isu[4]. Akka seeraatti immoo seera biyya Inglizzii keessatti jaarraa 18ffaa keessa yeroo jalqabaaf tumameera[5].Yeroo dhiyoo as immoo akkuma qajeeltoowwan gurguddoo seeraa isaan kaanii qajeeltoowwan gita mirkaneessa ragaa kunis guddina seeraa ammayyaatiif gumaacha godhanii jiru.

Qajeeltoowwan gita mirkaneessa ragaa dhimma yakkaa[6] irrati jiranis yeroo ammaa bifa lama qabu[7]. Inni hangafaa fi sirna *koman loo* keessatti beekamaa ta'e himatamaan tokko balleessaa jedhamuudhaaf ragaan irratti dhiyaate shakkii dhama qabeessa tokko malee kan itti mirkaneesse ta'uu qaba (*proof beyond reasonable doubt*[8]) isa jedhu dha. Inni lammataa fi biyyoota Awurooppaa sirna *siivil loo* hordofan keessatti fudhatama qabu ragaan dhiyaate abbaa seeraa dhimmicha ilaalu kan amansiise ta'uu qaba isa jedhu dha. Gitni mirkaneessaa kunis afaan Faransaayiin "*intime conviction''* jedhamee isa beekamu dha.[9] Qajeeltoowwan kunneen

---

[2] Waraqaa qo'annoo ka'uumsa wixinee seera deemsa falmii yakkaa naannoo Oromiyaa irratti dhiyaate, guraandhala 2003, kan hin maxxanfamne.

[3] Standards of proof could be expressed on various scales; (1) slightest possibility (2) reasonable possibility (3) substantial possibility (4) equipoise (5) probability (6) high probability (7)almost certainity.
Christoph Engel, Preponderance of the Evidence Vs Intime conviction, Vermont law review, maxxansa /vol/ : 33; F450.)

[4] Charles Robinson Mandlenkosi Dlamini, Proof Beyond A Reasonable Doubt, Qorannoo Xumura *'Doctor Legum, In Criminal And Procedural Law'* Yuuniversiitii *'Zululand'* tti hojjetame, Sadaasa 2005, fuula 129.

[5] Akkuma lakk. 4ffaa, F5.

[6] The continental law, in priniciple, does not differentiate between civil law and criminal law. While the American law has different standards of proofs for criminal law (*beyond reasonable doubt standard*) and civil law (*preponderance of the evidence and the clear and convincing evidence standards*). Preponderance of the evidence is a civil law standard of proof which means the claim is more likely true than not- even slightly.
Olitti yaadannoo lakk.3, F435 fi 439

[7] Akkuma lakk. 6ffaa, F435

[8] Studies produced estimates of what 'beyond reseanable doubt' meant ranged from 51% to 92% of certainity.
Olitti yaadannoo lakk. 6, F449

[9] *Intime conviction* is a french term that requires the personal conviction of the court. i.e the judge needs to be convinced personally.

waldhabbiiwwan sirnoota seera *koman loo* fi *siivil loo* jidduu jiran qabatamaan kan agarsiisani dha[10].

Yaadrimeewwan gita mirkaneessa ragaa kunneen sadarkaa mirkaneessaa qofa irratti osoo hin taane maalummaa mirkaneessaa hubachuu irrattillee garaagarummaa ni qabu. Sirni seera *siivil loo* biyyoota Awurooppaa mirkaneessi hubannaa dhuunfaa abbaa seeraa irratti hundaa'a yoo jedhu sirni warra *koman loo* garuu hubannaa waliigalamaa bu'uureffachuu akka qabu kaa'a[11]. Sababni warri *siivil loo* kaasan immoo dhugaa baasuuf kan gargaaru waan ta'eef isa jedhu dha.Warri sirna seeraa *koman loo* deeggaran immo seerri adeemsaa sababaawaa /rationality/ ta'uu abbaa seeraa mirkaneessuu danda'uu qaba yaada jedhu kaasu. Murtiin ilaalcha dhuunfaan kennamu dogongoraaf saaxilamaa dha kan jedhu irraa ka'uudhaan[12]. Ibsa biraatiin, qajeeltoon mirkaneessa ragaa shakkii dhama qabeessa malee itti-gaafatamummaa abbootii seeraa mirkaneessuu keessatti irra caala filatamaa dha. Kun immoo tattaaffii abbootiin seeraa murtii haqaa kennuuf qaban kan cimsu dha.[13]

Biyya Ameerikaatti sadarkaan ragaan balleessummaa nama yakkaan himatame tokkoo itti mirkaneessuu qabu gita mirkaneessa shakkii dhama qabeessa malee jedhamuun beekamuu dha. Biyyoota sirna seeraa *'koman loo'* hordofan keessaas biyyi Ameerikaa yaadrimee *shakkii dhama qabeessaa* jedhamu kana babal'isuun ishii hangafa[14]. Yaadrimeen kun manneen barnoota seeraa, beektota seeraa fi manneen murtii Ameerikaa keessatti dhimmoota falmisiisaa fi ilaalchi adda addaa irratti calaqqisu keessaa isa tokko dha[15].

Hojiitti hiikinsa irratti falmisiisaa haata'uyyuu malee yaadrimichi heera Ameerikaa fooyya'iinsa 14 ffaa irraa jalqabee beekamtii kan argatee fi dhimmoota yakkaa irrati sadarkaa mirkaneessaa barbaadamu /*requisite standard of proof*/ dha[16]. Nama tokko irratti dhimma yakkaatiin murtii

[10] Akkasumas qajeeltoowwan gita mirkaneessa ragaa kunneen ilaalcha 'continental law is irrational; and common law is irresponsible' jedhuufis kan ka'uumsa ta'anii dha. Olitti yaadannoo lakk.3, F464

[11]The difference between these legal orders is not just doctrinal nor a matter of degree. They conceptualize proof differently. On the continent proof is understood as a stirictly subjective impression in the judges mind where American law of evidence aims at objectivity. Akkuma lakk. 11ffaa, F465

[12] Akkuma lakk. 12ffaa, F436

[13] The reasonable-doubt standard sounds 'only convict if you are sure you can take on responsibility for this decision.' By contrast, the prepondarence of the evidence and other instructions can be interpreted as a tool for exonerating judges from personal responsibility. Akkuma lakk. 13ffaa, F464.

[14] Olitti yaadannoo lakk.4, F70

[15] Akkuma lakk. 14ffaa.

[16] Akkuma lakk. 15ffaa, F44

balleessummaa kennuuf ulaagaa guutamuu qabuu fi heerawaa yoo ta'ellee, *mirkaneessi shakkii dhama qabeessaa* kun biyya Ameerikaattis qabiyyee isaatiif hiikkaan kenname hin jiru.

Beektoni seeraa biyya Ameerikaa hedduun yaadrimee *shakkii dhama qabeessaa* kana hiikuu fi qabiyyeesaa ibsuuf yaalii adda addaa taasisaniiru. Gariin isaanii immoo gaalee kana caala yaadrimicha ibsuuf yaaluun balaa qaba yaada jedhuun hiikkaa kamiyyuu kennuu irraa akka of qusatan barreessaniiru. Beektota kanneen keessaa yaada hayyuu seeraa 'Wigmore' jedhamuu haa ilaallu:

> *Reasonable doubt is a normative legal standard with which triers of fact must demonstrably comply because it is binding. The principle of legality commands that legal rules must be certain. The rule of proof beyond a reasonable doubt must be certain to the fact finder no less than to the defendant. Once it is certain, the fact finder, in applying it will be certain that he is carrying out his democratic and legal duty to render justice*[17].

Akka barreessaa kanaatti sirni gahuumsa sadarkaa ragaa itti madaallu '*shakkii dhama qabeessa* ' jennu kun ogeessota dhugaa barbaadaniif /fact finders[18]/ qixxuma himatamaa beekamuu akka qabu kan agarsiisuu dha. Ibsa gabaabaadhaan dhugaa barbaaddotni ragaan raawwatamuu gocha yakkaa agarsiisu tokko *shakki dhama qabeessa malee* qulqulleesseera jechuudhaaf dhugummaa ragichaa fi raawwatamuu gocha yakkaa sanatti guutumaan guutuutti itti amanuu fi ofitti fudhachuu qabu akka jechuu ti.

Biyya Ameerikaatti manni murtii waliigalaa seera biyyittii hiikuudhaaf qaama isa olaanaa dha. Murtii fi hiikkaan mana murtii kanaan kennamus manneen murtii sadarkaa gajjallaatti argamaniif dirqisiisaa waan ta'eef manneen murtii sadarkaa gara garaatti argaman murtii mana murtichaa akka seeraatti bu'uureffachuun hojii seera hiikuu raawwachuu qabu[19].

Manni Murtii Waliigalaa Ameerikaa kun kaayyoo fi sababa sadarkaa mirkaneessa shakkii dhama qabeessa malee akka itti aanutti ibseera:

---

[17] Akkuma lakk. 16ffaa, F71-74

[18] Fact finders often have the job of determining what facts are available and their relevancy. The position of fact finder is determined by the type of proceeding. In a jury trial, it is the role of a jury in a jury trial. In a non-jury trial, the judge sits both as a fact-finder and as the trier of law. In administrative proceedings it may be a hearing officer or a hearing body. Kan argamu: www.en.wikipedia.org/wiki/Trier_of_fact

[19] Olitti yaadannoo lakk.4, F77.

In a criminal case...the interests of the defendant are of such magnitude that ... they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgement. In the administration of criminal justice, our society imposes almost the entire risk of error upon itself[20].

Sadarkaan mirkaneessaa kun hanga danda'ametti himatamaan dogongoraan akka hin adabamne eegumsa olaanaa gochuufi amantaa jedhu irraa kan madde akka ta'e hubachuun ni danda'ama. Sababa gahuumsa ragaatiin murteen dogongoraa himatamaa yakkaa irratti kennamuu danda'a jedhamee yeroo yaadamu, bulchiinsa sirna haqa yakkaa keessatti miidhamaa yakkaa kan ta'e hawaasni dogongora uumamuuf of saaxiluutu filatama ejjennoo jedhu dha. Ibsa gabaabaadhaan himatamaan shakkiidhaan adabamuurra, carraan balleessaa qabaachuu isaa osoo jiruullee, gadhiifamuu wayya jechuu dha. Manni Murtii Waliigalaa kun hiikkaan gaalee shakkii dhama qabeessa jedhuuf yeroo gara garaatti kennes yaaduma kana kan bu'uureffate dha[21].

Akkuma biyya Ameerikaa, Inglizzi keessattis xiyyeeffannoo olaanaa bilisummaa lammiileetiif kenname irraa kan ka'e sadarkaan ragaan seeraa balleessummaa himatamaa itti mirkaneessuu qabu *shakkii dhama qabeessa malee* isa jedhu kana dha[22]. Ka'uumsi yaada kanaas qajeeltoo seera yakkaa beekamaa ''namootni qulqulluun balleessaa jedhamuurra yakkamtootni bilisa gaggeeffamuu wayya'' isa jedhu dha[23].

Gita mirkaneessa ragaatiin walqabatee biyya Inglizziitti hiikaan beektotnii[24] fi abbootiin seeraa yaadrimee shakkii dhama qabeessaatiif kennan qajeeltoo armaan olii irratti kan hundaa'e dha. Hiikaan abbaa seeraa '*Denning*' jedhamuun kenname kan itti aanee dhiyaate dha.

---

[20] Olitti yaadannoo lakk. 3, fuula 443.

[21] Dhimma 'Coffin's case' jedhamee beekamu irratti dursaa haqaa /Chief Justice/ kan turan '*Shaw*' Manni Murtii Waliigalaa Ameerikaa hiikkaa akka kennu oliyyataan kan gaafatan yoo ta'u,manni murtichaas, ''Reasonable doubt was "... of necessity the condition of mind produced by the proof resulting from the evidence in the cause[21]" jechuun ibseera. Akkuma lakk. 20ffaa, F78.

[22] Akkuma lak 21ffaa, fuula 80

[23] Akkuma lak 22ffaa.

[24] Beektota seeraa Inglizzi keessaa hayyuun 'Stone' jedhamu qabiyyee yaadrimee shakkii dhama qabeessaa jechoota armaan gadiin ibsuuf yaaleera. ''The standard of proof beyond a reasonable doubt relates to the cumulative effect of the whole evidence adduced in the case and constitutes the basis on which a verdict of guilty may be grounded if the evidence as a whole complies with the standard. The requisite standard is stated in terms of belief and not in probabilistic terms. Akkuma lakk. 23ffa, fuula 85

> *Reasonable doubt ... need not reach certainty, but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond a shadow of doubt.* **...** *If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond a reasonable doubt, but nothing short of that will suffice*[25].

Hiika '*Denning*' qabiyyee yaadrimichaa irratti kenne kana yeroo ilaallu immoo gitni mirkaneessa shakkii dhama qabeessa malee jennu kun carraan balleessummaa himatamaa sadarkaa olaanaadhaan jiraachuu kan ibsu malee % /dhibbeentaa/ 100 dhugummaan isaa mirkanaa'uu qaba jechuu akka hin taane kan agarsiisu dha. Himatamaan balleessaa jedhamerraa bilisa ta'uuf carraan garmalee dhiphaan jiraachuu waanti agarsiisu yoo jiraatellee shakkii dhama qabeessa malee hin mirkanoofne akka hin jechisiisne ibsa olii irraa ni hubatama. Akkuma armaan olitti ilaalame, yaadrimee fi gita mirkaneessa ragaa kana irratti ogeessaa fi ogeessa jidduutti, mana murtii tokkorraa mana murtii isa biraa jidduutti hubannoon jiru garaa garummaa hiikkaa muraasa qabaachuun isaa akkuma jirutti ta'ee, biyyoota sirna koman loo hordofanii fi biyyoota bulchiinsi sirna haqa yakkaa isaanii kan warra koman loo' tiin oofame (influenced) hedduu, kanneen akka Afriikaa Kibbaa[26], keessattis gitni mirkaneessaa kun hojiirra oolfamaa jira.

Gama biraatiin, biyyoota Awurooppaa kontineentaal keessaa yaadrimeen gita mirkaneessa ragaa amansiisaa /*intime coviction*/ yeroo ka'u biyyi Faransaay adda-durummaan kan waamamtuu fi sirnichas bifa ifa ta'een diriirsitee kan qabduu dha. Seera deemsa falmii yakkaa Faransaay keewwatni 353 ergaa akka itti aanutti taa'e kan qabu dha.

> *The law doesn't ask the judges to account for the means by which they convinced themselves; it does not charge them with any rule from which they shall specifically derive the fullness and adequacy of evidence. It requires them to question themselves in silence and reflection and to seek in the sincerity of their conscience what impression has been made on their reason by the evidence brought against the accused and the*

[25] Akkuma lakk 24ffaa

[26] Dhimma '*Queen v Benjamin'* jedhamuun beekamu irratti manni murtii Afrikaa Kibbaa oliyyata ilaalu, hiikkaan gita mirkaneessa ragaa irratti hiikkaa yoo kennu; ''...there should not be a conviction unless the crime charged has been clearly proved to have been committed by the accused. Where the evidence is not reasonably inconsistent with the prisoner's innocence, or where a reasonable doubt as to his guilt exists, there should be an acquittal'' jedheera. Akkuma lakk. 25ffaa

arguments of his defence. The law asks them but this single question, which encloses the full scope of their duties: are you inwardly /to your self/ convinced?[27]

Akka seera warra Faransaay kanaatti, abbootiin seeraa ragaan dhiyaate guutuu fi amansiisaa ta'uu isaa amanuu isaaniitiif sababa agarsiisuudhaaf hin dirqaman. Kan seerri abbootii seeraa irraa barbaadu ragaa dhagahanii erga xumuranii booda himatamaan yakka ittiin himatame raawwateera jedhanii amanuu danda'uu dha. Kanaaf biyya Faransaayiifi biyyoota Awurooppaa kontineentaalii birootiif gitni mirkaneessa ragaa barbaadamu amantaa dhuunfaa abba seeraa dhimmicha ilaalee irratti qofa kan hundaa'u dha.

Gara biyya keenyaatti yeroo deebinu, gitni mirkaneessa ragaa murtii balleessummaa yakkaa kennuuf barbaachisu seerotas ta'e heera keenyaa keessatti ifatti kan taa'e miti[28]. Haa ta'uyyuu malee, barreessitootni tokko tokko dhiibbaa muuxannoo Aangloo-Ameerikaa irraa dhufeen manneen murtii keenya qabatamaadhaan gita mirkaneessa shakkii dhama qabeessaa hojiirra oolchaa akka jiran ni eeru.[29] Dabalataanis barreessitootni kun, tumaalee seera deemsa falmii yakkaa keenya xiinxaluudhaan sadarkaan mirkaneessa ragaa biyya keenyaa yaadrimee shakkii dhama-qabeessaa waliin akka walgituutti kaa'aniiru[30]. Kana agarsiisuuf kan fayyadaman keessaa tokko immoo dubbisa garagaltoo (a contrario reading) S/D/F/Y kwt 141 ti. Hima keewwatichaa haa ilaallu.

When the case for the prosecution is conducted, the court if it finds that no case against the accused has been made out which, if unrebutted, would warrant, his conviction, shall record an order of acquittal.

...ማፍረሻ ማስረጃ ማቅረብ ሳያስፈልግ ተከሳሹን ጥፋተኛ የሚያደርገዉ ሆኖ ባልተገኘ ጊዜ እና ማስረጃዉ በቂ ሆኖ ሳያገኘዉ የቀረ እንደሆነ ተከሳሹ በነጻ እንድለቀቅ ፍርድ ቤቱ ያዛል።

Yaada keewwata kanaa irraa akka hubatamu ragaan seeraa himatamaa irratti dhiyaatu manni murtii himatamaan balleessaa qabaachuu akka amanu kan dandeessisuu fi ragaa biraan yoo

[27] Olitti yaadannoo lakk.3, F440.

[28] Aderajew Teklu fi Kedir Mohammed, Maateriyaalii Seera Deemsa Falmii Yakkaa Itoophiyaa Irratti Moojulii Yuunivarsiitotaaf (Baruu fi Barsiisuuf), Gargaarsa Instiitiyuutii Qorannoo Seeraa Federaalaatiin Qophaa'e, Bitootessa, 2009 F 272-276

[29] Akkuma lakk. 28ffaa, F272

[30] '… if the defense evidence(s) produced by the accused can falsify the evidence of the prosecution or at least shade a reasonable doubt, the court must decide for the acquittal of the accused …
Akkuma lakk. 29ffaa, F275

faccifame malee himatamaan yakkamaa dha jechuufis kan quubsu ta'uu qaba. Hiikkaa afaan Amaaraa fi Ingliffaa jidduus garaagarummaan jiraachuu ni mul'ata. Hiikkaan afaan Amaaraa manni murtii ragaan dhiyaate gahaa ta'ee yoo argamuu baate himatamaa bilisaan gaggeessa jedha. Kanaaf murtii balleessummaa kennuuf ragaa gahaa ta'etu barbaadama jechuu dha. Akkasumas ragaan dhiyaate himatamaa irratti murtii balleessummaa kennuuf kan dandeessisu ta'uu qaba. Ragaan dhiyaate gahaa ta'uu qaba inni jedhu garuu ammas yaada ifa ta'e miti. Ragaa gahaa hin taane kan jedhamuu fi himatamaan bilisaan akka gaggeeffamu kan ajajamu ragaan dhiyaate gita kamitti mirkaneessuu yoo dadhabee dha. Kuusaan jechoota seeraa tokko gaalicha yeroo hiiku akkas jedha: ''*insufficient evidence is a finding (decision) by a trial judge or an appeals court that the prosecution in a criminal case ... has not proved the case because the attorney did not present enough convincing evidence*''[31]. Hiikkaan kun ragaan gahaa hin taane jedhamu kun amansiisuu irratti gahuumsa kan hin qabne akka ta'e kan hubachiisuu yoo ta'ellee, gahaan hammam akka ta'e garuu kan adda baasee agarsiisu miti.

Ibsa biraatiin, ragaa gahaa hin taanee fi murtii balleessummaa kennuuf hin dandeessisne yeroo jennu balleessummaa himatamaa irratti manni murtii shakkii dhama qabeessa yeroo qabaatu akka jechuu ti. Kanaaf ibsi keewwata kanaa, dhimmoota '*Holt v United States*' fi '*Queen v Benjamin'* olitti ilaalle keessatti hiikkaa yaadrimee *shakkii dhama qabeessaaf* manneen murtii Ameerikaa fi Afrikaa kibbaa,duraa duubaan, kennan waliin kan walfakkaatu ta'uu hubachuun ni danda'ama.

Akkasumas sadarkaan mirkaneessa balleessummaa yakkaa kan biyya keenyaa shakkii dhama qabeessa bu'uureffachuu isaaf agarsiistuuwwan gara garaa biroos ni jiru. Inni tokko, S/D/F/Y keenya (bara 1954) yeroo wixineeffamu irra caalaa akka maddaatti kan gargaare seerota biyyoota sirna koman loo hordofanii ta'uun isaa fi biyyootni sirnicha hordofanis gita mirkaneessa ragaa shakkii dhama qabeessaa kana kan fudhatan ta'uu isaa ti.[32] Inni kan biraa qajeeltoowwan ammayyaa heeraa fi seera deemsa falmii yakkaa keenya keessatti haammataman bilisummaa lammiileetiif gatii olaanaa kan kennan ta'uu isaati[33]. Mirgooleen bu'uuraa heericha keessatti hammataman kunneenis bifa walqixxummaa, bilisummaa akkasumas kabajaa namoomaa guddisaniin hiikamuu akka qabanis ni beekama. Kanaaf eeggumsi olaanaan mirgoota kanaaf

[31] Kuusaa jechoota seeraa 'legal dictionary' jedhamu irraa kan fudhatame, Toora Intarneetiii (http://legal-dictionary.thefreedictionary.com/insufficient+evidence) irratti kan argamuu fi sadaasa 21, 2004 kan ilaalame.
[32] The Ethiopian courts had British-influenced, adversary procedures since 1941 at least. The Code's sporadic relationship to Malayan, and therefore, ultimately, Indian law, derives from the influence of Sir Charles Mathew's drafts. The overall flavor of the law is adversary. Stanley Z. Fisher, Ethiopian *Criminal Procedure: A Source Book*, 1969, F(ix-xii), olitti yaadannoo lakk. 28(F73 fi 74) kana kessaatti akka caqasame.)
[33] Heera mootummaa RDFI, keewwata 17

akka godhamu immoo gitni mirkaneessa balleessummaa yakkaa *shakkii dhama qabeessa* ta'uu akka qabu nutti agarsiisa. Muuxannoon biyyoota mirga bilisummaa namootaaf eeggumsa olaanaa gochuun beekamaniis kan agarsiisu isuma kana.

Bilisummaa namootaaf xiyyeeffannaa olaanaan kennamuu kan agarsiisu tumaan heera biyya keenyaa keewwatni 17 *''No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law''* jechuun ibseera. Heerichi hima olii kanaan eegumsi olaanaa bilisummaa namoomaaf kennamuu akka qabu yoo kaa'ellee, seerri /labsiin/ sadarkaa ragaan abbaa alangaa balleessummaa nama yakkaan himatamee itti mirkaneessuu qabu adda baasee kaa'u hin jiru. Kun immoo kaayyoon tumaa heeraa kun galma akka hin geenye kan taasisu dha.

Gara naannoo keenyaatti yeroo dhufnu immoo hanga ammaatti adeemsi falmii yakkaa qaamolee haqaa naannichaa keessatti gaggeeffamu S/D/F/Y/Itoophiyaa olitti ilaalle bu'uureffachuun yoo ta'u, yeroo ammaa garuu wiixineen seera deemsa falmii yakkaa Oromiyaa qophaa'ee akka jiru ni beekama. Mootummaaleen naannoo RDFI seera deemsa falmii yakkaa mataa isaanii baafachuuf aangoo qabaachuu fi dhabuu waliin walqabatee gaaffileen yeroo ammaa ka'aa jiran akkuma jiranitti ta'ee, ijoo qabanne kanaan walqabatee wixinichi filannoo 1ffaa fi 2ffaa jechuun tumaan kaa'e yoo ilaalamu sadarkaa mirkaneessa ragaatiin walqabatee seera deemsa falmii yakkaa Itoophiyaa hojiirra jiru caalaa yaada ifa ta'e tokko kan hammate fakkaata. Wixinicha keewwatni 318 akka itti aanutti kan taa'e dha.

Filannoo 1ffaa

1. *Manni murtii himannaan himatamaa irratti dhiyaate ifaa fi amansiisaa haala ta'een balleessummaan isaa hin mirkanoofne jedhee yoo amane ofirraa ittisuun osoo hin barbaachisiin bilisaan akka gaggeeffamu ni murteessa.*

Filannoo 2ffaa

1. *Manni murtichaa himannaan himatamaa irratti dhiyaate shakkii sababa gahaa ala ta'een balleessummaan isaa hin mirkanoofne jedhee yoo amane ofirraa ittisuun osoo isa hin barbaachisiin bilisaan akka gaggeeffamu ni murteessa. Jedha.*

Xiinxala Dhimma Mana Murtii Olaanaa Godina Arsii Lixaa Galmee Lak 10695 tiin Murtaa'e

Gara xiinxala murtii manni murtichaa kenneetti seenuuf adeemsa manni murtii ragaa ittisaa itti dhagahe ilaaluu irraa haa jalqabnu. Akka seerri deemsa falmii yakkaa jedhutti ragaan abbaa alangaa dhagahamee akka xumurameen gochaan manni murtii raawwachuu qabu ragaan dhiyaate murtii balleessummaa kennisiisuuf gahaa dha moo miti isa jedhu madaaluu dha. Erga madaalee raawwatees gahaa ta'uu yoo itti amane himatamaan akka ofirraa ittisu ajaja /decree/[34] kennuu dha[35]. Ajaja kana kennuuf immoo ragaan dhiyaate gita seerri barbaaduun madaalamuu qaba jechuu dha. Manni murtii kun garuu ragaa abbaa alangaa dhagahee akka xumureen madaallii tokko malee ragaan ittisaa himatamaa akka dhiyaatu ajajeera. Gochaan kun immoo ragaan abbaa alangaa balleessummaa himatamaa osoo itti hin mirkaneessiin dirqama mirkaneessuu /*burden of proof*/ himatamaatti dabarsuu ta'a. Dirqamni akkanaa immoo himatamaatti kan darbu ragootni abbaa alangaa akkaataa himannootiin balleessummaa himatamaa yeroo mirkaneessanii fi ragaan argame himatamaa balleessaa jechisiisuuf kan gahu yeroo ta'e dha. Manni murtii ajaja kana kennuuf himatamaan gochaa yakkaa ittiin himatame raawwachuu isaatiif *amantaa cimaa*[36] balleessummaa isaa murteessuuf gahu qabaachuu mirkaneeffachuu qaba. Akkasumas manni murtichaa ragaa ittisaa dhagahuudhaaf ajajuun dura balleessummaa himatamaa irratti shakkii dhama qabeessa ta'e tokko illee hin qabu yoo ta'e dha[37]. Manni murtii kunis himatamtootaan ofirraa ittisaa jechuudhaan dura gahuumsa ragaa abbaa alangaa sadarkaa kanatti madaaluu qaba. Haa ta'uyyuu malee manni murtichaa gahuumsa ragaa abbaa alangaa haalli itti madaale hin jiru. Kun ta'uu dhabuun isaa mirgaa fi bilisummaa himatamtootaa daran kan dhiphisee fi qajeeltoo heeraa *namni himatame hanga balleessaa jedhamutti akka qulqulluutti lakkaa'ama* jedhu kan diige dha[38].

Dabalataanis gochaan mana murtichaa mirga dhagaha madaalawaa argachuu himatamtootaa kan hambise dha. Kun immoo manni murtichaa himatamaan ragaa ittisaa isaa akka dhiyeeffatu ajajuun dura of-eeggannoo barbaachisaa fudhachuu dhiisuu irraa kan madde dha. Manni

[34] In practice, after going through all admissible evidences produced by the public prosecutor primarily and examining where relevance to the proof of the fact (s) in issues the court shall reach in to a decision, which is referred as **"**Beyen**"** in Amharic**.** Olitti yaadannoo lakk.28, F72

[35] Seera Deemsa Falmii Yakkaa Itoophiyaa, Lab.Lakk. 1/1954, Kewwata 141

[36] ' …the court shall order the accused to defend himself only when it believes that " based on the evidences of the prosecutor the accused is guilty'' and when the believe is strong …' Olitti yaadannoo lakk. 28, F274

[37] The burden of proving the guilt of the accused beyond reasonable doubt is on the state, and does not shift to the accused. This is in contrast to the evidential burden which may shift to the accused to rebut a case against him or her.

[38] Heerri RDFI keewwatni 20/3/ 'During proceedings accused persons have the right to be presumed innocent until proved guilty according to law..' jedhee kaa'eera.

murtichaa ragaa ittisaa ajajuun dura ragaan abbaa alangaa dhagahame, yoo ragaan ittisaa himatamaa irraa ittisuu baate, murtii balleessummaa kennuudhaaf kan isa dandeessisu ta'uu itti amanuu qaba ture. Kana gochuu dhabuun isaa mirga bilisummaa himatamtootaa seeraan ala akka daangessuu fi murtii dogongoraa akka kennu isa taasisee jira. Barreessitootni tokko tokko akka jedhanitti, 'himatamaadhaan ofirraa ittisi jechuun, keessattuu himatamtoota abukaattoodhaan osoo bakka hin bu'amne abbaa alangaa ogummaa fi muuxannoo ragaa qoruu qabu waliin falmaniif, murtii balleessummaa kennuu irraa garagarummaa baay'ee hin qabu' jedhu[39]. Yaada kana irraa hubachuun akka danda'amuttis nama yakkaan himatame tokkoon ragaa ittisaa dhiyyeeffadhu jechuun murtii balleessummaa irratti dabarsuu biraa kan hafu akka hin taanee fi xiyyeeffannoon sanaa gadi ta'es kennamuufii akka hin qabaanne dha.

Gara dhimma ijoo xiinxala kanaatti yeroo deebinu gita ragaan abbaa alangaa balleessummaa himatamtootaa itti mirkaneessee fi mirkaneessuu qabu ilaalla. Dhimma armaan olii irraa akkuma hubatamu manni murtii himaticha sadarkaa duraatiin dhagahe, ragaa abbaa alangaa sobaan dhiyaate bu'uureffachuun murtii dogongoraa kennee jira. Manni murtichaa dhugaa jiru irraa maquun murtii akkasii kennuu isaatiif sababoota dhiyaachuu danda'an keessaa inni duraa gitni mirkaneessaa ragaan abbaa alangaa itti madaallame laafaa ta'uu isaati. Ibsa biraatiin manni murtichaa namni yakkaan himatame tokko balleessaa qaba jedhamuuf sadarkaan ragaan dhiyaate himatamaan yakkamaa ta'uu itti mirkaneessuu qabu hammam ta'uun akka irra jiraatu hubatee hinjiru jechuu dha.

Manni murtii kun namni ajjeefame jedhame kun du'uu isaallee karaan itti mirkaneeffate hin jiru. Lubbuun namaa darbuun immoo ulaagaalee yakki ajjeechaa raawwatame jechuudhaaf guuttamuu qaban keessaa tokko akka ta'e ni beekama.[40] Ragaan abbaa alangaa metra 50 irra dhaabbatee reebamuu nama du'e jedhamee ilaalu du'uu /ajjeefamuu/ nama kanaa mirkaneessuu danda'aa laata? Manni murtii hoo meeshaa namni tokko ittiin reebame, qaama isaa rukutame yookin irra deddeebiin dhahamuu yookin dhababuu nama reebamee qofa irratti hundaa'uun du'uu nama tokkoo yookin ajjeesuu nama reebee murteessuuf bu'uura seeraa ni qabaa? Fageenya metra 50

[39] Setting for prosecution is no less than giving the final judgment because the court shall order the accused to defend himself only when it believes that " based on the evidences of the prosecutor the accused is guilty'', hence, the purpose of giving the accused this right to defend himself is to see if he can rebut *this strong believe* and show that he did not commit the alleged crime or show that somebody else committed that crime, if in fact is referred as the best defense. Olitti yaadannoo lakk. 24, fuula 274

[40] Seera yakkaa RDFI, Lab. lakk.414/1996, keewwata 539-541

irraa namni ilaalu tokko namni reebamaa jiru tokko gateettii dhahamuu fi qolomata dhahamuu akkasumas kalee dhahamuu fi cinaacharra yookin sarbaarra dhahamuu adda ni baasa jedhamee yaadamaa? Himatamtoonni nama jedhame ajjeessuu tilmaamuun ni danda'ama ta'a. Ta'innaadhaan /far-fetched probability/ yoo ta'e malee ragaan dhiyaate dhugummaa ragichaas ta'e raawwatamuu gocha yakka ajjeechaa shakkii dhama qabeessa malee amananii fudhachuuf kan nama dandeessisu miti.

Manni murtii tokko murtii balleesummaa dhimma yakkaarratti kennuun dura namni yakkaan himatame sun gochaa itti himatame raawwachuu ragaan dhiyaate kan itti mirkaneesse ta'uu fi gochaan raawwatame jedhame himatamaa irratti murtii balleessummaa kan kennisiisuu danda'u ta'uu mirkaneeffachuu akka qabu ni beekama[41]. Haata'uyyuu malee dhimma harkaa qabnu kana irratti ragaan dhiyaate himatamtootni gochaa ajjeechaa ittiin himataman kana raawwachuu ifatti mirkaneesseera jechuuf gonkuma kan nama amansiisuu miti. Ragaa dhiyaate irraa ka'uudhaan, himatamtootni kun yakka ittiin himataman kana hin raawwatne jedhanii jala muranii dubbachuuf kan nama rakkisu yoo ta'ellee, carraan himatamtootni kun yakka ajjeechaa jedhamerraa bilisa ta'uuf qaban sadarkaa olaanaadhaan jiraachuu nama dhama qabeessa tokko jalaa ni dhokata jedhamee gonkuma kan yaadamu miti. Himatamaan tokko balleessaa jedhamerraa bilisa ta'uuf carraan garmalee dhiphaan jiraachuu waanti agarsiisullee yoo jiraate shakkii dhama qabeessa malee itti mirkanaa'eera akka hin jechisiisne hiikkaa yaadrimichaa armaan olitti kennamerraa kan hubatamu dha.

Manni murtichaa qabatama jiru irraa maquun murtii akkasii kennuu isaatiif sababoota dhiyaachuu danda'an keessaa inni biraa, qorannaan ragaa mana murtichaan gaggeeffame rakkoo kan qabu ta'uu isaati. Jechootni ragaa abbaa alangaa lamaan dhagahamanii kan sobaan qindaa'ee dhiyaate ta'uun isaa kan hubatamuu danda'u dha. Ragaa 1ffaan himatamtootni du'aa yeroo reeban metra 50 irraa fagoo dhaabbannee ilaalaa turre yoo jedhu ragaa 2ffaan metra 20 irraa fagoo turre jedheera. Gargarbaateen jecha ragoolee kun osoo jiruu manni murtichaa kallattiin ragaa himatamtootaa dhagahuutti ce'uun, akkasumas murtii balleessumma kana kennuun isaa mirgii fi bilisummaan himatamtoota kanaa heeraan beekamtii argate salphaatti akka cabu godheera. Manni murtichaa karaalee garaa garaatiin ragaalee kanneen qoruu fi dhugaa jiru irra gahuu ni danda'a. Fakkeenyaaf, ragaan abbaa alangaa 4ffaan yookin ragaan dabalataa biraa yoo jiraate dhiyaatee jecha ragummaa isaa akka kennu gochuun ni danda'ama ture. Ragoolee

[41] Olitti yaadannoo lakk.35 , kwt 141

kanneen gaaffilee qaxxaamuraa fi keessa deebii gaafachuun dhugaa jiru qulqulleessuunis gahee mana murtichaa ture. Manni murtichaa tattaaffiin gamanaan godhes daran gad-aanaa akka ta'e ni hubatama.

Gama biraatiin, gaaffii qaxxaamuraa abbaan alangaa ragaa ittisaa himatamaa 2ffaa gaafate 'yoo jidduun deemee ajjeesee dhufe hoo beektaa?' Jedhuu fi deebii ragaan kenne irratti manni murtii xiyyeeffannaa kennuun qulqulleeffachuu qaba ture. Ragaan ittisaa kun himatamaa kana waliin wal wajjin turre osoo jedhuu abbaan alangaa gaaffii qaxxaamuraati jechuun gaaffii kana fakkaatu kaasuu fi afaan ragoolee ittisaatii 'ani kana hin beeku' jecha jedhu baafachuun waanta yeroo kana amaleeffatamaa dhufe dha. Kan irra caalaa rakkoo ta'e garuu abbootiin seeraa afamaksoo akkanaa callisanii galmeessuun jecha ragoolee ittisaa gatii dhabsiisuu isaaniiti. Abbootiin seeraa gaaffilee fi deebiiwwan akkanaatti xiyyeeffannoo kennuun qulqulleeffachuu danda'uutu irraa eeggama. Fakkeenyaaf dhimma kana irratti bakki yakki ajjeechaa itti raawwatame jedhamee fi bakki awwaalaa fageenya inni walirraa qabu adda baasuun osoo hin beekiin, himatamaan kun bakka awwaalchaa osoo jiruu jidduun yakka ajjeechaa kana raawwatee deebi'e jedhanii yaaduun akkamitti danda'ama? Manni murtii kun himatamaa 2ffaa kana balleessaa gochuun isaas gaaffii olitti abbaan alangaa gaafate kanaaf ragaan ittisaa 'hin beeku' waan jedheef abbaan alangaa gaaffii qaxxaamuraatiin ragaa kana sobsiiseera jedhee yaaduun ta'uu isaati. Kun immoo abbaa alangaas ta'e abbootii seeraa kanneen bira ragaa dhiyaate akkaataa seerri jedhuun qoruu fi madaaluudhaan murtii haqaa kennuu irratti rakkinni xiyyeeffannoo fi hubannoo jiraachuu ifatti kan agarsiisu dha.

Yaada Guduunfaa

Mirgootni bilisummaa dhala namaatiif faaya, eenyummaa, fi kabaja. Kanaaf, mirgootni kun akka laayyootti yookin dogongora salphaatti uumamuu danda'uun akka hin sarbamne eegumsi olaanaa ta'e godhamuufiitu barbaachisa. Qajeeltoon seera deemsa falmii yakkaa beekamaa fi fudhatama olaanaa qabu 'nama qulqulluu tokko xureessuu irra yakkamtootni dhibbi tokko qulqulluu jedhamuu wayya' jedhus yaaduma kana kan deeggaru dha. Kun immoo qaamoleen mootummaa aangoo isaanii seeraan ala fayyadamuun miidhaa bilisummaa, kabajaa fi walqixxummaa lammiilee irraan gahuu danda'an daangessuuf kan gargaaru dha.

Manneen murtii mirgoota bu'uura lammiilee kanneen kabajchiisuu keessatti itti gaafatamummaa olaanaan irratti gatameera. Haa ta'uyyuu malee manneen murtii keenya ittti gaafatamummaa

isaanii kana akka barbaadametti yeroo bahatan hin mul'atan. Dhimma xiinxalame kanatti yeroo deebinu, himatamaan akka ofirraa ittisu ajaja yookin murtii dhumaa kennuun dura manni murtichaa ragaa dhiyaate of eeggannoodhaan xiinxaluu fi madaaluutu irra eegama ture. Kun waan hin taaneef mirga dhagaha madaalawaa /fair trial/ himatamtoota kanaa mirkaneessuu hin dandeenye. Kanarraa kan ka'e mirga murtii haqaa argachuu himatamtootaa sarbeera; namootni qulqulluun yakkamtoota jedhamuun bilisummaan isaanii daanga'eera. Kun immoo bilisummaa lammiilee kabajchiisuu dhabuu irra darbee, manneen murtii amantaa uummataa akka dhaban kan taasisu, bilisummaa abbaa seerummaa mirkaneessuun ulfaataa akka ta'u kan godhu dha.

Rakkoo kana hambisuuf immoo sirna mirgoota lammiileef eegumsa cimaa kennu diriirsuun dhimma filannoo hin qabne dha. Keessattuu, biyyoota sirni haqaa isaanii hin guddanne, hubannoon seeraa lammiilee daran gadi bu'aa ta'ee fi dandeettiin abukaattoo dhaabbachuu namoota yakkaan himatamanii laafaa ta'e, kanneen akka biyya keenyaa keessatti immoo sirni dhagaha madaalawaa eessayyuu caala xiyyeeffannaa argachuu kan qabu dha. Sirna dhagaha madaalawaa karaawwan ittiin dhugoomsuun danda'amu keessaa inni tokkoo fi hangafti sirna gahuumsi sadarkaa ragaa itti madaallamu cimaa ta'e diriirsuu dha. Sirni mirkaneessa gahuumsa ragaa *shakkii dhama qabeessa malee* sirna kamiyyuu caala mirga dhagaha madaalawaa lammiilee mirkanneessuuf mala gargaaru dha. Sababni isaas ragaa dhiyaatu tokkoof ta'innaadhaan seera fulduratti fudhatamni kan kennamu yoo ta'e seerri hawaasa eeguu akka hin dandeenye kan taasisu waan ta'eefi. Sadarkaan mirkaneessuu laafaa yoo ta'e, gama biraatiin, qorannaan yakkaa abbootii alangaa fi poolisiidhaan gaggeeffamu akka dadhabu taasisa, hawaasa keessatti ragaa sobaa gurmeessuun akka babal'atu karaa saaqa. Kun immoo haqni akka dabu, amantaan uummatni sirna haqa yakkaa irratti qabu akka quucaru, nagaa fi tasgabbiin akka dhabamu godha. Akka waliigalaatti, sirna haqaa naannoo tokkootiif kufaatii fiduu danda'a.

Kanaafuu seera deemsa falmii yakkaa sadarkaa naannoo keenyaatti wixineeffamaa jiru keessatti xiyyeeffannaa barbaachisu kennuudhaan rakkoo kana furuun daran barbaachisaa ta'a. Akkuma olitti ilaalame sirni sadarkaa (filannoo) 1ffaa irratti ni diriira jedhamee yaadame, gita mirkaneessa ragaa'*ifaa fi amansiisaa*' jedhu dha. Sadarkaan mirkaneessaa kun biyyoota sirna *koman loo* hordofan keessatti gita mirkaneessa ragaa seera siivilii ti. Gitni mirkaneessaa kun gita mirkaneessaa laafaa waan ta'eef rakkoowwan armaan olitti sirnichatti hudhaa ta'an jedhaman kana furuuf kan dandeessisu miti. Qorannoon wixinichi bu'uureffate jedhames qajeeltoowwan seera yakkaa gurguddoo bilisummaa lammiileetiif wabii ta'anii fi heera biyyaa fi naannoo keenyaa waliinillee walbira qabamee kan hin ilaalamnee dha.

Shakkii sababa gahaa ala ta’een kan jedhu akka filannoo 2ffaatti yaadrimeen dhiyaate barreeffama kana keessatti isa shakkii dhama qabeessa malee (beyond reseanoble doubt) jedhamee ibsame jechuu yoo ta’u, gita mirkaneessa ragaa balleessummaa yakkaa kana seericha keessatti ifatti haammachisuun bulchiinsa haqa yakkaa naannoo keenyaa fulduratti tarkaansfachiisuuf gahee olaanaa ni taphata.

OROMIA JUSTICE SECTOR PROFESSIONALS TRAINING AND LEGAL RESEARCH INSTITUTE: MAJOR ACTIVITIES AND ACHIEVEMENTS[1]

By Milkii Makuria*

Introduction

Justice organs, in all countries, are given the authority to settle on the issues concerning liberty, property, etc of the persons under their respective jurisdiction. Conversely, these issues are becoming intricate, with change in time, demanding highly qualified professionals. To discharge such responsibility efficiently and effectively, justice organs need to be primarily backed by legal training and research. The quality of justice organ professionals is mainly evaluated in terms of qualifications, experience, and integrity. Agreed these criteria, one can appreciate the existence of inherent relationship between legal training and the efficiency of justice organs. Complicated laws and legal issues, increasing caseloads, changes in judge's and prosecutor's recruitment, etc have also increased the demand and need for justice organ professionals training.

The need for institutional training of judges and public prosecutors had long been reflected in different countries. It is now, far and wide, accepted that institutional training of judges and public prosecutors helps litigants from confronting undue delays, excessive costs, and uncertainty in the disposal of court proceedings, and to facilitate easy access to justice. This feeling accelerated with the course of time as the justice organs came to be seen as an instrument for strengthening democracy and establishing the rule of law. Legal research, on the other hand, is also given great concern in the development of law and legal institutions in particular and socio-economic development of countries in general.

Legal training and research are, therefore, serving the following purposes when they befall part of a reform program: building a reform coalition within the judiciary and ancillary institutions, introducing new methods, practices, values, outlooks, and attitudes, identifying problems that may have to be resolved by other reform interventions, and building solidarity and a sense of common objective.

*Previously worked as judge and currently OJSPTLRI legal researcher,(LL.B), e-mail: milkiiw@yahoo.com

[1] Source: OJSPTLRI reports and other relevant documents.

Moreover, to keep swiftness with socio-economic developments in the national and international spheres, the justice organs need to be dynamic, sound, and capable of meeting the requirements of the time. In order to achieve these objectives, it was alleged necessary to train justice organ professionals and to conduct researches related to the administration of justice, as an activity that deserves topmost priority in the reform initiatives. Thus, performing justice organs' professionals training and legal research do have their own contribution to build efficient and effective justice system and to bring sustainable development of a country.

Furthermore, the value of legal training and research can be related to greater public confidence in judiciary and other justice organs. In particular, training of judges, these days, is considered as an essential element of judicial independence, as it lends a hand to ensure the competency of the judiciary. In addition, justice organs professionals are also required to have profound practical legal skills and understandings to solve the increasingly complex and sensitive issues society leaves to be settled by litigation. Besides, justice organs professionals are required to have the appreciation of the role the justice system plays in the political, social and economic spheres. Hence, in an age that is increasingly demanding more judicial independence and excellence in professional skills, the need for justice organs professionals training is perceived to be greater than ever.

These and other similar initiatives have caused the awakening of justice reform in Ethiopia. Consequently, reform of the justice system became a priority and justice organs professionals training and legal research were considered the primary vehicle for advancing reform in Ethiopia after year 2000 when the country urgently needed to adapt its justice system to the demands of the globalized and changing world.

Under the auspices of the Ministry of Capacity Building the Justice System Reform Program was charged with designing a comprehensive reform plan. In February 2005, the Centre for International Legal Cooperation (CILC) had undertaken a baseline study of the Ethiopian justice system and made recommendations for its reform. Introduction of the justice organs' professionals training and legal research and publication centres were among the major recommendations. Rooted in the recommendations, justice organs professionals training and legal research centres were established both at federal and regional level. Oromia Justice

Sector Professionals Training and Legal Research Institute /hereinafter called OJSPTLRI/ is established as a regional implementing agent of the above mentioned justice reform program.

This paper aims at discussing the major activities and achievements of the Institute from its establishment to the present (2007-2011 G.C). For this, it is divided into different parts which include: establishment, management and operation, functions, reforms, achievements, partnerships, challenges and the conclusions. Now, let us see step by step.

1. Establishment of OJSPTLRI

OJSPTLRI was established in 2007 by regulation as an autonomous institution financed by Oromia regional government. The Institute is accountable to the Oromia Supreme Court. The Institute is a young institution established with a view to alleviate the complex problems of the region's justice system.

The Institute is established with the following major objectives; (i) producing sufficient and qualified legal professionals who have a firm stand to defend the constitutional order; (ii) enabling the justice system of the region to build up itself with legal professionals of high competence and professional ethics and who will win public confidence for their commitment to serve the public; (iii) bringing about co-ordinated and uniform service in the justice system based on the principles of rule of law, transparency, and accountability; (iv) bringing about fair, efficient and effective system of justice in the region.

2. Management and Operation of OJSPTLRI

As laid down in its establishment regulation, the Institute has a governing board[2] (council) composed of 9 members headed by the Regional Supreme Court President. The Board is responsible for determining the Institute's training and research policy, approving long-term policies, annual programs, and budgets, reviewing its activities and enacting necessary rules and regulations for its smooth functioning.

In addition to the Governing Council, the Institute is administered by a management Committee of seven members headed by the Executive Director. The Director is the

[2] Pursuant to article 11 of the regulation, the Management Board is indeed high profile and comprises: (a) the President of the Regional Supreme Court, who is also Chairman; (B) Head of Regional Justice Bureau who is the Vice-Chairman; (C) The Regional Capacity Building Bureau Head; (D) The Regional Supreme Court Research Head; (E) The Regional Justice Bureau Research and Law Affairs Head; (F) One Zonal High Court President recommended by the Supreme Court (G) One Zonal Justice Buraeu Head recommended by the Regional Justice Bureau; (H) One Law Faculty Dean from the University recommended by the Board and (I) The Director of the Institute who is also an acting Secretariat.

Institute's full-time chief executive official and responsible for implementing the decisions of the board. He manages the day-to-day administration of the Institute and ensures that the Institute achieves its mission and vision effectively and efficiently. The director also designs, implements, monitors and evaluates a strategic plan, training and research policies and annual programmes that will help OJSPTLRI to attain its vision. The director also supervises the preparation and sensible implementation of the annual budget of the Institute and lead in resource mobilization for the Institute. He is also required to prepare and submit a quarterly report on the programmes and activities of the Institute to the Board and to discharge other functions of OJSPTLRI, as per the instructions of the Board. The director of the Institute is assisted by one deputy director. The Board appoints the Institute's director and deputy director up on the recommendation of the head of the board. The Institute is also empowered to organize and employ key personnel so as to staff and conduct its functions to the full scale[3].

3. Functions of OJSPTLRI

The regulation which established OJSPTLRI also provides an outline of the major activities of the Institute, which can be broadly categorized into two core processes: legal training and consultancy services on the one hand and legal research and publication services on the other hand. The training core process is aimed at helping the justice sector professionals adhere to the highest standards of personal and official conduct and acquire the skills, knowledge and attitude required to perform their responsibilities fairly, correctly and efficiently.

This process has two forms of training programs: initial /pre-service/ training and in-service training. By the initial training, which presupposes a technical training mainly of practical skills, the Institute trains judges and prosecutors who will be operational on leaving this initial training program. Beyond that, the training program also focuses on the essential ethical and attitudinal underpinnings the judges and prosecutors are to be steeped in to hold the position of judge or prosecutor. Practical training is also an integral part of OJSPTLRI's pre-service training. OJSPTLRI Trainee-judges and public prosecutors practice in courts, justice offices and in other government institutions on district level. Beyond developing necessary skills, practical trainings are intended to make trainees aware of the activities of these organizations and help them gain knowledge of other important issues beside the law.

[3] Until the first quarter of 2012, OJSPTLRI staff members are 130, out of which 27 are core process employees (legal trainers and researchers).

On the other hand, the Institute gives in-service trainings. The goals assigned to in-service training include: refreshing or updating knowledge and skills, keeping abreast of changes in legislation and practice, preparing for the performance of new duties, sharing good practices and promoting self development, providing a forum for reflection on important issues, etc. In-service training is considered as ethical responsibility of judges and prosecutors. The in-service training programme is of two kinds: short term in-service training which lasts for five days and long-term in-service training which extends up to five months. In-service short term training is short program that typically used to increase understanding of and generate enthusiasm for a reform program (e.g. introduction of new laws, new conventions, new practices, etc.).

Regardless of their types, OJSPTLRI training programmes are mainly designed to improve justice organ professionals' performance by: preparing judges and prosecutors for performing their duties, updating them in new methods, laws and other knowledge and guaranteeing greater consistency in judicial decisions.

The research process, on the other hand, is aimed at conducting researches to bring and preserve a systematic, uniform and effective justice delivery system in the region.

On the whole, OJSPTLRI is responsible for the following major functions: (a) conducting training, orientation, and workshops for judges, public prosecutors, legal officers, and public advocates and etc; (b) undertaking research and publications pertaining to law and justice; (c) Providing consultancy services to the government and justice organs on any matter relating to the justice system; (e) arranging and conducting regional conferences, workshops, and symposia to improve the justice system and the quality of justice organs professionals work; (f) determining the subjects of study, curriculum, and all other matters relating to training programs; (g) awarding certificates to those trained by OJSPTLRI; (h) Orienting to new technology and practices in the field of law and justice; (i) linking training with efficient, speedy, and accessible justice; (j) introducing programs to make the legal profession competitive, service oriented, and effective; (k) working as a liaison with similar institutions and other international organisations or associations in other countries to improve the quality and effectiveness of legal training and research in the field of law and justice; (l) carrying out any work, as determined by rules, to activate the justice administration system**.**

To sum up, the Institute works to improve the administration of justice, to ensure access to justice and to enhance public trust and confidence in the justice organs. In other terms the Institute strives for an impartial, competent, inexpensive, speedy and accessible justice in the region.

4. Reforms

Since the launch of reform programs in 2009, efforts have been underway to bring about a fundamental change in the way that OJSPTLRI serves its stakeholders and clients with regard to accessibility, quality, efficiency as well as effectiveness. In this respect, different change management programs, projects and implementation strategies have been designed and implemented consecutively. For the realization of the reform programs' objectives, different reform sub-programs and projects were designed and are being implemented. The Institute is thriving in managing these change programmes and measuring their progress and results. The Institute has also been trying persistently to identify performance gaps and take relevant remedial measures. With this regard, the effort made to introduce and implement BPR and BSC are the major deeds geared towards establishing workable performance management and measurement systems. BPR has been introduced in 2009 in which OJSPTLRI has redesigned its processes. In addition to BPR, the Institute has launched and entered into full scale implementation of the BSC project in 2011, which is a management and measurement system and communication tool.

The Institute is implementing these two change management tools in harmonious manner so that the final desired outcome of both change management tools could be achieved. The Institute is also trying to align up BPR with BSC which plays a fundamental role for effectively executing the strategy. OJSPTLRI have also been trying to reshape and adjust its business processes by recalibrating BPR. With regard to these efforts, the Institute could be said to have achieved cheering outcomes which renders it the leading institution compared to other governmental agencies in the region. Therefore the substantial amount of work done in introducing reform tools (BPR and BSC) and the development of strategic plan may be considered as one of the OJSPTLRI major achievements.

The reforms have re-set the vision[4] and mission[5] of the Institute. Based on the vision and mission set, the Institute has developed a five-year strategic plan (2011-2016) emphasizing on solving the justice system problems through training and research programs.

5. Achievements of OJSPTLRI

The efforts and achievements of OJSPTLRI, despite its young age, are noteworthy. The Institute commenced operations in the same year it was established. In particular, the Institute has trained over 875 law professionals in the initial training from the year 2007-2011, who have joined the justice sectors as appointee judges and prosecutors. Similarly, more than 10,346 professionals including judges, public prosecutors, public defenders, police investigators, custom's authority prosecutors were trained in the short term in-service training programs from the year 2007-2011. By the long-term in-service training, which was first launched in 2010, 817 judges and public prosecutors were trained. The impact assessments conducted previously have also demonstrated that the Institute, since its commencement, has contributed meaningfully, in capacitating professionals and in promoting sense of professionalism in the justice system of the region.

In order to be effective and outcome evaluative, the Institute conducts needs assessment before launching its in-service trainings at the end of every year and the overall training impacts on two year basis in collaboration with the research process, which can also be cited as a cause for the success of most of its training programs. Thus the functions of the two core processes are run in an integrated way so that they can feed each other and minimize cost and duplication of efforts. In line with training delivery function, OJSPTLRI conducted more than 15 research projects and presented to workshops from the year 2008–2011 in its research process. The researches have had a great contribution in improving the justice system and the quality of OJSPTLRI training. The process has also conducted researches on and drafted appropriate training, consultancy and research policies of the Institute. The Institute has also begun publishing a yearly Law Journal- entitled *Oromia Law Journal*.

---

[4] Vision: 'by 2020 our competency in the legal training and research will have secured us to be a preferred centre for justice organ professionals training and legal research in Ethiopia and a recognized one in Africa'

[5] Mission: 'giving an un interrupted training to ensure the competency of our justice organ professionals in protecting the constitutional and legal order; and conducting legal research to identify and to resolve problems of justice system in order that bring about continuous justice reform.

6. Partnership

Apart from its regular activities, OJSPTLRI has also successfully organized training programs in partnership with different regional and international organizations. Several donor and governmental agencies have provided capacity building supports to OJSPTLRI which focuses on: (a) professional assistance; (b) development of training curricula, development and implementation of training courses for the target groups of OJSPTLRI, (c) management, financial and institutional development; etc. These supports are aimed at enabling the institution to provide well-structured professional training and research, thus increasing the justice organ professionals efficiency and enhancing these organs to understand their roles and responsibilities. Among these International agencies, the major are international senior lawyers project (ISLP), American Bar Association (ABA), and PSCAP. The Institute is also working in collaboration with Addis Ababa University Law School senior lecturers to build the capacity of its trainers and researchers.

OJSPTLRI, recognizing the importance of experience sharing and exposure, is also participating in some international conferences related to the justice system reform. For instance, the Institute has sent its director to France-Bordeaux at the fifth international training conference of the judiciary in 2011, for exposure to the justice organs professionals training programs and experiences of different countries. OJSPTLRI has also sent some of its core staff members for academic up grading to some reputed universities in the country and outside.

7. Major Problems

There is no doubt that OJSPTLRI has played an important role in advancing the region's justice system reform movements and improving specific aspects of justice organs professionals' performance. Although initial results have been relatively positive, the overall performance of the institution has not been optimal. These non-optimal results should not, however, come as a surprise. Because, this institution is still new and in a phase of initial trialling.

There are seen challenges such as: over-reliance on classroom training, insufficient field follow-up, absence of adequate and systematic training evaluation, and a failure to introduce complementary changes that would encourage participants to apply their new skills and outlooks. The development of a quality curriculum has also been a challenge for the

Institute, as it must take into account the needs and problems, as well as the practical ground realities of various target groups.

There also existed challenges related to quality of the training especially with respect to the teaching methods and aids used. The teaching aids available to trainees are mainly handbooks and case studies. The role of modern teaching aids like digital media (websites, discussion forums, e-learning platforms, audio and video materials, etc.) are not yet properly and effectively integrated in our training methods. In some theoretical training, trainees are also learning in impersonal lecture halls than in small groups. The work practice trainings in courts and various partner institutions is not a full-scale work experience with the trainee performing judge's or prosecutor's duties. Judges or prosecutors who should follow up and act as training supervisors of the trainees' are also not formally represented.

Centralisation of training is another awkward for OJSPTLRI which is covering a large geographic area including substantial rural or remote areas. The difficulty in getting away from remote rural locality and the financial costs and time wastage of travelling to OJSPTLRI central location for training are major barriers for some judges and public prosecutors in the region. The professionalization of trainers and researchers is also another problem of OJSPTLRI. There are no adequate training and education opportunities to these core staff members. Accordingly, it is not difficult to appreciate the afore-mentioned challenging areas, working methods, styles, and/or approaches etc are where transformation measures would seem urgent.

8. Conclusions

In denoting the importance of training, *Alvin Tofflers* once wrote, "the illiterate of the 21st century will not be those who cannot read or write but those who cannot learn, unlearn and relearn." He wrote this as he understood that training significantly determines the professional competence, integrity and ethics of these personnel who will in turn help to persistently win greater public confidence. Legal research also plays a great role in making justice system uniform which again improves the efficiency and effectiveness of justice delivery. It is cognizant of this that training and research became focal areas of OJSPTLRI.

So far, OJSPTLRI has accomplished several training programmes and research projects. In spite of the aforementioned challenges, the impacts of these accomplishments are also

encouraging in reforming the justice system of the region as a whole. Hence, every support from government, NGO's and any other concerned body nationally and internationally to the Institute is highly recommended.