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In this Issue:

Law and Development from Theory to Practice

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Original Article

Law and Development from Theory to Practice

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Abstract

The nexus between law and development remained varied, elusive, complex, and non-linear. This paper has three purposes; first, it introduces the historical development of 'law and development' in academic circles. Moreover, it engages with the scholarly debate on the nexus between law and development. Furthermore, it discusses the relevance of the state in bridging law and development praxis. This paper analyzes Ethiopia's law and development praxis from the Haile Selassie regime up to incumbent Prime Minister Abiy's Administration. This paper concludes that all Ethiopian regimes had inherited fragile states, and all assumed political power not through the ballot box but through guns or revolutions. Either way, the route to a throne has been violent. It concludes that underdevelopment and state legitimacy have remained unresolved issues further complicating law and development in Ethiopia.

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I. Introduction

David M. Trubek and Alvaro Santos – describe the three phases of law and development as ‘moments.’ The first moment gained significance after the Second World War, which was influenced by *modernization* theory advanced in the 1950s and the 60s by scholars such as Walt Rostow.[1] The second moment was when law and development were resuscitated in the 1980s and the 90s after the fall of the Soviet bloc, with the *proliferation of neoliberal law reform* projects. The third moment took place in the late 1990s. Unlike the two preceding movements, the third advocates a more *holistic development*; and promotes the rule of law as an integral part of the development objective.[2]

In the 1960s American aid programs and foundations were believed to be the initiators of law and development movement. The approach to development was ‘modernization’ – mimicking the development trajectories of the West – was recommended to the developing countries. Ohnesorge notes also that ‘the modernization orthodoxy was not concerned only with economic development but saw development as a process by which ‘traditional’ or ‘backward’ societies would transform along a host of dimensions to become ‘modern’. Thus, it assumed that ‘underdeveloped countries would follow a path roughly like that of developed capitalist countries. Legal scholars of the early law and development proponents embraced the modernization theory and attempted to transplant legal principles, standards, legal institutions, and legal theories from the West to the rest. In the 1960s, under the Haile Sellasie regime, Ethiopia opted to promote the modernist development approach.[3]

The modernization theory had faced significant criticism and was thus attacked by the ‘path dependency’ theorists, and experiences from the Northeast Asian Countries. For the dependency theorists, underdevelopment is a ‘self-reproducing structure’, and it needs to be understood from the historical trajectories of the third-world states. Today’s ‘third world’ countries were incorporated into the expanding capitalist economy through colonialism, slave trade, and exploitation of the resources of that region. Thus, ‘underdevelopment and dependency reflect more than the diverse historical origins of formulations that have fused into a single concept.’[4] In other terms, the development of the North is the underdevelopment of the South. Therefore, ‘isolated mode of observation that concerns the problems of developing countries as 'domestic'

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[1]Trubek, D. M. *The New Law and Economic Development: A Critical Appraisal*. Cambridge University Press, 2006.

[2] Trubek, David M., and Alvaro Santos. "The third moment in law and development theory and the emergence of a new critical practice." (2006). See also: Tamanaha, Brian Z. "The lessons of law-and-development studies." *American Journal of International Law* 89.2 (1995): 470-486; Davis, Kevin E., and Michael J. Trebilcock. "The relationship between law and development: optimists versus skeptics." *The American Journal of Comparative Law* 56.4 (2008): 895-946.

[3]Tamanaha, Brian Z. "The lessons of law-and-development studies." *American Journal of International Law* 89.2 (1995): 470-486; Sonntag, Heinz, et al. "Modernism, development and modernization." *Pensamiento* (2000); Snyder, Francis G. "Law and development in the light of dependency theory." *Law and Society Review* (1980): 723-804.

[4] Snyder, Francis G. "Law and development in the light of dependency theory." *Law and Society Review* (1980): 723-804.

in the absence of factors of other world intervention is not possible.'[5]

Francis G. Snyder's work entitled 'Law and Development in Light of Dependency Theory' attempted to evaluate this issue from the dependency theory.[6] The 'dependency theory' was first propounded by Raul Prebisch and his colleagues in the 1950s.[7]The theory dichotomizes the world communities into "core/periphery," "center/periphery," or "dominant/dependent."[8] The main gist of this theory holds that economic practices in the wealthy nations were instrumental in the poor countries' deterioration. The exports made by the poor countries directly benefited the rich countries since they used them as raw materials for their industries, and the wealthy countries exported the end products back to the poor countries.

Drawing on the Marxist critique of the capitalist economy, the dependency theory seeks to expose the predatory, exploitative nature of the global economy. Therefore, the dependency theory is an antithesis to the modernization theory which was promoted by the West following the end of the Second World War. The modernization theory was criticized for it promotes Western liberalism which exploits the poor in the global South. One of the limitations of the 'modernization' theory was that it failed to underpin the notion of 'development' and 'under development'.[9]

The remaining part of this paper is structured as follows. Following the introduction, the first section discusses the debate over the nexus between law and development. The second section deals with the relevance of the state in law and development discourse. The third section details law and development – from practical scenarios – taking the case of developed and developing countries' experience. Furthermore, Ethiopia's journey from the Haile Selassie regime up to the incumbent government is analyzed.[10] Finally, concluding remarks are forwarded.

II. Law and Development Nexus

A) Definitional Challenge

To begin with, there is no unanimously agreed definition of the concept of 'development' as well as 'law'.[11] Often, when the term 'development' is stated, any layperson may presume it as a matter of economic growth – say in terms of GDP or Per Capita income of a country.[12] For instance, political economists may perceive development as 'raising the level of productivity; that is, the capacity or potential

[5] Escobar, Arturo. *Encountering development: The making and unmaking of the Third World*. Vol. 1. Princeton University Press, 2011.

[6] Snyder, Francis G. "Law and development in the light of dependency theory." *Law and Society Review* (1980): 723-804.

[7] Prebisch, Raul. "The economic development of Latin America and its principal problems." (1962).

[8] Lisimba, Alpha Furbell, and Alpha Furbell Lisimba. "Theoretical understanding/literature review dependency theory." *China's Trade and Investment in Africa: Impact on Development, Employment Generation & Transfer of Technology* (2020): 21-47.

[9] Hout, Wil. "Classical approaches to development: Modernisation and dependency." *The Palgrave handbook of international development* (2016): 21-39.

[10] Kebbede, Girma. *The state and development in Ethiopia*. Atlantic Highlands, NJ: Humanities Press, 1992; Kebbede, Girma. "State capitalism and development: The case of Ethiopia." *The Journal of Developing Areas* 22.1 (1987): 1-24.

[11] Sen, Amartya. "The concept of development." *Handbook of development economics* 1 (1988): 9-26; Hart, Herbert Lionel Adolphus, and Leslie Green. *The concept of law*. oxford university press, 2012.

[12] Soubbotina, Tatyana P. *Beyond economic growth: An introduction to sustainable development*. World Bank Publications, 2004; Phillips, Anne. "The concept of 'development'." *Review of African Political Economy* 4.8 (1977): 7-20.

for production or the 'capability over time to satisfy human needs and desires.'[13] However, economic growth is one dimension of development, not development in itself. Brietzke rightly problematizes such understanding of development as follows:

> *Does the satisfaction of human needs and desires necessarily require that something be produced? If, for example, freedom of speech is valued, must such preconditions as political stability, participation, and tolerance be 'produced'? Is freedom of speech, which is valued by some people in all societies although it cannot be measured statistically or in per capita terms, to be forgotten or excluded automatically from development theories? If not, what priority ought to be accorded to this fairly vague concept?*[14]

Understanding the concept of 'development' requires multidimensional perspectives. A linear thinking which assumes development 'as mutually exclusive' of tradition needs critical observation.[15] As development studies have emerged as a specialized area of study, sociologists, anthropologists, and political scientists have approached from different orientations. As a result it has become very broad (social, political, environmental, and others) and dynamic. Acknowledging the vanity of attempting to define such vague terms, for this paper, development in an economic sense is maintained.

The subject of development is primarily meant for society. In that sense, culture and development are two sides of the same coin. However, in practice, there might be dissociation – where the state alienates both – for it may guard the latter against its power – in this regard state is an intervening entity between society and development. The state is 'a necessary evil,' however.[16] Where it acts on behalf of the public – as a legitimate actor – then, development in social, economic, and political areas is positively attributed to it. Although it may not be sustainable, illegitimate regimes can also contribute to the development of its people.

The principal objectives of development may vary from state to state. It depends on what the political elites securitize and prioritize that development endeavors take root. For a country like Ethiopia, back in the 1950s or 1960s, the primary objective of the state might have been 'illiteracy, poverty, and health'. However, one may be critical of such assertion and argue that all development endeavors of the monarchy were meant to bolster the central authority, the throne than it was meant for the ordinary citizens of the country. Either way, the question 'what are the primary objectives of development' is a proper question worth further studies than reductionist reflections. Now, development cannot be brought into existence without an actor. And the central

[13] Alkire, Sabina. "Needs and capabilities." *Royal Institute of Philosophy Supplements* 57 (2005): 229-252; Sen, Amartya. "Development as capability expansion." *The community development reader* 41 (1990): 58; Sen, Amartya. "Capability and well-being73." *The quality of life* 30 (1993): 270-293.

[14] Brietzke, Paul. "Land reform in revolutionary Ethiopia." *The Journal of Modern African Studies* 14.4 (1976): 637-660.

[15] Maria, Teodorescu Ana. "Sustainable development, a multidimensional concept." *Annals-Economy Series* (2015): 82-86.

[16] Wills, Garry. *A necessary evil: A history of American distrust of government*. Simon and Schuster, 2002.

question is – who is/are the primarily responsible 'agent' of development. This leads to 'structural' or 'institutional' matters – and human actors – as 'agents.' The state representatives, the heads of the state, the heads of government, and the officials at different hierarchies are all the actors/agents of development. These actors may be regarded as 'networked bureaucrats' – interpreters of the rules of the game – enforcers and those who turn the black letters into living institution. The actors are supposed to enforce the rules – fairly – without any discrimination in whatsoever form. In this regard, they do serve as *embodiment* and *translators* of *the* law and development.

The nexus between law and development may be – understood as having positive, negative, or no relation at all.[17] We argue that it has a strong correlation. If law is understood as a 'change agent' – irrespective of the outcome of the change – be it positive or native – it is sufficing that law can induce change. In a positive sense, where states exist, there is a monopoly on violence – and the latter can only be expressed through the law. Weber Pistor notes that the power of law comes from the "state's monopoly over the means of coercion."[18] In this regard, legal rules are the projection of political manifestation. State-enacted laws are 'instruments of development'. In this regard, law and development have a direct relation. For example, the enactment of the Nationalization of the Rural Land Proclamation in 1975 radically changed the feudal system Ethiopia practiced for centuries.[19] After all, the law follows the path of power – not the other way around. Naturally, 'law likes to frame its rules, wherever possible, as if they were homely truths; or even as statements of fact about the physical world.'[20]

Put differently, the United States of America is a country built by the law.[21] The lawyers have crafted fifty autonomous states out of the thirteen colonies,[22] they drafted the Bill of Rights and in this regard, the founding fathers of the US may be acknowledged for establishing 'the state of the union' guaranteed by the constitution – through which separation power, impeachment of the president and division of power, among others, were grounded more than two centuries back and still functioning.[23] Where the law emanates from consensual processes, i.e., where it develops from elite negotiations, then it may serve for generations. Conversely, when it stems from violence – the continued use of force to ensure obedience implants as well as supplants it. As an instrument, therefore, it depends on the 'will' of the actor(s).[24] One of

[17] Dam, Kenneth W. *The law-growth nexus: The rule of law and economic development*. Rowman & Littlefield, 2007; Trubek, David M. "Toward a social theory of law: an essay on the study of law and development." *The Yale Law Journal* 82.1 (1972): 1-50.

[18] Pistor, Katharina. "The value of law." *Theory and Society* 49.2 (2020): 165-186.

[19] Abebe, Mengistu. "Which Kind of Land Reform for Ethiopia: The Debate Preceding the 1975 Land Proclamation." *Ethiopian Journal of Social Sciences* 1.2 (2015): 30.

[20] Sherwin, Richard K. "Law frames: Historical truth and narrative necessity in a criminal case." *Popular Culture and Law*. Routledge, 2017. 177-221.

[21] Haggard, Stephan, Andrew MacIntyre, and Lydia Tiede. "The rule of law and economic development." *Annu. Rev. Polit. Sci.* 11.1 (2008): 205-234.

[22] Ford, Richard T. "Law's territory (a history of jurisdiction)." *Michigan Law Review* 97.4 (1999): 843-930.

[23] Stampp, Kenneth M. "The Concept of a Perpetual Union." *The Journal of American History* 65.1 (1978): 5-33.

[24] McWilliams, Wilson Carey. "On Violence and Legitimacy." *Yale LJ* 79 (1969): 623; Cook, Deborah. "Legitimacy and political violence: A Habermasian perspective." *Social Justice* 30.3 (93 (2003): 108-126; Couto, Richard A. "The Politics of Terrorism: Power,

the qualities of formal law is the capacity to create formal uniformity or 'legality' where one can predict its outcome.[25] Predictability or relative certainty is crucial for a business to flourish. Hence, in this regard, law and development are interlinked – for the demand predictable environment. Law, as a logical and rational balancer of political goals, may serve this end.[26]

B) Law and Development Nexus

Snyder makes clear that the law and development movement was characterized by a lack of specificity and consensus concerning basic concepts, hypotheses, and explanations. Where some argue that law has a strong correlation with development, others argue that yes, there is a relation but with a weak correlation, and still others maintain that there is no such connection.[27]

The term which we often take for granted, say, 'the law', or 'development' may raise serious academic discussion. Some scholars tend to embrace 'liberal legalism' (see the capitalist law),[28] 'Marxist legalism',[29] and others 'neo-Marxist legalisms.'[30] Ohnesorge, accounting to the liberal legality' notes that 'the common law legal origins provide protections to the businesses creating less bureaucratic system and institutions than the civil law legal origins. He further argued that:

> *The existence of a comprehensive legal system that is effectively, impartially, and cleanly administered by a well-functioning, impartial, and honest judicial and legal system accompanied with the protection of human and property rights and comprehensive legal frameworks are the key determinants of development.*[31]

Nevertheless, the enactment of black law letters, on its own, may not transform the socio-economic conditions of the people. To put the law into motion, it may require institutional frameworks, state capability, and above all cultural orientations toward achieving economic growth. Thus, in the correlation between law and development – there is optimism as well as skepticism. *Davis and Trebilcock* had attempted to explicate the fact

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Legitimacy, and Violence." *Integral Review: A Transdisciplinary & Transcultural Journal for New Thought, Research, & Praxis* 6.1 (2010).

[25] Braithwaite, John. "Rules and principles: A theory of legal certainty." *Australasian Journal of Legal Philosophy* 27.2002 (2002): 47-82; Varuhas, Jason NE. "The principle of legality." *The Cambridge Law Journal* 79.3 (2020): 578-614;

[26] Aleinikoff, T. Alexander. "Constitutional law in the age of balancing." *Yale lj* 96 (1986): 943; Weingast, Barry R. "The political foundations of democracy and the rule of the law." *American Political Science Review* 91.2 (1997): 245-263.

[27] Davis, Kevin E., and Michael J. Trebilcock. "The relationship between law and development: optimists versus skeptics." *The American Journal of Comparative Law* 56.4 (2008): 895-946; Boettke, Peter, and J. Robert Subrick. "Rule of law, development, and human capabilities." *Supreme Court Economic Review* 10 (2003): 109-126;

[28] Dossa, Shiraz. "Liberal legalism: Law, culture and identity." *The European Legacy* 4.3 (1999): 73-87; Shiffrin, Steven. "Liberalism, Radicalism, and Legal Scholarship." *UCLA L. Rev.* 30 (1982): 1103.

[29] Hunt, Alan. "Marxist theory of law." *A companion to philosophy of law and legal theory* (2010): 350-360; Tomlins, Christopher. "Marxist Legal History." *Forthcoming, The Oxford Handbook of Historical Legal Research* (2017).

[30] Papke, David Ray. "Neo-Marxists, Nietzscheans, and New Critics: The Voices of the Contemporary Law and Literature Discourse." *American Bar Foundation Research Journal* 10.4 (1985): 882-897; Fitzpatrick, Peter. "Marxism and legal pluralism." *Austl. JL & Soc'y* 1 (1982): 45.

[31] Ohnesorge, John KM. "Law and Development Orthodoxies and the Northeast Asian Experience." *Law and Development in Asia*. Routledge, 2012. 9-42.

that 'countries that possess similar legal culture or legal system are not achieving equal economic success.[32] For example, Ghana and Hong Kong have similar legal systems but very in economic achievements. Legal reform can indeed play a great role in creating an enabling environment for development.

For the legal system to play its role, the culture, political, and social environment in which the law operates also matters most. Chua, Amy is critical of the liberal economy – which claims to be 'color blind' and 'individualistic'.[33] Unlike the Western countries, developing countries in Sub-Saharan Africa, South and East Asian countries house diverse ethnic groups, and their role in the political and economic market cannot be underestimated. When ethnic minorities are economic majorities in a certain country, they can be targeted by an aggrieved majority. Therefore, in developing countries, law and development theorists and practitioners cannot take ethnicity out of the equation.[34]

Interestingly, Lee emphasized that 'legal culture influences the manner in which the public perceives law and the degree to which they comply with it.'[35] He also corroborated this clam through the empirical presentation of the case of the South Korea (1962–1996). Lee further discussed, in fair detail, the interplay between law and development employing three technical terms; first, "regulatory design" (which in turn consist anticipated policy outcome, organization of law, legal frameworks, and institutions "LFIs"); second, "regulatory compliance" (which refers to the conduct of the general public in complying with law); and third, "quality of implementation" (which assesses the degree to which a state meets the requirements of law). Nevertheless, for a quality implementation of the law, there needs to be 'state capacity' and 'political will.'[36]

Concomitant to Lee, John K. M. Ohnesorge appears to have been convinced that the Northeast Asian countries 'economic miracle' indicates the strong relation between law and development, but in the modernization theory sense.[37] The Northeast Asian experience tells us that the legal systems failed to conform to any of the claims of law and development orthodoxies. Ohensorge notes the reasons as it was associated with how these theories have been produced, which have not included the careful study of Northeast Asian practices, rapid economic growth and the respective legal system.'[38] Ohensorge was not rejecting the idea of 'liberal legality', rather he was against the fact that 'law and development' was his direct correlation.

[32] Davis, Kevin E., and Michael J. Trebilcock. "The relationship between law and development: optimists versus skeptics." *The American Journal of Comparative Law* 56.4 (2008): 895-946.

[33] Chua, Amy L. "Markets, democracy, and ethnicity: toward a new paradigm for law and development." *The Yale Law Journal* 108.1 (1998): 1-107; Chua, Amy L. "Privatization-Nationalization Cycle: The Link between Markets and Ethnicity in Developing Countries, The." *Colum. L. Rev.* 95 (1995): 223.

[34] Chua, Amy L. "Paradox of Free Market Democracy: Rethinking Development Policy, The." *Harv. Int'l. LJ* 41 (2000): 287.

[35] Lee, Yong-Shik. "General theory of law and development." *Cornell Int'l LJ* 50 (2017): 415; See also: Lee, Sang M., and Suzanne J. Peterson. "Culture, entrepreneurial orientation, and global competitiveness." *Journal of World Business* 35.4 (2000): 401-416; Friedman, Lawrence M. "Legal culture and social development." *Law and Society Review* (1969): 29-44.

[36] Lee, Yong-Shik. "General theory of law and development." *Cornell Int'l LJ* 50 (2017): 415.

[37] Ohnesorge, John KM. "Developing development theory: law and development orthodoxies and the Northeast Asian experience." *U. Pa. J. Int'l Econ. L.* 28 (2007): 219.

[38] Ibid.

Lee evaluated the "*Asian values*" which put socio-economic progress first, and civil and political rights second, and pinpoints 'the third way' – 'developmental state' – which is neither purely 'liberal legality' nor 'Marxist legality' – as a viable policy for developing countries. Criticizing Amartya Sen for not adequately addressing the social constraints that inhibit the realization of the holistic goals of development (*development as freedom*), Lee argues that 'without economic development, which enables a developing country to secure necessary economic resources to promote non-economic values, the effective promotion of 'political' values as constituent elements of development may not be realistic.' Thus, he advises developing countries 'to focus on what they need most so that they may secure necessary resources to promote non-economic values."[39]

We argue that law and development are inextricably linked. Development is dynamic, and to keep pace with new progress, legislators revise laws and refine old ones to make them 'fit for purpose.' In this process, the environment in which laws as well as development operate needs to be 'democratic' or at least such a state needs to have legitimacy. Had dictatorship brought development, Africa would have been the number one global economy. Thus, we argue that, although the Chinese, South Korean and other rising East Asian Tigers are not fully practicing liberal democracy, they do have their forms of rule of law, good governance with zero tolerance for corruption accompanied by a culture of industriousness.

III. The Trilogy of Rule of Law, Institutions and Democracy

Fukuyama seems to be convinced that sustainable development needs to consider 'the state, the rule of law, and mechanisms of accountability.' Fukuyama describes the notion of the state as follows:

The state is a hierarchical, centralized organization that holds a monopoly on legitimate force over a defined territory. Early states were indistinguishable from the ruler's household and were described as "patrimonial" because they favored and worked through the ruler's family and friends. Modern, more highly developed states, by contrast, make a distinction between the private interest of the rulers and the public interest of the whole community.[40]

He further notes that the rule of law does not exist:

> *If rulers can change the law to suit themselves, the rule of law does not exist, even if those laws are applied uniformly to the rest of society. To be effective, a rule of law usually has to be embodied in a separate judicial institution that can act autonomously from the executive. The rule of law should be distinguished from what is sometimes referred to as "rule by law." In the latter case, the law represents commands issued by the*

[39] Lee, Yong-Shik. "General Theory of Law and Development: An Overview." *Law and Development Review* 12.2 (2019): 351-375.

[40] Fukuyama, Francis. "Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy." *Farrar, Straus and Giroux* (2014).

> *ruler but is not binding on the ruler himself.*[41]

The third and most important element is democratic accountability, which means that:

> *The government is responsive to the interests of the whole society—what Aristotle called the common good—rather than to just its narrow self-interest. Accountability today is understood most typically as procedural accountability, that is, periodic free and fair multiparty elections that allow citizens to choose and discipline their rulers.*[42]

For law and development to function in a certain country, 'the state, rule of law and accountability' need to operate in a balanced way. However, there might be variance among implementers, and the states. For instance, a country may have a strong state but lack the rule of law and democracy (see China); or it may be a fragile state with no rule of law as well as democracy (see Ethiopia), or it may have strong state (which fails in providing social services but able to crush political descendants) and weak rule of law (see Russia); or failed states like Somalia, Haiti, and the Democratic Republic of the Congo. Fukuyama takes Denmark as a typical example that fulfills 'the three sets of political institutions in perfect balance.'[43]

Adamant to the logic of law and development, it is often argued that 'strong political institutions are often necessary to get economic growth going in the first place. It is precisely their absence that locks failed or fragile states into a cycle of conflict, violence, and poverty. Therefore, 'the reason that this part of the world is so much poorer in terms of income, health, education, and the like than booming regions like East Asia can be traced directly to its lack of strong government institutions.'[44]

The work of Lee can be a good example of what Fukuyama claims that strong government can lead to economic growth. Lee notes that South Korea is a clear indication of a strong state where law between law and development interplay well. One of the crucial roles the Korean government played was the facilitation of financial, legal, and investment spaces for private investors. Astonishingly, the political will as well as the commitment of the then Korean leader, President Park, had consistently managed "Extended Meetings for Export Promotion", every month and continued for fourteen years, i.e. from 1965 to 1979.[45]

A) State, Law, and Development

In law and development, the role of the state, especially the quality of government, cannot be taken out of the equation. For instance, a state that is democratic may fail to deliver for reasons such as corruption, patronage, neo-patrimonialism, rent-seeking, and clientelism. Corruption impedes development in two ways:

> *First, distortion of 'economic incentives by channeling resources not into their most productive uses but rather into the pockets of officials with the political power to extract bribes'; second, 'the vast bulk of misappropriated funds goes to elites who can use their positions*

[41] Fukuyama, Francis. "Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy." *Farrar, Straus and Giroux* (2014).
[42] Ibid
[43] Ibid
[44] Ibid
[45] Lee, Yong-Shik. "General theory of law and development." *Cornell Int'l LJ* 50 (2017): 415.

> *of power to extract wealth from the population.'*[46]

In an undemocratic state, corruption charges are used not to make the top officials accountable and not to improve the quality of government, but often it is used as a weapon to quash politically competitive personalities (i.e. for power grab).[47] Nevertheless, a 'political order is not just about constraining abusive governments,' but it also requires resource redistribution by controlling 'the richest and most powerful elites in society, so that the latter would not appropriate and use the political system at everyone else's expense.'[48] Therefore, 'it is impossible to run a large organization, public or private, without a bureaucracy, where the latter, as 'agents do not have their own goals.'[49] A state where its existence is tainted by corruption, patronage, clientelism, and rent-seeking, it leads to distrust by the society they govern. The source of distrust is believed to be not because of culture but because of the 'historical absence of a strong, impersonal state and a rule of law.'[50]

The fundamental problem of developing states is that – laws as well as policies are top-down and it fails to take into account the lived realities of its society. Often developing countries emulate the development paths of the Western or Eastern countries, which in itself is not bad, but fails to succeed in achieving desired goals; it may be even counterproductive. Fukuyama notes also that 'one of the big problems with developing countries' governments is copying the outward forms of developed countries' governments while being unable to reproduce the kinds of outputs.'

James Scott is one of the acclaimed authors on the discordance between state development plans and society. The state in developing countries is much more known for failed projects than successful ones. There is a serious problem of discontinuity between the outgoing and incoming regimes, and above all regimes promote agendas that come with taking the concern of the masses into account. Therefore, social packages intended to transform society through the instrumentality of authoritarian state plans or schemes remain failed. Therefore, he is critical of 'development theory' and argues against top-down state planning which sidelines the values, desires, and objections of its subjects.

Interestingly, he elucidates:

> *Certain kinds of states, driven by utopian plans and an authoritarian disregard for the values, desires, and objections of their subjects, are indeed a mortal threat to human well-being.*[51]

In his seminal work, *Seeing Like State*, Scott describes the strategy the state normally uses in two technical terms, 'project legibility' and 'simplification' – which aims to create

[46] Fukuyama, Francis. "Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy." *Farrar, Straus and Giroux* (2014). See also: Lash, Nicholas A. "Corruption and economic development." *The Journal of Economic Asymmetries* 1.1 (2004): 85-109;

[47] Pandemic ccan also be used as a mans of power grab, see: Guasti, Petra, and Lenka Bustikova. "Pandemic power grab." *East European Politics* 38.4 (2022): 529-550.

[48] Fukuyama, Francis. "Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy." *Farrar, Straus and Giroux* (2014).

[49] Ibid

[50] Ibid

[51] Ibid

'homogeneous citizenship.'[52] States use these – not for the sake of 'sustainable development' of the society – rather for 'taxation, prevention of rebellion, and conscription.' He regards this process as 'a project of internal colonization, often glossed, as it is in imperial rhetoric, as a 'civilizing mission.' For example, the mass villagization process that happened in Ethiopia under the *Dergue* regime in the 1970s and the similar case from Tanzania were planned, partly or wholly, by officials of the central government. The *Dergue* regime regarded this state-planned action as a 'civilizing mission.'[53] However, such top-down planning damaged the ecosystem and contributed to the under productivity of crops in the country's agricultural history.

The cultural characteristics of African society are collective rather than individualistic and have a strong attachment to their 'clan land' and 'ancestral graves.' Parker Shipton, in his work '*Mortgaging the Ancestors: Ideologies of Attachment in Africa'* elaborates on the notion of property rights, and the mortgaging system imposed on Africans is antithetical to their ways of survival.[54] For example, for the Luo community of Kenya land is everything – it defines their existence from birth to death. However, with the introduction of the mortgage system, where the community fails to pay their debts, mortgaged land that harbors 'graves of ancestors, farms, and prayers' as collateral will be dispossessed.[55] Even worse, the mortgage system instituted conflict in Luoland for it 'divide families by bringing about new disputes over control of title.'[56]

In terms of efficiency, the traditional system of resource governance has long been perceived as unproductive, and thus privatization was suggested as a viable option. In 1986, Hardin published a breakthrough paper 'The Tragedy of commons' in which he advocated private ownership of natural resources including land.[57] Elinor Ostrom also tried to analyze the theory of 'the tragedy of the commons' through comparative study taking the case of the meadows in Japan and Switzerland, water projects in the Philippines and California, and fisheries in Canada and Turkey vis-à-vis commonly held natural resources and its efficacy.[58] Ostrom also calls for the management of a 'common-resource-pool' (CRP) through 'indigenous, self-organizing, and self-ruling institutions' – a move from traditional collective ownership to progressive small number of appropriators. However, Ostrom argued against a 'one-fit-all' approach to CPR management; instead, she alternatively argued pragmatic problem-solving approach needs to be followed where dynamic institutions where appropriators play active roles contributing to the sustainability and productivity of CPRs. In this process, however, the public-private partnership which lends itself to co-management plays a significant role in CRP management.

Robert C. Ellicksson has brought an alternative legal order to the 'legal centralism' of the state, taking the case of Shasta Country's legal norms

[52] Scott, James C. *Seeing like a state: How certain schemes to improve the human condition have failed*. Yale University Press, 2020.

[53] Ibid

[54] Shipton, Parker. *Mortgaging the Ancestors: ideologies of attachment in Africa*. Yale University Press, 2009.

[55] Ibid

[56] Ibid

[57] Hardin, Garrett. "The tragedy of the commons." *Environmental ethics*. Routledge, 2013. 185-196.

[58] Ostrom, Elinor. "Tragedy of the commons." *The New Palgrave Dictionary of Economics* 2 (2008): 1-4.

in California into the equation of law and development. Ellicksson attempted to challenge the assumption of 'legal centralism' would transform the behavior of the rural community.[59] Among the local community such as the Shasta Country – there is a gap in knowledge about the state law; the payment for legal services is considered unfriendly practice, and above all laws that are made to regulate extra-contractual behaviors of the local community become irrelevant.[60] Realizing this fact, Ellickson, recommends 'self-discipline to legal rules, in which social norms engage an intermediate space.' Finally, he argues that among close-knit communities such as the Shasta Country, norms are preferred over state laws. Therefore, he recommends that an approach needs to be that lowers 'transaction costs', and thus, legal centralism remains ineffective in the face community-oriented normative orders.

Hernando de Soto, in his praised work *'The Mystery of Capital, Why Capitalism Triumphs in the West and Fails Everywhere else?'* explored the source of capital and explained how to correct the economic failures of poor countries in a 'bell jar'.[61] He argued that these failures have nothing to do with deficiencies in cultural or genetic heritage, but it has to do with 'lacking entrepreneurial spirit or market orientations.'[62] The central hypothesis of de Soto was that 'the poorest of the world already possess the assets they need to make a successful capitalism, but they lack the process to represent their property and create capital. The central problem of the poor, for de Soto, is not lack of resources, rather they have 'representational problem' – lack of legal titles, deeds, statutes and documentation that would turn them into capital. Thus, he identified 'the five mysteries of capital' – the missing information (saving and dead capital), the capital (capital and money), the political awareness (city and rulers), the missing lessons of US History, and the legal failure.[63]

He argued that capital is the result of discovering and unleashing potential energy from the trillions of bricks that the poor have accumulated in their buildings. Citing the works of Adam Smith's economic specialization, he argued 'entrepreneurship – increase capital accumulation – which has potential to deploy new production.'[64] To explicate this matter, he used the energy analogy – turning 'mountain lake'/potential energy/ into kinetic energy to mechanical energy to electric energy. Capital, like energy, remains until transformed for further production.[65]

Pistor, Katharina also recognizes that 'it is the lawyer who embodies code to these properties, 'lawyers are the masters of the code.'[66] Pistor argues that property is a legal construct, and it plays an indispensable role in the creation and distribution of wealth in society. Like de Soto, Pistor argues that 'an asset turns into capital when the legal code bestows certain qualities to it. The nature of the coding varies over time and

[59] Ellickson, Robert C. *Order without law: How neighbors settle disputes*. Harvard University Press, 1991.
[60] Ibid
[61]Soto, Hernando. *The mystery of capital: why capitalism triumphs in the West and fails everywhere else*. Basic Books/New York, 2013.
[62] Soto, Hernando. *The mystery of capital: why capitalism triumphs in the West and fails everywhere else*. Basic Books/New York, 2013.
[63] Ibid
[64] Ibid
[65] Ibid
[66] Pistor, Katharina. "The code of capital: How the law creates wealth and inequality." (2019): 1-320.

space, affecting assets and the social relations that take shape around them.'[67] The masters of the code, Pistor explains, "don't just use and apply existing law; they actively fashion new law—subject only to ex-post scrutiny by a court, or, if they so choose, by private arbitrators, many of whom, of course, are their peers."

IV. Ethiopia's Law and Development Trajectory (1950s to Present)

Law – is an expression of the economic, political, social, and cultural development of society. The law that Ethiopia had in the past, cannot be dissociated from the political, economic, and social organization Ethiopia had at the time. Brietzke argues that:

> *Ethiopian social systems are permeated with an Indigenous 'feudal colonialism', and the tenacity of many Ethiopian cultures and the absence of the disruptions associated with European colonialism make for a historical continuity like that of the states of Western Europe. It is the extraordinary degree of continuity in Ethiopian history that makes a historical perspective essential to an understanding of the processes of underdevelopment, and the constraints and choices relating to development in the future.*[68]

However, this statement began to change when Western legal principles and structures were transplanted into Ethiopia in the 1950s and thereafter – in the name of 'modernization'.

A) The Haile Sellasie Regime

The Haile Sellasie government, supported by a few elites of Ethiopians and expatriates had played significant roles in transplanting the Western legal systems into Ethiopia. When the major codes (i.e., the Civil Code, Commercial Code, Penal Code, Maritime Code, Civil Procedure Code, Criminal Procedure Code) were enacted, most Ethiopians were 'economically, socially and politically isolated and ethnically fragmented' and they 'utilize a wide variety of customary rules to regulate their daily lives.'[69]

Brietzke regards Ethiopia not as a 'developing' but 'undeveloped' country – since:

> *In 1968 estimates of per capita incomes in Ethiopia ranged from US $60 - 85 per year ($90 in 1973) which means that Ethiopia lags behind roughly 39 of the then 43 countries in Africa ..., with modest annual growth in Ethiopian agricultural production of 1.8% throughout the 1960s was swamped by annual population increases of 2%, resulting in a net deterioration in living standards ... In 1970 it was estimated that the average life expectancy of Ethiopians is 35 years, and infant mortality before one year is somewhere in the range of 16 – 30.*[70]

[67] Ibid

[68] Brietzke, Paul. "Land reform in revolutionary Ethiopia." *The Journal of Modern African Studies* 14.4 (1976): 637-660.

[69] David, Rene. "Sources of the Ethiopian civil code." *Journal of Ethiopian Law* 4.2 (1967): 341-367;

[70] Brietzke, Paul. "Land reform in revolutionary Ethiopia." *The Journal of Modern African Studies* 14.4 (1976): 637-660.

When it comes to education, health, and other social services – Ethiopia is one of the underdeveloped states in Africa. In education, 'it is paradoxical that the only sub-Saharan country with a 2,000-year-old literate culture should have the lowest literacy rate in Africa. For example;

> *In 1962, 104 top officials were surveyed and the 95 respondents included 66 Amhara, 9 Tigreans from Tigre Province, 13 Tigres from Eritrea (including one Protestant and at least one Muslim), and 7 Oromos. A few persons entered these elite groups through indigenous commerce or by serving as window-dressing for the growing number of foreign corporations. Many bureaucratic and business activities were dominated by what were termed modernizing members of the feudal nobility, and the patron-client relations found among rural Amharas and Tigreans were reproduced in the new urban areas.*[71]

In the healthcare sector, the focus of the service was limited to towns and wealthy city dwellers. For instance, 'in 1969, there was one doctor for every 2,300 residents of Asmara, while the ratio in the rural areas was 1:63,000.' If colonizers underdeveloped Africa, who underdeveloped Ethiopia? Brietzke addresses this question as follows: 'If, as Walter Rodney argues so forcefully, Europe underdeveloped Africa, how much more was Ethiopia underdeveloped through her traditional political systems?'[72]

Nonetheless, the Haile Selassie regime was paternalistic – turned the father-child relationship into a basic moral justification – and thus the 'children were not to question what was best for them and State institutions did not merely act in loco parentis; they were direct manifestations of the parent's will.' This goes with the logic of the source of power. The 1955 Constitution restates: 'The Imperial dignity shall remain perpetually attached to the line of Haile Selassie I, descendent of … the Queen of Sheba, and King Solomon of Jerusalem.'[73]

B) The Derg Regime

Although the Haile Sellasie government succeeded in aborting the 1960 coup d'état, and co-opting most students by offering well-paid bureaucratic positions, it could not do so in 1974. However, did the revolution bring new change, a new development that transformed Ethiopia from 'poverty to prosperity'? Brietzke responds, 'the 1974 Revolution grows no crops and has not; '[…] the political style continues to follow historic patterns of manipulation, repression, paternalism, and factionalism.'[74] The first major change was the shift from monarchical administration to Provisional Military Administration Council or *Derg*, the Amharic word for committee. Following this, it nationalized private businesses, and rural and urban lands to consolidate its power. Under Haile Selassie's regime, where capital formation was neglected, under the Derg

[71]Brietzke, Paul. "Land reform in revolutionary Ethiopia." *The Journal of Modern African Studies* 14.4 (1976): 637-660.

[72] Rodney, Walter. *How Europe underdeveloped Africa*. Verso Books, 2018.

[73] Selassie, Bereket Habte. "Constitutional development in Ethiopia." *Journal of African Law* 10.2 (1966): 74-91.

[74]Brietzke, Paul. "Land reform in revolutionary Ethiopia." *The Journal of Modern African Studies* 14.4 (1976): 637-660.

regime it was ignored. The Derg enacted laws that allow 'confiscations, pricing policies and the projected mobilization of investible surpluses mean that upper- and middle-income groups will bear most of the costs of attempts at Ethiopian development.'[75]

Broadly speaking, the Derg regime rejected 'Ethiopian constitutionalism', and downplayed the civil and political rights of the citizens. The historical tragedy committed under the Derg regime was in 1978 – the purge of thousands of the political opponents – tagged as "enemies of the people" – mainly targeting those who 'participated in the emperor's regime and/or who opposed the Derg.' For instance, the so-called 'revolutionary measures' reports 'suggest that 'some 32,000 people were killed in the urban areas as a result of urban political activity from November 1974 to April 1978.'[76] Nevertheless, some of the changes under the Derg regime were:

> *The bureaucratic organization in Proclamation 110 with an expansion of the Auditor General's powers of inquiry into budgetary processes and the efficiency of governmental units. ... The formal pension scheme was introduced for employees of public enterprises, and minor changes were made in arrangements for retaining the services of civil servants after retirement age. ... the Derg has also eliminated many of the patron-client relations that were so productive of corruption in the past.*[77]

In 1979, Brietzke predicted that the Derg 'may not convince the vast majority of peasants of the validity of its vision may well constitute its Achilles Heel in terms of acquiring legitimacy in the long run.'[78] Finally, after a bloody civil war, the Derg's regime was ousted from power and the EPRDF (Ethiopian Peoples' Revolutionary Democratic Front) assumed power in 1991.

C) The Ethiopian Peoples' Revolutionary Democratic Front Regime

Constitutional democracy, at least formally, was reinstated in 1994 – with the official nomenclature the 'Federal Democratic Republic of Ethiopia.' The FDRE Constitution encompasses fundamental human rights principles, division of powers, separation of power (not strict), and guiding policy objectives. Besides, the constitution recognizes customary laws dealing with civil laws and the social and recognizes cultural rights of all Ethiopians. However, there was a deficit in the rule of law, democracy, and prevalence of justice.[79]

Comparatively, the EPRDF is acknowledged for its economic growth – especially from 2007 to 2017. Under the late Prime Minister Meles Zenawi, the Ethiopian government adopted the East Asian developmental state model of growth which puts socio-economic development as the primary value, where civil and political rights were assumed as it naturally follows from the former. The rise of China as the economic powerhouse of the world, and the financial, technical, and technological

[75] Ibid
[76] Ibid
[77] Ibid
[78] Ibid
[79] Abebe, Adem. "Rule by law in Ethiopia: Rendering constitutional limits on government power nonsensical." *University of Cambridge• Centre of Governance and Human Rights• Working Paper* 1 (2012).

assistance of the same had contributed to the economic growth of Ethiopia.

The law, under the EPRDF regime, was 'facilitative' and meant to pave ways for social, political and economic growth – of course, in a way that serves the interest of the political elites. For instance, the land had remained the property of the Ethiopian 'nations, nationalities, and peoples' of Ethiopia, and the state administered it on behalf of the people. Therefore, the legal order the EPRDF deployed was substantial in building a developmental state – the state took an active role in the economic growth of the country.

D) Prime Minister Abiy's Administration

The economic growth that the country registered could not save the EPRDF. The civil and political rights repression under the EPRDF regime, the economic inequalities and the so-called Addis Ababa Integrated Development master plan, and the opposition to the project transformed into widespread protest, first across Oromia Regional State and later propagated into neighboring regional states such as Amhara Regional State. After three years of continuous protests, the EPRDF brought Prime Minister Abiy Ahmed as a champion of change, in March 2018. A year after coming to power, the Prime Minister Abiy abolished the EPRDF vanguard party and established the Prosperity Party.

In terms of ascendance to power, like Mengistu Hailemariam, Abiy Ahmed 'revolution' or 'social movement.' However, the former was socialist, and the latter pragmatic liberalist.[80] In the first year in office, the Prime Minister induced changes such as signing a peace agreement with Eretria, releasing all political prisoners and journalists, amending civil society organization laws, and repealing the anti-terrorist proclamation (although redeemed again on 1st May 2021).

Under the Abiy Administration, Prosperity Party, Ethiopia has shifted from a developmental state economy to the so-called 'home-grown' economy to full economic liberalization.[81] It appears too early to evaluate law and development under the Abiy Administration. However, from reading the book *'Medemer'* which means synergy – one may grasp the economic vision the incumbent Prime Minister has for Ethiopia. *Medemer* – is a concept which begins with "human nature" – '*ye sewu lij tefetro*', and goes on discussing 'human needs', '*ye sewu lijoch filagot' and* 'human capability' – '*yesew lijoch akim'*. *Medemer* attempts to reconcile 'socialism' and 'liberalism', and it tries to transcend the ideological dichotomy of the West and the East. As a solution, it recommends revisiting the 'sovereign and Ethiopian philosophical foundation' ("*andach lualawina Itiopiawi filsifina yasfeligal*").

Medemer appears to have been convinced that Ethiopia has sufficient natural resources for development, but lacks the necessary skill, entrepreneurship, and leadership to turn it into capital. Although the author did not acknowledge the works of Hernando de Soto, especially the *Mystery of Capital,* the idea that 'the poorest of the world – already possess the assets they need to make a successful

[80] Gardner, Tom. *The Abiy Project: God, Power and War in the New Ethiopia*. Oxford University Press, 2024.

[81]On July 28/2024 Prime Minister Abiy Ahmed announced that Ethiopia has embarked on full implementation of macroeconomic reform policy. See: https://www.ena.et/web/eng/w/eng_4869646 (Accessed in October, 2024).

capitalism' has been implicated in the book. Moreover, the 'Ease of Doing Business committee which the Prime Minister heads – seems to have adopted from the experience of South Korean – President Park's "Extended Meetings for Export Promotion" from 1965 to 1979. De Soto also criticized the challenge of doing business in developing countries and recommended taking lessons from the liberal economic history of the US.

Like its predecessors, the law has remained as an 'instrument of change' under the Prosperity Party led by Prime Minister Abiy Ahmed. Apparently the Prosperity Party fully liberalized the the foreign exchange regime in August 2024. In understanding Ethiopia's political quagmire and explaining the roots of poverty *Medemer* has plenty of flaws; however, it had envisioned a 'new dimension.' It must be noted that unless one man's vision becomes shared visions of the majority of Ethiopians, a well-intentioned vision may turn into a nightmare.

There is one thing that all regimes in Ethiopia share – that is state fragility. All regimes attempt to consolidate central authority through the use of force and yet state fragility persists. The Ethiopian state remained weak – especially in terms of delivering basic services to its citizens, ensuring peace and security in its territory. The legitimacy crisis persists, and it is not yet free from foreign aid and exploitation (dependency).[82] As the government's impunity, corruption, and underdevelopment were the defining characteristics of the Ethiopian state under the EPRDF, issues of rule of law, peace and security, unemployment, state legitimacy and corruption has remained critical issues.

Concluding Remarks

Throughout this paper, an attempt is made to understand the notions of 'law', and 'development' by drawing on the diverse literature. Under the academic discussion of 'law and development', concepts such as 'liberal legality', hybrid-legality, and others were given emphasis. In addition, the trilogy of the rule of law, institutions and democracy are the cornerstones of any country's sustainable development. This indicates that the enactment of black letters of the law may not change anything – but it can only induce change when it becomes the rules of the game of the institutions and such institutions are periodically checked through periodic elections. This is because development is a learning process, an exchange between the political and administrative system – which in turn confers benefits upon the socio-cultural system to obtain public loyalty.

Law as an instrument of change can be used for the betterment of the society it rules or it can also be used to exploit the subjects. It can emancipate slaves, or it can enslave the citizens. It can perpetuate corruption, and clientelism and pave the way for political decay. Equally, it can establish political order and perpetuate free society and entrepreneurship. Therefore, the law can be an indispensable instrument for the sustainable development of a certain state. However, it is only one string among the multitudes of strings of development.

[82]Tausch, Arno, and Almas Heshmati. "Learning from Dependency and World System Theory: Explaining Europe Failure in the Lisbon Process." *Alternatives: Turkish Journal of International Relations* 9.4 (2010): 3-90.

Coming to the case of Ethiopia, the paper has indicated that all Ethiopian regimes have a commonality; all inherit fragile states, and all assumed political power not through the ballot box but either through guns or revolutions – either way, 'blood' is the route to power.

Once regimes assume power, they fail to redeem legitimacy, and thus could not create a strong state that can deliver. Besides, they remain dependent on the aid and technical support of the developed countries.

Therefore, despite their dissimilarity, all regimes continue to centralize power, the rule of law and democracy remains a paper value, and underdevelopment remains the defining character of the Ethiopian state. Ethiopia's effort to liberalize her economy amid peace and security deterioration in Amhara and some parts of Oromia may not produce the desired change.

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Original Article

Forex Regulation *vis-à-vis* Foreign Direct Investment in Ethiopia: An Appraisal of Previous Regulatory Trends vs. the New *Forex* Law

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Abstract

Ethiopia is a key foreign direct investment (FDI) hub in East Africa, consistently striving to boost the business environment with updated legal and institutional regimes. Yet, over the last three decades, foreign investors have been encountering significant investment risks, such as political, economic, and regulatory risks. Forex regulation was one of the regimes that posed a significant challenge to the establishment and operation of foreign investors. Previously, forex was governed by the NBE Establishment Proclamation No. 591/2008 and other subsequent regulations and directives. The forex regulatory trend was generally inconsistent and/or uncertain. In July 2024, Ethiopia adopted a New Monetary Policy Framework to support economic reforms. To implement the new policy, the National Bank of Ethiopia (NBE) enacted Foreign Exchange Directive No. FXD/01/2024. The Directive is the first comprehensive forex law that revises and repeals all the previous forex laws. It introduced substantial policy changes, such as shifting to a market-based exchange and eliminating various forex-related requirements, such as surrendering requirements. Besides, it mandates consultation with the NBE for foreign loan contracts and sets guidelines for forex account transactions in industry parks and special economic zones. On one hand, the rules in general aim to simplify and liberalize forex transactions, and they do have far-reaching repercussions on FDI in Ethiopia. This article, through textual

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analysis and/or doctrinal research methods, analyzes Ethiopia's previous forex regulations and compares them with the new law to evaluate their impact on FDI (if the regulatory trend supports or hinders FDI from the perspective of foreign investors). The findings of the work reveal that the previous forex regime was largely inconsistent with the state investment policy of attracting and protecting FDI. Neither did it resolve the country's currency shortage. Thus, it has been causing a substantial regulatory risk to FDI. The new forex law that repeals all the previous forex regime has incorporated significant changes that, on their faces, do potentially create a more favorable condition for the establishment and operation of FDI when compared to the previous regime. Yet, their practical repercussions on FDI in Ethiopia are to be seen.

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1. Introduction

Ethiopia has implemented several reforms to attract and protect foreign investors. It is a signatory state to many key international investment agreements, such as the Multilateral Investment Guarantee Agency (MIGA), and has signed bilateral investment promotion and protection treaties (BITs) with over 30 countries. At home, it has adopted a liberal investment law that incorporates important guarantees to foreign investors, such as full repatriation of profits in convertible currency, national treatment (NT), most-favored-nation treatment (MTN), and a fair and equitable treatment (FET) standard, among other things. However, for the last three decades, foreign investors have faced various investment risks, including economic, political, legal, and infrastructure risks.[1] In general, high state interference, poor infrastructure, land acquisition issues, strict foreign exchange controls, high transaction costs, and institutional weaknesses hinder Ethiopia's long-term economic development prospects.[2] In the field of foreign investment, regulatory risk is a significant factor that influences foreign investors' investment decisions. Countries with low regulatory risk are in general more likely to attract FDI.[3] In Ethiopia, foreign investors were facing regulatory risks mostly due to strict forex controls.[4] Forex regulation was one of the regimes that posed a significant challenge to the establishment and operation of foreign investors. Previously, forex was governed by the NBE Establishment Proclamation No. 591/2008 and other subsequent regulations and directives. The forex regulatory trend was generally inconsistent and/or uncertain.

[1] Lloyds Bank, Ethiopia: Investing in Ethiopia, April 2024, https://www.lloydsbanktrade.com/en/market-potential/ethiopia/investment
[2] Ibid
[3] Ibid
[4] Berihu Assefa, Mulu Gebreeyesus, and Alebel Bayrau, Chinese Investment in Ethiopia: Contribution, Challenges, Opportunities, and Policy Recommendations. PSI Research Report 34, Addis Ababa: Policy Studies Institute, 2020, p. 33, Available at https://mpra.ub.uni-muenchen.de/109166/1/MPRA_paper_109166.pdf Accessed on July 15, 2024

In July 2024, Ethiopia adopted a New Monetary Policy Framework to support economic reforms. With the aim of implementing the new policy, the NBE enacted Foreign Exchange Directive No. FXD/01/2024.[5] The Directive is the first comprehensive forex law that revises and repeals all the previous forex laws. The Directive addresses various activities such as banks, forex bureaus, and foreign currency accounts. The new law seeks to provide a unified framework for managing Ethiopia's foreign exchange market by replacing previous regulations.[6] It entails significant policy changes in various aspects of forex in Ethiopia. The Directive marks a transition to a market-based exchange regime, allowing banks to buy and sell foreign currencies at freely negotiated rates with limited NBE intervention. Besides, it removes several requirements in relation to forex embodied in previous regulations. The Directive removes surrender requirements to NBE and enhances retention rules, enabling exporters and banks to retain foreign exchange, converting 50% of export proceeds to Ethiopian Birr (ETB) immediately at a negotiated rate. The rules governing banks' allocation of foreign exchange and rules restricting imports are also the rules repealed by the Directive.[7]The Directive, for the first time, introduces non-bank foreign exchange bureaus, operating independently without bank affiliation. Restrictions on *franco-valuta* imports of goods not utilizing foreign exchange from the banking system are also lifted.

In sharp contrast to the previous forex regime, the Directive also establishes foreign currency saving accounts (FCY) for various entities and individuals, subject to specific requirements. A modest modification was made to the foreign loan contracts. Although the requirement of prior mandatory consultation with NBE before entering foreign loan contracts is maintained: interest rate ceiling for private sector borrowing from abroad is removed. The Directive also opens the securities market to foreign investors with detailed terms and conditions to follow. Lastly, it permits industry parks and Special Economic Zones (SEZs) to engage in various transactions, including the purchase and sale of raw materials in FCY, and explicitly provides guidelines for foreign currency cash notes for travelers, limiting cash to US$10,000 per trip for residents unless authorized otherwise. Overall, these changes aim to liberalize and streamline foreign exchange transactions and regulations in Ethiopia. These new regulations do have far-reaching repercussions on FDI in Ethiopia as well.

This article, through textual analysis and/or doctrinal research methods, critically analyzes the repercussions of Ethiopian forex regulations on FDI, comparing past trends with the new forex law. Along, it assesses the compliance of the past and present forex regimes with the state's goal of attracting and

[5] The Foreign Exchange Directive No. FXD/01/2024 (referred to as 'FXD/01/2024' herein under). The NBE enacted this Directive in accordance with Article 18(6), Article 20, Article 21(5), and Article 27(2) of the National Bank of Ethiopia Establishment (as Amended) Proclamation No. 591/2008. The Directive is a lengthy text of 108 pages in total, containing 25 lengthy articles with many sub-provisions divided into seven parts and containing six annexes.

[6] FXD/01/2024, Art-25.2.1

[7] The new regime allows authorized banks to facilitate imports of goods for any value upon submission of required documents.

protecting FDI, or if they pose a risk to foreign investors.

2. Foreign Currency and Foreign Direct Investment: An Overview of Conceptual and Legal Backgrounds

2.1. Definition of Key Terms

Some concepts are referred to throughout the work, and it is imperative to briefly address them before delving into the main theme of the work. Thus, this section briefly discusses the key concepts of FDI, currency, foreign currency, foreign exchange, exchange market, foreign exchange rate, and foreign exchange regulation, respectively. The Organization for Economic Cooperation and Development (OECD) defines FDI as a type of investment where a resident enterprise in one economy establishes a lasting interest in an enterprise in another economy.[8] An establishment of a lasting interest often involves a foreign investor owning at least 10% of the voting power in an enterprise in a host state.[9] FDI is essential for integrating economies globally, and bringing capital, technology, and skills to foreign markets.[10] Effectively managed, it can be a significant source of capital inflows, especially for underdeveloped recipient states.[11] However, maximizing FDI benefits requires addressing challenges such as creating a transparent, investor-friendly environment and enhancing institutional capacity through international investment architecture and national policies.[12] This, inter alia, requires a host state to have effective, predictable legal frameworks in several fields of law that potentially affect the establishment and operation of FDI, including laws governing foreign currency.

The next concept worth addressing here is the concept of 'currency' and/or 'foreign currency'**.** There is no universal definition of money or currency, and it is often defined as an economic unit that functions as a generally recognized medium of exchange for transactional purposes.[13] They are economic units that serve as mediums of exchange generally accepted for transactions and have recognized value.[14]While the terms money, currency, and legal tender are often used interchangeably, money is usually referred to as currency, a liquid asset used for transactions.[15] On the other hand, foreign currency is any currency other than the official currency in a country. The NBE Establishment

[8] OECD Benchmark Definition of Foreign Direct Investment 2008, 4th edition, p. 17. Available at https://www.oecd-ilibrary.org/docserver/9789264045743 Accessed on May 10, 2024

[9] Maitena Duce and Banco de España, Definitions of Foreign Direct Investment (FDI): A Methodological Note Final Draft, July 31, 2003, p. 2. Available at https://www.bis.org/publ/cgfS22BDe3.pdf Accessed on May 17, 2024

[10] OECD , International Investment Law: Understanding Concepts and Tracking Innovations, Companion Volume to International Investment Perspectives, 2008, p-46, Available at https://www.oecd.org/investment/internationalinvestmentagreements/40471468.pdf, accessed on March 20, 2024

[11] Ibid

[12] Muhammad Akram and Hassan Mobeen Alam, The Impact of Exchange Rate Movement on Foreign Direct Investment Inflows in Pakistan: An Empirical Assessment Using the ARDL Approach to Cointegration, Journal of the Punjab University Historical Society, Volume No-3, Issue No. 2, July-December 2017, p. 114, available at https://pu.edu.pk/images/journal/HistoryPStudies/PDF_Files/11_V-30-No2-Dec17.pdf Accessed on July 20, 2024

[13] Investopedia, Definition of Money, Currency, and Legal Tender, Available at https://www.investopedia.com Accessed on May 10, 2024

[14] Ibid

[15] Ibid

Proclamation No. 591/2008[16] and FXD/01/2024[17] define foreign currency as currencies accepted for payment in Ethiopia. However, the latter also adds the expression "foreign currency cash notes" in addition to 'foreign currency' and defines it as currencies, which are acceptable by banks and authorized foreign exchange dealers as listed by the NBE from time to time.[18] The expression 'other foreign currency'; i.e., 'foreign currency other than those listed as acceptable foreign currency by NBE' is also incorporated in the Directive.[19] The expression 'foreign exchange' represents money denominated in another country's currency or a group of countries. It also refers to claims on foreign currency payable abroad, including funds, bills, and checks.[20] The concept of foreign exchange often comes into play in the context of currency convertibility. Currency is considered convertible if the person holding it can freely convert it into any other currency.[21] The NBE Establishment Proclamation defines foreign exchange as;

Any foreign currency, checks, bills of exchange, promissory notes, drafts, securities, and other negotiable instruments, expressed in foreign currency, as well as bank balances in accounts held in foreign currency or assets in the form of foreign account crediting or set-off arrangements, expressed or payable in foreign currencies, provided they are acceptable by the NBE.[22]

The last group of concepts commonly raised in the discourse of forex is the 'foreign exchange market', the 'foreign exchange rate', and 'foreign currency regulation'. A foreign exchange market is a mechanism where currencies can be bought and sold, with pricing being a key component.[23] The Directive defines 'foreign exchange market" as a market where spot foreign exchange transactions are conducted at either the retail level (between bank and client or between forex bureau and client) or wholesale level (among banks).[24] It enumerates banks and authorized foreign exchange dealers as the key stakeholders in the foreign exchange market in Ethiopia.[25] FXD 01/2024 adopts a floating exchange rate system for the Ethiopian Birr, determined by the foreign exchange market based on supply and demand for other currencies.[26] On the other hand, 'regulation of foreign exchange' represents government-imposed limits on currency purchases to stabilize economies. Today, strict exchange controls are generally seen as undesirable, as they can discourage FDI.[27] Foreign investors prefer free convertibility and transfer of funds.

[16] The National Bank of Ethiopia Establishment (as Amended) Proclamation No. 591/2008, Federal *Negarit Gazetta*, 14th Year No. 50, Art-2.5
[17] FXD /01/2024, Art-2.35
[18] Id, Art. 2.36
[19] Id, Art-2.64
[20] James Sharpe, Foreign Exchange: The Complete Deal, A Comprehensive Guide to the Theory and Practice of the Forex Market, Harriman House Ltd, UK, 2012, p-37
[21] Ibid
[22] NBE Establishment Proc.No., 591/2008, Art-2(6). A verbatim copy of this definition is contained under Arts-2.37 of the FXD/01/2024. These definitional provisions indicate that foreign currency is an element of a broader foreign exchange.
[23] James Chen, Exchange Rates: What They Are, How They Work, and Why They Fluctuate, Updated July 23, 2024, Available at; https://www.investopedia.com/terms/e/exchangerate.asp Accessed on April 17, 2024
[24] FXD/01/2024, Art-2.38
[25] Id, Art-4
[26] Id, Art-5
[27] EMUI Euro-Mediterranean University Institute (2016), Country Risk in Foreign Direct Investment: Similarities and Differences with Country Risk in Exports, p. 4, available at http://dx.doi.org/10.5209/NOMA.53538 Accessed on July 20, 2024

28Restrictions on currency transfers can hinder foreign investors and lead to exchange rate risks that affect profits. 29Predictable regulations often positively impact FDI.30 Uncertainty in-laws, excessive regulations, government instability, and legal insecurity can deter FDI.31 In some transition economies, legal instability can lead to adverse selection of investors and lower FDI inflows.32

2.2. Foreign Direct Investment and Foreign Currency in Ethiopia: An Overview of the Policy and Law

2.2.1Foreign Direct Investment

In 1991, Ethiopia transitioned from a "command economy" to essentially forming 'the new market economy' which allowed FDI (mainly in the manufacturing sector) to enter into the country.[33] To attract foreign investment, Ethiopia has enacted laws, signed 34 Bilateral Investment Treaties (BITs) with 22 currently in effect and 12 pending, and joined the Multilateral Investment Guarantee Agency (MIGA) and the Common Market for Eastern and Southern Africa (COMESA).[34] While not ratifying the Convention on the Settlement of Investment Disputes, the country has committed to using the Additional Facility provided by an agency under the International Centre for Settlement of Investment Disputes (ICSID).[35] A 'Homegrown Economic Reform' was implemented in 2018 to enhance government efficiency and liberalize the economy, leading to the creation of new regulations and investment policies in 2020.[36] In terms of territorial sovereignty, governments have the option to either open their economy to foreign investors or close it partially or fully, which is an economic consideration.[37] In Ethiopia, the Investment Proclamation[38] and Regulation[39] define which parts of the economy are open or closed to foreign investors as part of their investment in Ethiopia. The sector is partially or entirely open to foreign investors, which means that in areas such as postal and air transport services, joint ventures with the government are now possible.[40] Some sectors permit foreign investors to invest, while others demand technology transfer and profit-sharing through joint ventures.

A "negative list approach" was introduced by the Proclamation and Regulation to identify areas that foreign investors could explore for

[28] Ibid

[29] Ibid

[30] Christian Daude and E. Stein, Quality of Institutions and Foreign Direct Investment, Vol. 19, No. 3, 2007, p. 324. Available at: https://ideas.repec.org/a/bla/ecopol/v19y2007i3p317-344.html Accessed on 23 April 2024

[31] Ibid

[32] Jacek Cukrowski, et al.,, Determinants of Foreign Direct Investments in Transition Economies, Problems of Economic Transition , Vol-48, No-2, 2003, Available at; https://www.researchgate.net/publication/5173292_On_the_Determinants_of_Foreign_Direct_Investment_in_Transition_Economies , Accessed on April 23, 2024

[33] Martha Belete Hailu and Zeray Yihdego, The Law and Policy of Foreign Investment Promotion and Protection in Ethiopia: An Appraisal of Theories, Practices and Challenges, Ethiopian Yearbook of International Law 2017, pp-13-14

[34] Bereket Alemayehu Hagos, Major Features of Ethiopia's New Investment Law: An Appraisal of their Policy Implications Transnational Corporations Journal, Vol. 29, No. 1, April 28, 2022, pp.137-138 Available at; https://ssrn.com/abstract=4096750 Accessed on Oct-15, 2024

[35] Ibid

[36] Ibid

[37] Id ,p-139

[38] Investment Proclamation No. 1180/2020, *Federal Negarit Gazette*, 26th Year No. 2, 2020, Addis Ababa

[39] Council of Ministers Investment Regulation No. 474/2020, *Federal Negarit Gazette*, 26th Year No. 78, 2020, Addis Ababa

[40] Art. 6(2), the Proclamation; Art. 3, the Regulation

investment purposes.[41] This method categorizes closed or restricted areas, while remaining open areas. The determination of prohibited or restricted investments becomes simpler with this. Nevertheless, certain countries employ the "positive list approach" to identify sectors that allow foreign investment, making it difficult to cover all fields and introduce new investment areas.[42]. The adoption of the negative list approach is anticipated to resolve administrative challenges and enhance the transparency and efficiency of an investment system. The objective of this change is to boost investment in Ethiopia. This proclamation outlines conditions for setting up and operating an investment in Ethiopia, including the allocation of minimum capital to foreign investors and the acquisition and maintenance of permit applications.[43] Regulations are also formulated to promote and facilitate investment, which include direct access to investors and the EIC's responsibility to simplify visa applications.[44] The Ethiopian Investment Board, EIC, Federal Government and Regional State Administrations Investment Council, and regional investment bodies are all part of the investment administration.[45] The Board, under the leadership of the Prime Minister, is accountable for establishing investment policies, managing EIC initiatives, and overseeing investments within its purview.[46] Industrial Parks Development Corporation of Ethiopia (IPDC) develops and operates industrial parks including textile and apparel production.

The Proclamation provides guarantees, protections, and obligations for investors, including allowing foreign investors to own immovable property, protect investment against unlawful expropriation, and allow foreign loans, foreign currency accounts, and repatriation of investment-related funds.[47]It also outlines obligations for investors, including providing investment information to government bodies and complying with social and environmental sustainability requirements.[48]

In March 2021, the Ethiopian Commercial Code was amended to regulate economic activities with more modern business structures and bankruptcy procedures. Despite these all legislative reforms; high state interference, poor infrastructure, land acquisition issues, strict foreign exchange controls with high transaction costs combined with institutional weaknesses make Ethiopia struggle to welcome foreign investment.[49]

2.2.1. Foreign Currency

The FDRE Constitution[50] establishes a federal parliamentary republic, with a bicameral parliament consisting of the House of Federation and the House of People's Representatives. It allocates law making power between the federal government and regional

[41] Bereket, p-149
[42] World Bank Group , Investment Law Reform: A Handbook for Development Practitioners, 2010, Washington, D.C., p-28
[43] Investment Proclamation No. 1180/2020, Arts. 9 and 10,
[44] Id, Arts- 24 and 23
[45] Id, Art. 29
[46] Id, Art. 31
[47] Id, Arts-18-21
[48] Id, Art. 14 and 54
[49]Llyods Bank, Foreign direct investment (FDI) in Ethiopia, April 2024, https://www.lloydsbanktrade.com/en/market-potential/ethiopia/investment
[50] Constitution of the Federal Democratic Republic of Ethiopia, 1995, *Federal Negarit Gazetta*, Proc. No. 1, 1st year, No. 1, Article 51(7)

states. The powers to administer the National Bank, print and borrow money, mint coins, and regulate foreign exchange and money in circulation belongs to the federal government.[51] Thus, the currency and currency exchange-related issues are the exclusive power of the federal government. The NBE is authorized to enforce currency exchange regulations under the supervision of the Council of Ministers.[52] It is responsible for formulating and implementing exchange rate policy, managing international reserves, setting limits on gold and silver bullion and foreign exchange assets, establishing payment systems, and monitoring foreign exchange transactions.[53] The NBE also acts as a banker, fiscal agent, and financial advisor to the government, modernizing payment systems and exercising other powers.[54] It controls foreign exchange transactions under the NBE Proclamation and related Directives, Guidelines, and Letters.[55] The NBE has issued several directives governing various aspects of foreign currency control, retentions, utilization, management, and operations of foreign currency, foreign currency transactions, and regulations of external loans.

The foreign exchange regime in Ethiopia has been liberalized gradually, with the delegation of management of foreign exchange operations to commercial banks under Directive FXD/07/1998. Over 60 directives, letters, and guidelines have been issued to regulate market activities and foreign direct investment. There was no comprehensive law that governs foreign currency exchange in Ethiopia until recently, and the sector used to be governed by the NBE Establishment Proclamation No. 591/2008[56] and several Directives and Regulations subsequently enacted by the same. These forex-related laws were subject to frequent amendment and were unpredictable and uncertain, thereby posing a problem for foreign investors. However, the Ethiopian state has made a sudden shift in its entire monetary policy recently.[57] As a part of an IMF-backed economic program, the new policy is believed to support the authorities' Homegrown Economic Reform Agenda, a comprehensive policy package to stimulate private sector activity and increase economic openness to promote higher and more inclusive growth.[58] Other development partners—notably the World Bank—are also providing substantial external financing, and the program provides a framework for the successful completion of the ongoing debt restructuring.[59]

In order to guide the implementation of the new policy, the NBE issued FXD/01/2024, a new law that consolidates and revises previous forex legislation. [60] The new law addresses several key forex-related activities. such as the role of banks and authorized dealers, exchange rate determination, foreign exchange retention,

[51] Id, Art- 55(10)

[52] Id, Art. 77(4) FDRE and NBE Establishment Proc.No., 591/2008

[53] NBE Establishment Proc.No., 591/2008, Art-5

[54] Ibid

[55] Ibid

[56] Id, Art-4

[57] National Bank of Ethiopia, Press Release, The National Bank of Ethiopia Announces A Reform Of The Foreign Exchange Regime With Immediate Effect 29 July 2024, Addis Ababa, Ethiopia, https://nbe.gov.et/wp-content/uploads/2024/07/FXD012024-FOREIGN-EXCHANGE-PR-English.pdf

[58] IMF, Key Questions on Ethiopia, July 29, 2024, https://www.imf.org/en/Countries/ETH/ethiopia-qandas#:~:text=A%20new% 20monetary% 20policy% 20interest,prices% 20for% 20some% 20imported% 20commodities.

[59] Ibid

[60] FXD /01/2024, Art-25.2.1

exports, imports, services, forex bureau operations, remittances, payment instruments, foreign currency accounts, capital account transactions, and other miscellaneous items.

This Directive is a comprehensive law that seeks to regulate all aspects of foreign currency. Its comprehensiveness can also be understood from its provision which determines the scope of its application.[61] Pursuant to Art-3.1, the directive applies to 'all transactions related to foreign exchange', an expression that is broad enough to accommodate several forex-related transactions. The provision enumerates a non-exhaustive list of the transactions, emphasizing the most frequently made transactions.[62]

In addition to the transactions, the directive is made applicable to 'the *conclusion of any contract, agreement, arrangement, or understanding, as a result of which any foreign exchange* is purchased, sold, transferred, borrowed, lent, assigned, exchanged, received, paid, or credited.[63] Thus, its scope of application extends to 'agreements' that lead to the purchase, sale, transfer, etc. of foreign exchange. Here the law apparently talks about agreements such as external loans, external loans in kind, supplier's credit, etc. All foreign exchange purchases and cross-border payments for current account transactions are in principle authorized.[64] Yet, the provision speculates exceptional circumstances where *foreign exchange purchases and cross-border payments for current account transactions* may be denied. Current account transactions, as defined by the Directive, are 'transactions involving visible trade (exports and imports of goods), invisible trade (exports and imports of services), transfers (either private or public), and factor income-related flows (from labor or capital).'[65] Unlike a general authorization for current account transactions, the Directive prescribes a general restriction on capital account transactions.[66] Capital account transactions stand for inflows and outflows of capital that directly affect a resident's foreign assets and/or liabilities position.[67] Thus, in principle, all inflows and outflows of capital that directly affect the foreign assets and/or liabilities positions of Ethiopian nationals or resident foreigners living and/or working in Ethiopia are restricted unless there is exceptional permission.

3. *Forex* Regulation vis-à-vis FDI in Ethiopia: An Appraisal of Previous Regulatory Trends vs. the New *Forex* Law of 2024

This section highlights important facets of the Ethiopian *forex* regime impacting FDI and carefully examines the substantive contents of Ethiopia's prior forex regulatory developments in comparison to the Forex Directive No. FXD/01/2024 in the context of their effects on FDI.

3.1 Forex Surrender and Retention

The main mechanism for managing forex in Ethiopia involves overseeing how businesses keep and use it. Forex retention is a mechanism that allows businesses, such as exporters and investors, to keep the amount of foreign currency they have earned from abroad. Ethiopian businesses are not permitted to keep all the foreign currency they have made due to policy reasons, which are often caused by a

[61] Id, Art-3
[62] Ibid
[63] Id, Art-3.1.2
[64] Id, Art-3.2
[65] Id, Art-2.16
[66] Id, Art-3.3
[67] Id, Art-2.11

scarcity of foreign currencies. Additionally, there are regulations that require foreign currency remittances to be deposited in a specific foreign exchange account at domestic banks.

The first law enacted to regulate forex retention and utilization was Directive No. FXD/02/1996.[68] It allowed exporters to retain a portion of their export proceeds in foreign currency. In 1998, the first law was replaced by Directive FXD/11/1998[69] that allowed exporters to retain 100% of their export earnings, distributed between two retention accounts A and B. The Directives that came immediately after Directive FXD/11/1998, i.e., Directive No. FXD/48/2017[70], adjusted the ratios to a 30:70 distribution. This ratio was maintained by a successor to Directive No. FXD/48/2017 (Directive No. FXD/66/2020).[71] Again, Directive No. FXD/66/2020 was repealed and replaced by Directive FXD/70/2021[72]in 2021. Directive FXD/70/2021 mandated a 30% surrender of earnings to the NBE, reduced the remaining currency to 45%, and required the immediate sale of 55% of earnings to banks. In the same year, Directive FXD/70/2021 was replaced by Directive No. FXD/73/2021[73] which was again replaced by Directive No. FXD/79/2021.[74] Directive No. FXD/73/2021, introduced a 50% - 40% - 10% allocation, requiring exporters and remittance earners to surrender 50% of their earnings, while allowing 40% indefinite retention. Directive No. FXD/79/2021 changed the allocation to 70% - 20% - 10% (70 percent to NBE, 20 percent to the retention account for the benefit of exporters and inward remittance earners and 10 percent to commercial banks). Yet, it was eventually replaced with Directive No. FXD/84/2023.[75]

As per FXD/84/2023, exporters of goods and services have the right to retain 40% of their export earnings, while recipients of inward remittances have the right to retain 20% in foreign currency transfers after deducting 50% and 70% of the surrender requirements from the total exports and remittance earnings, respectively. Directive No. FXD/84/2023 doubled the percentage of foreign currency that exporters were previously allowed under FXD/79/2022. Just like its predecessor, the Directive authorized banks to open 'forex retention accounts' for 'eligible businesses'. Although FXD/84/2023 aimed to reduce Ethiopia's inflation rate, forex issues persisted, with exporters required to surrender up to 80% of earnings, causing reduced production capacity and job losses. As a result, the NBE has issued Directive No. FXD/86/2023[76] in

[68] Procedures for the Retention and Utilization of. Export Earnings Directive No. FXD/02/1996.

[69] Retention and Utilization of Export Earnings and Inward. Remittance Directive No. FXD 11/1998

[70] Directive for Amendment of Retention and Utilization of Export Earnings and Inward Remittance Directive No. FXD 11/1998, or simply Retention and Utilization of Export Earnings and Inward Remittance Directive No. FXD 48/2017.

[71] Retention and Utilization of Export Earnings and Inward Remittances, Directive No. FXD/66/2020

[72] FXD/73/2021, Directive for Amendment of Retention and Utilization of Export Earnings and Inward Remittance, Directive No. FXD/70/2021

[73] FXD/73/2021, Directive for Amendment of Retention and Utilization of Export Earnings and Inward Remittance, Directive No. FXD/70/2021

[74] The Retention and Utilization of Export Earnings and Inward. Remittances Directives No." FXD/79/2022

[75] The Retention and Utilization of Export Earnings and Inward. Remittances Directives No." **FXD/84**/2023

[76] Off-shore Account Opening and Operations for Strategic Foreign Direct Investment Projects Directive No. FXD/86/2023

order to tackle the problem to some extent. The law was meant mainly to help foreign investors in key sectors access more forex. It made an exception to the general prohibition of having offshore forex accounts, allowing businesses investing in strategic areas to use offshore bank accounts.[77] Yet, the use of offshore accounts is restricted to specific payments, such as external debt service, insurance claims, capital or investment expenses, and maintenance and operation costs.[78] In addition, the Directive ensures foreign currency convertibility[79] for dividend repatriation and loan repayments for strategic PPP power and mining projects when they exhaust options for purchasing foreign exchange from banks.[80] The Directive was augmented by the relevant provisions of the External Loan and Supplier's Credit (as amended) Directive No. FXD/82/2022 for matters it has not covered.[81]

As pointed out above one the fundamental policy change introduced by Directive No. FXD/01/2024 is the removal of surrender requirements to the NBE and improvement of forex retention rules. Pursuant to Art-6.1 of the Directive, exporting goods requires approval from an Authorized Bank and payment instruments to secure payment.[82] Exporters must repatriate sales proceeds in foreign exchange to an authorized bank before, during, or within three months, or as prescribed by the NBE for specific export classes or exports.[83] Payment instruments are required for exports. Exporters must convert 50% of their export proceeds into Birr at a freely negotiated rate for the Bank used in processing their foreign exchange transaction, while keeping the remaining 50% in their Foreign Exchange Retention Account.[84]

Art-6.2 states that;

After fulfilling the repatriation requirement set out in sub-article 6.1, *exporters of goods and services shall immediately convert into Birr, at a freely negotiated rate, 50 percent (50%) of their export proceeds to the Bank used in processing their foreign exchange transaction, while keeping the remaining 50 percent (50%) in their Foreign Exchange Retention Account.*[85]

To support the interbank foreign exchange market, foreign earners can use their Foreign Exchange Retention Account for different payments, with funds required to be sold to a transacting bank after 30 days. It is possible to convert leftover earnings into Birr at any time, and it can also be sold at a fixed exchange rate. However, half of the export proceeds will be retained in EBT at a negotiated rate by exporters and banks, while the remaining portion is held in the Foreign Exchange Retention Account. Some foreign exchange inflows do not have to be converted. Changes in the share of foreign exchange earnings and duration may be made by the NBE. Different account types are specified in the directive, which includes accounts for foreign entities, Ethiopian residents and non-residents, and

[77] Eligible projects include PPPs in power generation and infrastructure, large mining projects with export potential, and FDI projects.

[78] Art. 4, FXD/86/2023

[79] Art. 2.4 defines a convertibility guarantee as ‘a guarantee providing assurance that local currency funds can be converted into foreign currency funds at the prevailing exchange rate’

[80] Art. 6.1. FXD/86/2023, Art. 2.2 defines a bank as ‘a company licensed by the National Bank to undertake banking business or a bank owned by the government.

[81] Id, Art-9

[82] Id, Art-6.1

[83] Ibid

[84] Id, Art-6.2

[85] Ibid

exporters.[86] Merchants and entities can be included in the Retention Accounts Scheme to hold onto foreign exchange, provided that they have written permission to do so before funds are credited to their account.[87]

Despite Ethiopia's previous restrictions on forex retention, surrender, and utilization, the country hasn't been successful in attracting foreign investment or resolving currency shortages. The state asserts that there has been a surge in FDI arrivals, but there is no concrete proof to support this assertion. It is clear that the NBE has issued several guidelines on how to retain and use forex, indicating government interest in the matter. The laws have been repealed or modified several times, indicating their inability to tackle forex shortages. It is worth mentioning that the country essentially endorses international investment laws that permit the complete return of profits, dividends and interest payments in convertible currency, as well as upholding FET standards to safeguard investors from arbitrary actions by host states.

3.2. *Forex* Allocation

In countries that face foreign currency shortages, it is not uncommon to control and allocate the available foreign currency to certain priority sectors. Ethiopia has been facing a foreign currency shortage, with decades-old *forex* allocation laws in place. In 2021, the NBE enacted Directive No. FXD/77/2021.[88] that prioritized allocation of foreign currency to products and services based on first-come, first-served principles in order to promote effective and transparent foreign exchange distribution.[89] The Directive outlines the powers and functions of different organs, requiring banks to have clear guidelines for foreign currency allocation and management. The executive management board of the NBE was authorized to review the bank's foreign exchange exposure monthly to maintain prudent levels and resources.[90] The directive also requires daily records of foreign exchange business closures, proper reporting procedures between head offices and branches, monthly reconciliation of transaction accounts, and effective internal controls to monitor and control foreign exchange operations.[91]

The Directive outlines foreign exchange allocations and priorities in three categories: pharmaceutical items, medicine, and pharmaceutical manufacturing inputs; agricultural and manufacturing inputs; and motor oil, agricultural inputs, and pharmaceutical products.[92] Nonetheless, ***in practice,*** FXD/77/2021 has led to a lack of transparency and procedural requirements for accessing foreign exchange exchanges.[93] It also reduced the amount of foreign currency allocated for third-priority imports and payments to 40%, resulting in limited funds for these transactions. This has led to a risk of FDI, which is crucial for economic growth.[94] *Above all,* the forex regime governing allocation was

[86] Id, Art-15.1

[87] Id, Arts-5 and Art-12.13

[88] Transparency in Foreign Currency Allocation and Foreign Exchange Management (As Amended) Directive No. FXD/77/2021

[89] Id, the preamble, and Art. 6

[90] I d, Art- 4

[91] Id., Art-3

[92] Id, Art-6

[93] The *Legatum* Institute Foundation, Global Index of Economic Openness, Pathway to Prosperity Ethiopia Case Study 2021, p. 59, Available at https://li.com/wp-content/uploads/2021/09/GIEO-Ethiopia-Case-Study-Web.pdf Accessed on May 7, 2024

[94] WFP, Market Watch Ethiopia, March 2022, Retrieved from file:///C:/Users/en/Downloads/WFP-0000138505.pdf, < accessed on May 7, 2022.

inconsistent with the government's investment policies, limiting the privileges for companies engaging in FDI and import substitution. The regime did not differentiate between different types of companies, causing foreign companies to be disproportionately affected by forex shortages. Access to forex remained a risk, limiting growth, interfering with maintenance and spare parts replacement, and impeded imports of raw materials.[95] FXD/01/2024 repeals all previous foreign exchange directives and circulars, including Directive No. FXD/77/2021. Thus, the significant policy change in this area is the removal of rules governing banks allocation of forex and/or imports based on a waiting-list system for different categories based on priority.

3.3. Repatriation of Funds Off-Shore

Ethiopia regulates foreign exchange inflow and outflow, requiring effective repatriation of funds for foreign investors. A quick perusal of most Ethiopian BITs reveals that it fully liberalizes investment capital repatriation.[96] Capital inflows from foreign investors are generally registered at the Ethiopian Investment Commission (EIC) at the initial stage of investment, and subsequent requests for repatriation depend on compliance with EIC and NBE requirements.[97] On the other hand, Investment Proclamation No. 1180/2020 guarantees capital repatriation and remittance of dividends and interest.[98] All registered foreign investors to remit profits and dividends, principal and interest on foreign loans, and fees related to technology transfer in convertible foreign currency at the prevailing exchange rate.[99] The general rule stated under Art-20/1 of the Investment Proclamation under the title 'Remittance of Funds' is:

Any foreign investor shall have the right, in respect of his investment, to remit the following payments and earnings out of Ethiopia *in convertible foreign currency at the prevailing exchange rate on the date of transfer:*

1. *Profits and dividends* accruing from his investment;
2. *Principal and interest payments* on external loans;
3. Payment related to a technology transfer agreement registered by Article 15 of this Proclamation;
4. Payments related to collaboration agreements registered in accordance with Article 16 of this Proclamation;
5. Proceeds from *the transfer of shares or conferral of partial or total ownership of an enterprise to another investor;*
6. Proceeds from *the sale, capital reduction, or liquidation of an enterprise*; and
7. *Compensation* paid to an investor pursuant to Sub-article (2) of Article 19 of this Proclamation.[100] (Emphasis Added)

[95] IMF Staff Report for the 2019 Article IV Consultation and Request for Three-Year Arrangement under the Extended Fund Facility: Press Release and Staff Report IMF Country Report No. 20/29, Ethiopia, p. 24 Available at: https://www.imf.org/-/media/Files/Publications/CR/2020/English/1ETHEA2020001.ashx <Accessed on May 5

[96] Zakariyas Berhanu, Foreign Capital Outflow Regulation under Ethiopian Bilateral Investment Treaties and Domestic Investment Laws, Haramaya Law Review, *Vol. 7*, 2018, p. 78. Available at: https://www.ajol.info/index.php/hlr/article/view/184423 Accessed on July 20, 2024

[97] Ibid

[98] Investment Proclamation No. 1180/2020, Article 20

[99] Ibid

[100] Id, Art-20/1

The Proclamation outlines the permissible funds for offshore repatriation, but it is unclear if foreign investors can relocate their investments before liquidation or repatriate capital in kind.[101] It restricts offshore remittance only to foreign investors and denies that domestic investors investing jointly with foreign investors cannot remit funds.[102] However, expats employed for investments outside Ethiopia can remit salaries in convertible foreign currency at the prevailing exchange rate.[103] FXD Directive No. 01/2014 has contained a more detailed concern concerning the repatriation of funds offshore. The general principle under the Directive is that, 'unless explicitly authorized by NBE, capital account transactions by residents shall not be permitted, and banks shall not effect such capital transfers except under the specific exceptions and requirements'.[104]——The subsequent provisions of the Directive address the requirements for each element of repatriation of funds, *i.e.*, remittance of registered foreign investments.[105]transfers of profits and dividends.[106]-The transfer of profits and dividend wing has contained many lists that include net profit/dividend[107] , remittance of proceeds from liquidation[108] , and remittance of proceeds from sales of shares.[109] The Directive allows registered foreign investments, approved by the National Bank or Ethiopia Investment Commission, to repatriate profit and dividends, proceeds from liquidation, share transfers, return of investment if unable to start operation, and profits from portfolio investments in equity or debt securities.[110]

Investors earning profits or dividends from foreign investments can remit their net profit or dividend abroad with certain documents. These include authenticated minutes of the Board of Directors, a copy of closing financial documents audited by an independent third party, a capital registration letter from the National Bank or Investment Authority, tax receipts, a memorandum and article of association, a valid business license, an application letter, and any other necessary documents required by the National Bank.[111] As a wing of transfer of profits and dividends, the new law permits branch offices of foreign companies operating in Ethiopia desirous of repatriating foreign exchange.[112]–The NBE shall not deny the repatriation of profits from dividends so long as the documentary requirements are satisfied.[113]-As an exceptional treatment for any profit and dividend amounts that may be outstanding as of the issuance of this Directive (involving dividend repatriations approved by NBE but for which payment has not been effected by banks), the NBE *shall stipulate a special repayment schedule to be applied to address the backlog of such dividend cases*. Such a repayment schedule will not apply to any new dividend repatriation requests that are initiated after the issuance of this

[101] Zakariyas Berhanu, Foreign Capital Outflow Regulation under Ethiopian Bilateral Investment Treaties and Domestic Investment Laws, Haramaya Law Review, *Vol. 7*, 2018, p. 78, available at: https://www.ajol.info/index.php/hlr/article/view/184423 . Accessed on July 20, 2024

[102] Investment Proclamation No. 1180/2020, Art-20/2

[103] Id, Art 20/3

[104] FXD/ 01/2024, Art-16

[105] Id, Art-16.2.1

[106] Id, Art-16.3

[107] Id, Art-16.3.1

[108] Id, Art-16.3.5

[109] Id, Art-16.3.6

[110] Id, Art-16.2.1

[111] Id, Art-16.3.1

[112] Id, Art-16.3.2

[113] Id, Art-16.3.3

Directive, which shall—for such new cases—be accepted and settled by banks upon demand.[114]

Investors closing their businesses must provide certain documents to transfer the capital offshore.[115] These include shareholder/partner decisions, a declaration letter, a liquidation report, a letter from the ministry of trade, an audited balance sheet and income statement, a foreign capital registration letter, tax clearance from the relevant government authority, and any other necessary documents required by the National Bank. Foreign investors can apply for remittance of share sales proceeds to Ethiopian nationals or foreign investors by presenting updated foreign capital registration certificates, bank credit advice, authenticated sales agreements, and tax clearance from relevant government organizations, confirming receipt of foreign currency value, and confirming sales agreement authenticity.[116]

The forex laws governing repatriation of funds on FDI in Ethiopia have repercussions for both the government and foreign investors. The regime aims to attract FDI and reduce currency shortages. Compliance with these laws aligns with Ethiopia's commitments under the relevant BITs and international investment law obligations. The laws adequately guarantee foreign investors' right to repatriate funds offshore, but other economic factors may impact the effective enjoyment of these rights. Most commentaries on the subject published prior to the coming into force of FXD 01/2024 argue that Ethiopia has strict forex-related regulatory requirements for foreign investors, including private equity investors, to repatriate forex from the country.[117] Contrastingly, other sources indicate that the repatriation of funds offshore by foreign investors is being eased significantly. For instance, Dangote Cement from Nigeria was reportedly able to repatriate USD 70 million to Zenith Bank in Nigeria from its birr account in Ethiopia recently, and it is preparing to repatriate another substantial sum through a local private bank.[118]

Yet, other sources argue that foreign companies and individuals have experienced difficulties obtaining foreign currency to remit dividends, profits, or salaries.[119] The 2020 Investment Proclamation allows foreign investors to remit profits, dividends, principal and interest on loans, and fees related to technology transfer.[120] However, due to a critical shortage of foreign currency, foreign companies and individuals have faced difficulties in obtaining foreign currency to remit dividends, profits, or salaries.[121] It adds, 'an acute foreign exchange shortage (the Ethiopian birr is not a freely convertible

[114] Id, Art-16.3.4

[115] Id, Art-16.3.5

[116] Id, Art-16.3.6

[117] Getu Shiferaw, Foreign investment and forex regulation in Ethiopia, Return to Africa Connected: Issue 2, DLA Piper Africa, Ethiopia (Mehrteab Leul & Associates), 17 April 2019, available at: https://www.dlapiper.com/en/uk/insights/publications/2019/04/africa-connected-issue-2/foreign-investment-and-forex-regulation-in-ethiopia/, accessed on May 10, 2024

[118] Repatriation of Dividends and Capitals in Ethiopia: Perception vs. Reality, Ethiopian Business Review, 6th Year. January 16–February 15, 2018. No.57, available at: https://ethiopianbusinessreview.net/repatriation-of-dividends-capitals-in-ethiopia-perception-vs-reality/#:~:text=According%20to%20the%20investment%20proclamation,or%20liquidation%20of%20an%20enterprise. Accessed on July 19, 2024

[119] US Department of State, 2020 Investment Climate Statements: Ethiopia. Available at: https://www.state.gov/reports/2020-investment-climate-statements/ethiopia/ Accessed on May 10, 2024

[120] Ibid

[121] Ibid

currency) impedes companies' ability to repatriate profits and obtain investment inputs.[122]' Another source argues that Forex access for foreign loan repayment and benefit repatriation can take months or years, depending on factors like a company's priority sector status and experience in the Ethiopian business context.[123] Yet, it remains to be seen if the practical problems concerning the repatriation of funds identified in the previous commentaries will be resolved or remain after the country has enacted FXD/01/2024, following the adoption of a New Monetary Policy Framework in July 2024. In fact, the new Directive offers much more comprehensive guidelines for the repatriation of funds offshore.

4.4. External Loan, Supplier's Credit and *Franco-Valuta* Imports

Another forex regulation that potentially impacts FDI is the one governing external loans, supplier's credit and *franco valuta* imports. External loan is a loan acquired from an eligible foreign lender and approved and registered by the NBE[124] and it can be made either in cash or in kind.[125] Supplier credit is a commercial agreement where an exporter agrees to provide goods or services to a foreign buyer on credit. Exporters provide short-term loans to importers, with importers expected to repay after the loan period. The credit is collateralized by a usage letter and is used for inventory, raw materials, equipment, machinery, and working capital needs. Supplier's credit is 'a source of financing provided by a foreign supplier with a future repayment date.'[126] Ethiopia is concerned with external loan and supplier credit, as payment of principal and interest on foreign loans is made through foreign currency provision.

In 2022, the NBE issued a Directive[127] that allows eligible borrowers to take external loans, including exporters, foreign investors, and domestic manufacturers, if they meet specific requirements.[128] Exporters must have a valid export license, foreign investors must have a debt-to-equity ratio of 60:40, and manufacturers must have a business license.[129] All borrowers must submit loan agreements, capital documents, and repayment plans to the NBE before taking on external debt.[130] Banks are exempt from seeking approval, but individuals or companies can register for external loans or suppliers' credit upon prior approval.[131] The NBE must approve loans before interest and principal payments can be made. Approval requirements include an application letter, valid export license, investment or business license, draft loan agreement, supplier's credit pro forma invoice,

[122] Ibid

[123] TRAIDE, Forex Guide for Incoming Investors (to Ethiopia) by the Kingdom of Netherlands in October 2023, p. 5; available at: https://traide.org/wp-content/uploads/FOREX-Guide-for-Incoming-Investors-TRAIDE-foundation.pdf Accessed on July 10, 2024

[124] FXD No. 01/2024, Art. 2.29

[125] Id. Art. 2.30 defines 'external loan in kind' as the acquisition of capital goods from an eligible foreign lender in the form of a sale with deferred payments, a lease agreement, or any other legal arrangement that may be approved by the NBE.

[126] Id, Art. 2.83

[127] Directive No. FXD/82/2022 Amendment to External Loan and Supplier's Credit

[128] The Preamble of the Directive states that the NBE is vested with the power to issue this Directive in accordance with Articles 20 and 27(2) of the National Bank of Ethiopia Establishment Proclamation No. 591/2008 and Investment Proclamation No. 1180/2020 to regulate forcing exchange and determining registration procedures for external loans.

[129] Art. 4.2 of Directive No. FXD/82/2022

[130] Id., Art. 3.2

[131] Ibid

capacity to repay the loan, and foreign capital registration certificate.[132] Repayment requires an application letter, a copy of the credit registration letter, and a loan repayment schedule. Governments or banks are prohibited from acting as guarantors or entering guarantee agreements for private loans.[133]

The FXD/01/2024 has chosen to maintain the rigorous procedures in the previous Directive when it comes to foreign currency administration from external loans and supplier's credit. Foreign loan contracts must be approved by the NBE for government-issued contracts without fulfilling certain requirements.[134] External loans guaranteed by the Federal Government of Ethiopia must be registered by the NBE.[135] However, other eligible borrowers must first obtain approval from the NBE before entering into external loan and supplier's credit agreements.[136] Foreign loans remitted must be registered in cash or in kind, and no repayment in foreign currency is allowed without registration.[137] Authorized banks can open usance letters of credit for exporters importing equipment, raw materials, machinery, and accessories for future exports.[138]

In general, before entering into an external loan or supplier's credit agreement, borrowers must seek approval from the NBE. Similar to its predecessor, the current Directive also identifies eligible borrowers and the respective requirements they should satisfy. Accordingly, exporters and foreign investors are the major eligible borrowers.[139] Exporters and domestic investors can acquire external loans or supplier's credits for export-oriented investments that generate foreign currency.[140] To obtain approval and registration from the NBE, exporters must provide an application letter, a valid export license, a draft loan agreement with detailed terms, a pro forma invoice for suppliers, and a document justifying the capacity to repay the loan.[141] Where a loan contract is entered into without fulfilling the requirements of this article, foreign exchange for the repayment of the loan may be denied. [142] Another group of eligible borrowers, foreign investors, are permitted to acquire external loans if they meet certain requirements, such as a debt-to-equity ratio of 60:40 and a valid investment or business license.[143] To obtain approval from the NBE, they must provide an application letter, a foreign capital registration certificate, a draft loan agreement with detailed terms, and a pro-forma invoice with a repayment period and term for the supplier's credit.[144]

The state's forex regulations aim to attract FDI and alleviate forex shortages. However, the current forex laws governing external loans and suppliers' credit primarily combat foreign currency shortages rather than attracting FDI. Both previous and new forex laws require strict registration and approval by the NBE for businesses to utilize these financing vehicles. This has led to acute foreign currency shortages, indicating that the previous forex

[132] Id., Art. 3.4
[133] Id., Art. 3.1
[134] FXD/ 01/2024, Art-17.1.1.
[135] Ibid
[136] Ibid
[137] Ibid
[138] Ibid
[139] Id, Art-17.2
[140] Id., Art. 3.1.
[141] Id, Art. 17.2
[142] Ibid
[143] Ibid
[144] Ibid

regime was not effective in alleviating the issue. Foreign investors find these strict regulatory requirements challenging to use for funding operations. The practical effects of the new forex law on these issues are yet to be seen. Pursuant to the new forex law; no person or entity may enter into a foreign loan contract[145] without first consulting with the NBE (in the case of the Government) and obtaining the NBE's approval (in all other cases). If a loan contract is entered into without fulfilling these requirements, foreign exchange for the repayment of the loan may be denied. Thus, from the investors perspective there is no much change regarding the regulation of external loan and supplier's credit. Hence, the problems encountered because of these regulations previously seem to persist.

Franco-valuta imports involve any imports of goods that do not utilize foreign exchange resources from the banking system and hence do not require the use of letters of credit, cash against deposits, advance payments, or other payment modalities. The privilege was first introduced during the imperial regime and has been governed by several regulations since then.[146] Franco Valuta, in Ethiopia, refers to a license to import goods on which no foreign currency is payable from the banking system and is governed by Council of Ministers Regulation No. 88/2006 (ERCA 2006). The privilege is intended for Ethiopian investors or foreign nationals of Ethiopian origin for investment activities, including capital goods and raw materials.[147] Foreign investors in the manufacturing sector can also benefit from this privilege by importing certain goods. The importation of goods on a *franco valuta* basis is restricted to use by (a) diplomatic missions and (b) businesses that are 100% foreign owned. The broader use of *franco valuta* may clash with ERCA tax requirements. Many of the businesses using *franco valuta* benefit from long corporate tax holidays as they export 100% of their production. The supplier credit scheme allows importers to receive goods from suppliers on short-term credit terms provided the business is either a domestic business which is both an exporter and the loan is going to finance an exporter or a 100% foreign-owned entity with a debt-equity ratio of no more than 60:40, with clear loan repayment arrangements and purpose.

The initiation of FXD/01/2024 involves one of the crucial policy changes, which involves abolishing the ban on *franco-valuta* imports. This policy was introduced to address inflation, foreign exchange shortages, and debt issues. Yet, all customs, taxes, health, and regulatory regulations will be applied to the *franco valuta* imported into the country, with implementation determined by the relevant authorities or regulations.[148] "

4.5.Offshore and Domestic Forex Accounts

The last segment of forex regulation having repercussions on FDI in Ethiopia is the regulations pertaining to foreign currency

[145] Note, however, that the NBE has removed the interest rate ceiling that previously applied to private sector companies and banks when borrowing from abroad.

[146] Capital Increases and Franco Valuta Under Ethiopian Law, 09 January 2017, https://www.simmons-simmons.com/en/publications/ck0amp33mdiss0b595ilnw4wc/090117-capital-increases-under-ethiopian-law-4fr1ca

[147] Ibid

[148] Ethiopia Removes Foreign Exchange Permit Requirements, Retaining Only Two Exceptions, Shega News, August 19, 2024 https://shega.co/news/ethiopia-removes-foreign-exchange-permit-requirements-retaining-only-two-exceptions

accounts (in authorized domestic banks) and offshore forex accounts.

4.5.1. Offshore Accounts For Strategic FDI Investments

Ethiopia's strict currency controls have historically hindered foreign businesses from using foreign bank accounts for foreign currency payments, limiting foreign investment, exchange inflows, and purchasing from overseas. Thus, with the aim of tackling this problem, the NBE issued Directive No. FXD/86/2023 that granted businesses in strategic areas the right to use offshore bank accounts for payments on capital, insurance, contractors, maintenance, and external debt services. This directive aimed to attract high-potential investors for public goods, generate foreign exchange inflows, and create a favorable environment for opening offshore accounts with guaranteed currency convertibility and modified debt-to-equity ratios.[149] Eligible projects include PPP projects in power generation and infrastructure, large-scale mining projects with significant export earnings, or any other FDI project approved by the NBE.[150] A balance sheet is created with a debt-to-equity ratio of 80:20 using foreign capital.[151] The NBE monitors quarterly financial statements for strategic FDI project owners to track offshore account inflows and outflows.[152].

Similar to Directive No. FXD/86/2023 (that is now repealed), FXD/ 01/2024 has introduced special allowances for offshore accounts for strategic foreign direct investment projects.[153] These include large capital investment PPP projects in power generation and infrastructure, large mining projects with substantial export potential, and any other project deemed eligible by the NBE's Executive Management.[154] Eligible payments covered from the offshore account include external debt service, insurance claims in foreign exchange, capital or investment expenses, and maintenance and operation expenses.[155] The debt-to-equity ratio must not exceed 80:20 of the foreign capital.[156] The Foreign Currency Convertibility Guarantee applies to strategic PPP energy and mining sector projects for loan repayment and dividend repatriation after the project owner has exhausted all means to purchase foreign exchange from banks.[157] For the sake of effective implementation, the law requires transparency and reporting requirements. The law authorizes the NBE the right to monitor any contracts associated with offshore accounts to ensure there are no malpractices involved.[158] It also mandates quarterly financial statements for strategic FDI project owners, showing inflows and outflows of the offshore account and annual projections of expected foreign exchange inflows and outflows.[159]

4.5.2. Domestic Forex Saving Accounts for Ethiopian and Foreign Entities

The establishment and management of forex saving accounts in Ethiopian banks were first addressed by the NBE's Directive No. FXD/68/2020.[160] This Directive allowed the

[149] Preamble, Directive No. FXD/86/2023
[150] Id, art -3
[151] Id, art-5
[152] Id, arts-7-8
[153] FXD/ 01/2024, Art. 19
[154] Id, Art-19.1.1
[155] Id, Art. 19.2.1
[156] Id, Art. 19.3.1
[157] Id, Art-19.4
[158] Id, Art-Art-7
[159] Id, Art-Art-8.2
[160] Establishment and Operation of Foreign Currency Saving Account for Residents of Ethiopia, Non-Resident

establishment and operation of foreign currency saving accounts for residents of Ethiopia, non-resident Ethiopians, and non-resident Ethiopians of Ethiopian origin.[161] The Directive's main objectives were to create incentives and encourage the inflow of new exchange with funds, maintain the international foreign exchange reserve, reduce the burden on the economy, as well as promote savings and investment. To open an account, a minimum of USD 50 or its equivalent in other currencies such as US dollar, Pound Sterling, or Euro is required. Other convertible currencies may be accepted at spot exchange rates. The Directive established provisions for foreign currency saving accounts, allowing those savings to be used for education, medical expenses, and international travel with proper documentation. However, withdrawals were only allowed in Birr and approved transactions by the NBE. Deposits from foreign currency cash notes and illegal sources are not allowed to credit or open a foreign currency savings account. The opening bank is responsible for maintaining account confidentiality and reporting the number of accounts opened and balance to the NBE. Violations may result in a penalty of Birr 10,000 and account suspension. Other transactions approved by the NBE may also be allowed.

In contrast to Directive FXD/68/2020 which allowed only residents of Ethiopia, non-resident Ethiopians, and non-residents of Ethiopian origin to establish and operate foreign currency accounts, FXD/01/2024 has broadened the list of eligible individuals and entities who can establish FCY deposit accounts upon fulfilling the requirements applicable for specific accounts. The FXD/01/2024 recognizes three categories of FCY accounts authorized by the NBE, and additional types of accounts may be permitted from time to time.[162]These are FCY Accounts for Foreign Entities, including FDI Companies, International Organizations, Embassies, and Foreign Nongovernmental Organizations (NGOs); FCY Accounts for Resident and Nonresident Ethiopians, including Nonresident Foreign Nationals of Ethiopian Origin; and Retention Accounts for Exporters of Goods and Services.[163] Obviously, companies that engage in FDI are one of the eligible businesses in the list of FXD/01/2024.

Foreign companies (FDI) require documentation of the application letter, foreign investment license, TIN certificate, NBE approval letter, and other requirements as requested by the opening bank.[164] Holders of FCY accounts for foreign companies, international organizations, embassies, and foreign NGOs may use the account for all foreign payments without any restriction.[165] In addition to foreign currency account rights, FDI companies engaging in exporters of goods and services have retention rights as specified in Article 6 of this Directive, and they are entitled to open forex retention accounts in licensed domestic banks.[166] There are differences between these two accounts, while foreign companies are free to use the account for all foreign payments without any restriction.[167] However, foreign exchange

Ethiopian, and Non-Resident Ethiopian Origin Direc11ve No. FXD/68 720

[161] Id, Art-3

[162] Part-V of the Directive

[163] FXD/ 01/2024 , Arts-13,14, and 15 respectively

[164] Id, Art-13.5.1.

[165] Id, Art- 13.6

[166] Id, Art-15.2

[167] Id, Art-13.6

earners can use their foreign exchange retention account balance for their own use, including payments for imports, dividends, and external debt service repayments. To support the development of an interbank foreign exchange market, earnings must be sold to a transacting bank after 30 calendar days. Unutilized earnings can be converted into Birr at a freely negotiated rate. The NBE can modify the percent share of foreign exchange proceeds and the conversion period.[168] Art-6.2 of FXD/01/2024 states that;

> After fulfilling the repatriation requirement set out in sub-article 6.1, exporters of goods and services shall immediately convert into Birr, at a freely negotiated rate, 50 percent (50%) of their export proceeds to the bank used in processing their foreign exchange transaction, while keeping the remaining 50 percent (50%) in their foreign exchange retention account.[169]

The other important development by FXD/01/2024 is a special privilege conferred on industry parks and special economic zones (SEZs) regarding the utilization of foreign currency accounts. Industry parks not designated as SEZs may: buy, in FCY, raw materials or inputs manufactured by another investor within the same industrial park or across another industrial park from its FYC and/or retention account, Sell its manufactured product within the industrial park as an input to another investor within the same industrial park or across another industrial park in FCY via credits to its retention account. Open an FCY account for a foreign employee of an industrial park and Issue export and import permits for trade within and between industrial parks. Besides, authorized banks may open and maintain 'non-resident foreign currency accounts' in the name of persons, corporate bodies, institutions, and diplomatic organizations such as FDI companies, international organizations, foreign embassies and consulates, and foreign non-government organizations.[170] Also, foreign individual employees of the above companies are entitled to open foreign currency accounts as per Article 14 of this Directive.[171] Regarding the uses of the account, holders of FCY accounts for foreign companies, international organizations, embassies, and foreign NGOs may use the account for all foreign payments without any restriction.[172] The legal restriction imposed on the utilization of foreign currency accounts by exporters of goods and services is not applicable to non-resident foreign currency accounts.

5. Concluding Remarks

In recent years, Ethiopia has struggled with its forex regulatory regime. The fluctuating and uncertain regulatory landscape presented a significant risk to FDI. Ethiopia's previous forex system has been criticized for not following government investment policies to encourage FDI and address the country's foreign currency deficit. In July 2024, Ethiopia adopted a New Monetary Policy Framework, enacting Foreign Exchange Directive No. FXD/01/2024, which is the first comprehensive forex law to revise and repeal all previous forex laws. The Directive aims to provide a unified framework for managing Ethiopia's foreign

[168] Id, Art-6.3-6.8
[169] Id, Art-6.2
[170] Id Id, Art-13.1.2,
[171] Id, Art-13.1.1
[172] Id, Art-13.6

exchange market by replacing previous regulations. It marks a transition to a market-based exchange regime, allowing banks to buy and sell foreign currencies at freely negotiated rates with limited NBE intervention. The Directive also removes several requirements related to forex, including surrender requirements to NBE and enhancements in retention rules. It introduces non-bank foreign exchange bureaus and lifts restrictions on franco-valuta imports of goods not utilizing foreign exchange from the banking system.

The Directive also establishes foreign currency saving accounts (FCY) for various entities and individuals, opens the securities market to foreign investors, and permits industry parks and Special Economic Zones to engage in transactions. Overall, these changes aim to liberalize and streamline foreign exchange transactions and regulations in Ethiopia. Looking at their contents and the amount of modifications they have made to the previous forex regime, these new regulations do have far-reaching repercussions on FDI in Ethiopia. Yet the practical effects of the new law on FDI are yet to be seen.

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Original Article

Environmental Regulation in Ethiopia: Is It Adequate?

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Abstract

Environmental regulation is a key tool for environmental protection. The objective of this paper is to examine the adequacy of environmental regulation for the safety of the environment in Ethiopia. Methodologically, it is doctrinal and the analysis is based on the existing constitutional, policy, and legal frameworks. Secondary sources are also used to a limited extent. It concludes that the environmental regulation in the country is not adequate since some of the anticipated implementing guidelines or directives are not prepared, or even when prepared, not approved yet. This is so mainly in cases of environmental standards and *environmental impact assessment* guidelines which are essential regulatory mechanisms for the protection of the environment. Moreover, where legal frameworks of regulatory mechanisms are clear, they are poorly enforced because of a lack of funds and capacity of human resources. Accordingly, the paper suggests filling these gaps to have adequate environmental regulation in the country.

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Introduction

Countries in the world strive to ensure economic development. In this endeavor, they are also expected to adhere to environmental standards. However, economic development and environmental protection are often

considered as two competing interests. Environmental regulation is a tool that tries to strike the balance between these competing interests. Ethiopia has been taking so many policy and legal measures to deal with the situation, too. The main purpose of this paper is, therefore, to examine to what extent environmental regulation in Ethiopia is adequate to protect the environment basically by analyzing the existing constitutional, policy, and legal frameworks. To do this, it is organized into four sections.

Section one briefly explains the nexus between economic development and environmental protection with a view to contextualizing the relevance of environmental regulation. It explains the existing intervention strategies and the basic features/ characteristics of these strategies used for balancing both interests of environmental protection and economic development.

Section two shows the constitutional, policy, and legal frameworks within which environmental issues are operating in Ethiopia. The discussion in the section is neither detailed nor exhaustive as the purpose is just to lay the foundation for regulatory tools to be discussed in the subsequent section, section three.

Section three is the heart of the paper where legal and institutional mechanisms used for regulating the environment such as environmental impact assessment, licensing or permit system, environmental standards, citizen's suits, incentives, and environmental liabilities are all discussed and analyzed to judge their adequacy thereto. Finally, section four concludes the paper.

1) Environmental Regulation: Setting the Context

Environmental regulation is well contextualized by considering the relationship between economic development and environmental protection. The relationship between the two is controversial. For some, it is positive as they reinforce each other; for others, it is negative as one flourishes at the expense of the other.1 The trend is also not uniform. Although the negative relationship explains the situation in Sub-Saharan Africa, it is possible to make the relationship positive through effective environmental regulation.[2] South Africa is often cited as an example of a country that has effectively utilized its regulatory and enforcement mechanism to ensure that Foreign Direct Investment operations in its extractive industries do not impact negatively the environment.[3] Moreover, if the environment is left unregulated, it brings environmental problems like pollution whose economic explanation is externalities which are generated affecting parties who have not contracted to bear the environmental damages.[4] The question is what constitutes effective regulation so that economic development exists without harming the environment. No hard and fast rule fits all in this regard. The intervention strategies are of diverse. Some sectors like transportation and energy need substantial deregulation.[5] Some other sectors like environment and homeland security need

[1] Ghana Dennis O. Agelebe, 'Integrating Liberal Economic Regulation with Environmental Protection: Ethiopia, Zambia, Mali and Ghana', *Australasian Review of African Studies*,Vol.40, No 2, (2019), p105

[2] Id. p.110

[3] Ibid

[4] W. Kip Viscusi, Joseph E. Harrington, Jr., and John M. Vernon, *Economics of Regulation and Antitrust*, 5th ed., Cambridge MA: MIT Press, (2018),chapter 21

[5] Id, Introduction.

restrictive regulation.[6] Some are liberal; some others are restrictive.[7] This section is devoted to the intervention strategies and some of their attributes/characteristics.

1.1. Intervention Strategies

In principle, numerous intervention strategies might be adopted. Neil Gunningham identified ten of such distinctive, but often mutually compatible intervention strategies. These are rules and deterrence where coerciveness from the government side is emphasized[8], advice, and persuasion where cooperation is the focus [9], criteria-based regulation where government officers depend on criteria to conclude (decision)[10], responsive regulation where a mixture of cooperation and coercive is applied as the case may be[11], smart regulation where responsive regulation is expanded by including markets, civil societies, and other institutions[12], risk-based regulation where intervention is suggested depending upon the degree of risks[13] , meta-regulation where responsibility is placed upon the regulated organization by submitting a plan for approval by the regulator[14], just deserts where intervention is made through proportional and just punishment of non-compliance[15] , restorative justice where intervention is made to give environmental offenders a chance to proactively put things right[16] and 'responsive regulation' where going beyond intervention strategy and examining matters like the operating and cognitive environment of organizations, the institutional environment, the different logics of regulatory tools, and changes in these elements are needed.[17]

From Neil Gunningham's list, one can easily grasp the existence of a considerable diversity of intervention approaches. Some of them (as in the case of Criteria Strategies) are incoherent and provide almost unconstrained discretion to field officers.[18] Others (particularly some hybrids) are internally inconsistent and/or underdeveloped in that they do not fully embrace a particular strategy.[19] Some are proactive (anticipatory); some others are retroactive. Hence, Neil Gunningham rightly concludes that the best approach is applying different intervention strategies according to their suitability to particular regulatory contexts rather than seeking to identify a single intervention strategy.[20] However, effective intervention strategies are expected to be environmentally effective and economically efficient.[21]

1.2. Characteristics of Effective Intervention Strategies

Effective environmental regulations do reflect some unique characteristics which include

[6] Ibid

[7] Ghana Dennis O. Agelebe, *supra* note 1, p109.

[8] Neil Gunningham, 'Enforcing Environmental Regulation', *Journal of Environmental Law*, Vol.23, No2, (2011),p174

[9] Ibid

[10] Ibid

[11] Ibid

[12] Ibid

[13] Ibid

[14] Neil Gunningham, *supra* note 8, p175

[15] Id, p172

[16] Ibid

[17] Ibid

[18] Neil Gunningham, supra note 8, p201

[19] Ibid

[20] Ibid

[21] Michalak Krzysztof and Schucht Simone, Economic Aspects of Environmental Compliance Assurance (Proceedings from the OECD Global Forum on Sustainable Development 2-3 December 2004 OECD Headquarters, Paris, France), p13 available at https://www.researchgate.net/ publication/275885954_ECONOMIC_ASPECTS_OF_ENVIRONMENTAL_COMPLIANCE_ASSURANCE last visited on 13 October 2024

enforceability[22], adaptability to specific contexts, coordination between and among actors, and leaving discretionary powers to enforcers, especially to the local ones.[23] The whole idea is that effective intervention strategies reflecting these characteristics can lead to economic development without compromising the protection of the environment, i.e., environmentally effective; and economically efficient. With this, now let us turn to constitutional, policy, and legal frameworks for the protection of the environment in Ethiopia.

2) Environmental Protection in Ethiopia: Constitutional, Policy and Legal Framework

This section introduces the existing constitutional, policy, and legal framework for the protection of the environment in Ethiopia. There are many environmental laws in Ethiopia. Many of them are nationally enacted; some of them are domesticated treaties which are considered integral parts of the law of the land by Art. 9 (4) of the FDRE Constitution. Some of them are sectoral and some others are cross-sectoral.

Investment Proclamation No.1180/202, National Park Establishment laws, Water Resource Management Proclamation No. 197/ 2000, Public Health Proclamation No. 200/2000, Federal Rural Land Administration and Land Use Proclamation No. 456/2005, Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482/2006, Development Conservation and Utilization of Wildlife Proclamation No. 541/2007, Forest Conservation, Development and Utilization Proclamation No. 542/2007, Radiation Protection Proclamation No.571/2008, Ethiopian Wildlife Development and Conservation Authority Establishment Proclamation No. 575/2008, Biosafety Proclamation No. 655/ 2009, The Convention on Biological Diversity, The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, etc. are all laws directly or indirectly related to the environment.

The purpose of this section is not to make detailed and exhaustive discussions of all these laws and policies. Doing this is not realistic in such a brief paper. Rather, it is to show the general framework it constitutional, policy, or legal within which environmental issues are operating in Ethiopia. This is important as the regulatory tools that will be discussed under section three directly or indirectly emanate from these policies and laws.

2.1. The FDRE Constitution

Under the FDRE Constitution, environmental issues are incorporated both as 'fundamental rights' and 'environmental objectives. The fundamental rights component can be explained in terms of the right to a clean and healthy environment, the right to livelihood, and the right to sustainable development.[24] Accordingly, ''all persons have the right to a

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[22] Enforceability is 'the nitty-gritty of environmental regulation. For this, the regulation should be: i) transparent (clearly communicated); ii) accountable; iii) consistent (within and between sectors and over time); iv) proportionate (risk-based); v) targeted (outcome-focused); and vi) practicable (proper funding for enforcers and clarity for business about what they have to do) (see Id p.14).

[23] Id pp.14-15.

[24] The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1/1995, FEDERAL NEGARIT GAZETTE, 1st Year No.1, 1995 ('hereafter FDRE Constitution') Articles 43 cum.44.

clean and healthy environment''.[25] This right includes the right to livelihood of persons who have been displaced or whose livelihoods are adversely affected as a result of the implementation of state programs. [26] Again, the constitution guaranteed the right to improved living standards and sustainable development for the people of Ethiopia as a whole and each Nation, Nationality, and People in particular.[27] Such right presupposes wise and prudent use of environmental resources, i.e., it is an aspect of the right to a clean and healthy environment.

The environmental objectives provided in the Constitution reiterate the fundamental right to health and a clean environment. Accordingly, they impose duties on the government not to design and implement projects that damage or destroy the environment, to hear the views of the people in the design and implementation of environmental policies, and generally to protect the environment.[28]

Therefore, the FDRE Constitution regulated environmental rights and objectives which indicate Ethiopia's deep concern and commitment to the protection of the environment. It also laid the foundations for the development of environmental policies and laws.

2.2. The 1997 Environmental Policy

The Environmental Policy of Ethiopia was approved by the Council of Ministers in 1997. The Policy contains elements that emphasize the importance of mainstreaming socio-ecological dimensions in development programs and projects.[29] The goal of the Environmental Policy of Ethiopia is to improve and enhance the health and quality of life of all Ethiopians and to promote sustainable social and economic development through sound management of the environment and use of resources so as to meet the needs of the present generation without compromising the ability of future generations to meet their own needs.[30]

The Environmental Policy provides several guiding principles that require adherence to the general principles of sustainable development.[31] In particular, the a need to ensure that the Environmental Impact Assessment (EIA) completes the following:

- *Considers impacts on human and natural environments,*
- *Provides for early consideration of environmental impacts in project and program design,*
- *Recognizes public consultation processes as essential to effective management,*
- *Includes mitigation and contingency plans,*
- *Provides for auditing and monitoring,*
- *A legally binding requirement.*[32]

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[25] FDRE Constitution Article 44 (1).

[26] FDRE Constitution Article 44 (2): *All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance*.

[27] FDRE Constitution Article 43 (1).

[28] FDRE Constitution Article 92

[29] Federal Democratic Republic of Ethiopia Environmental and Social Management Framework,For Africa CDC Regional Investment Financing Program, Revised ESMF Report (2019) pp.44-45.

[30] See the 1997 of the Environmental Policy of Ethiopia.

[31] FDRE Environmental and Social Management Framework, *supra* note 28, p45; Khushal Vibhute, 'Environmental Policy and Law of Ethiopia: A Policy Perspective', *Journal of Ethiopian Law*, Vol.22 (2008) p.80.

[32] FDRE Environmental and Social Management Framework, Id. p.45

2.3. Some Environmental Proclamations

2.3.1. The Environmental Impact *Assessment Proclamation No.299/2002*

Environmental impact assessment (EIA) is ''the methodology of identifying and evaluating in advance any effect, be it positive or negative, which results from the implementation of a proposed project or public instrument.''[33] Its aim is to integrate environmental considerations in the development planning process so that natural resources are used in a responsible manner and thereby the environment is protected, i.e., to ensure eco-friendly development.[34]

The EIA proclamation defines the role and the relationship of different actors. Accordingly, the Environmental Protection Authority at the federal and regional levels (the Authority), the proponent, and the licensing agencies are the main actors in the proclamation. The Authority is the decision-maker. The implementation of any project that needs the conduct of an EIA study will not commence without the approval of the Authority.[35] Hence, the authority is the appropriate body to decide on the findings of the EIA study and to monitor the implementation of the project.[36] The proponent is the owner of the project and any organ of government if in the public sector or any person if in the private sector that initiates a project.[37] The licensing agency is any organ of government empowered by law to issue an investment permit a trade or operating license or a work permit or to register a business organization, as the case may be.[38] The agency, prior to giving any permit, has to ensure that the Authority has authorized the implementation of the project.[39]

Moreover, the EIA proclamation contains provisions dealing with public participation, incentives provided for the rehabilitation of degraded or polluted environments, grievance procedures, and offenses and penalties.

2.3.2. The Pollution Control Proclamation No. 300/2002

As can be understood from the preamble, the proclamation is enacted to control *pollution* that may arise following some social and economic development. It requires ongoing activities to implement measures that reduce the degree of pollution to a set limit or quality standard.[40] Thus, one of the dictates of the proclamation is to ensure, through inspection, the compliance of ongoing activities with the standards and regulations of the country through an environmental audit.[41]

The sectors that require standards shall include at least the following:

(a) Standards for the discharge of effluents into water bodies and sewage systems.

(b) Air quality standards that specify the ambient air quality and give the allowable amounts of emission for both stationary and mobile air pollution sources.

[33]Environmental Impact Assessment Proclamation No.299/2002, FEDERAL NEGARIT GAZETA, 9th Year No.11, Addis Ababa, 3rd December 2002 Article 2 (3).

[34]Khushal Vibhute, *supra* note 31, p.85; this is also understandable from the preamble of the EIA proclamation.

[35]Environmental Impact Assessment Proclamation No. 299/2002, *supra* note 33, Article3 (1). Here, it is good to note that not all projects need EIA study. The proclamation envisaged the type of projects that need and do not need EIA study to be fixed by the directive (see Art. 5)

[36] Id Articles 4 cum.12

[37] Id Articles 2 (9) cum. 7.

[38] Id Article 2 (5).

[39] Id Article 3 (3)

[40]Environmental Pollution Control Proclamation No. 300/2002,FEDERAL NEGARIT GAZETA, 9th Year No. 12, Addis Ababa, 3rd December, 2002 Article 6 (1)

[41] This is understandable from the whole readings of the proclamation, especially, Articles 3(1), 6 (5)

(c) Standards for the types and amounts of substances that can be applied to the soil or disposed of on or in it.

(d) *Standards for noise providing for the maximum allowable noise level taking into account the settlement patterns and the availability of scientific and technological capacity in the country.*

(e) Waste management standards specifying the levels allowed and the methods to be used in the generation, handling, storage, treatment, transport, and disposal of the various types of waste. [42]

As a follow-up to this proclamation (proc.no. 300/2002), Industrial Pollution Regulation No. 159/2008 was enacted to ensure the compatibility of industrial development with environmental conservation. It includes comprehensive industrial pollution standards for a range of industrial and mining activities.

2.3.3 Solid Waste Management Proclamation No. 513/2007

The proclamation defined 'solid waste' as anything that is neither liquid nor gas and is discarded as unwanted.[43] Accordingly, solid waste management is the collection, transportation, storage, recycling, or disposal of solid waste or the subsequent use of disposal site that is no longer operational.[44] The proclamation is enacted to regulate these all. It has also the objective of creating further economic benefit out of the waste by different means like re-cycling.[45]

For this, the proclamation imposed obligations on those who have roles in the management of solid wastes: government officials, traders, and the community. For example, restaurants and food industries must collect, store, and dispose of solid waste in an environmentally friendly manner.[46] Similarly, construction companies, together with urban administrators, must arrange appropriate places for waste disposal, a precondition necessary even for the issuance of construction permits.[47]

To conclude, constitutional, policy, and legal frameworks for the protection of the environment in Ethiopia are basically the above ones. As indicated in the introductory remark, they are the main ones; not the only ones. They are also the sources for environmental regulation that we will consider right away in the next section.

3) Environmental Regulation in Ethiopia: Examining Adequacy

This section examines the adequacy of environmental regulation in Ethiopia by examining available legal and institutional mechanisms and identifying the gaps there. Accordingly, the section is organized into two sub-sections. The first sub-section deals with the existing legal mechanisms. The second sub-section is about institutional mechanisms. Let us see one by one.

3.1. Legal Mechanisms

3.1.1.The Environmental Impact Assessment (EIA) System

EIA is considered as a very essential tool for environmental protection with

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[42]Environmental Pollution Control Proclamation No.300/2002, *supra* note 40, Article 6 (1).

[43] Solid Waste Management Proclamation No. 513/2007, FEDERAL NEGARIT GAZETA, 13th Year No.13, Addis Ababa, 12th February 2007 Article 2 (6).

[44]Id Article 2(7).

[45]IdArticle3; Habtamu Lanjore, Interplay Between Investment Laws and Environmental Laws in Ethiopia about Environmental Protection, LL.M Thesis, Jimma University (2015) p.43

[46] Solid Waste Management Proclamation No. 513/2007, *supra* note 43, Article10.

[47] Id Article12.

multidimensional importance.[48] It can be used to predict the environmental consequences of a proposed major development project.[49] It can also provide a forum for public involvement in the decision-making process.[50] However, the proper functioning of the EIA system in Ethiopia has many gaps. The evaluative study conducted in 2010[51] can clearly illustrate the case at hand. This study used eighteen (18) criteria that focus on institutional aspects, the EIA process, and other features of the EIA system. Accordingly, the study found that the EIA system *theoretically* meets 12 of 18 evaluation criteria, partially meets 4 and fails to meet 2. *In practice*, the system meets only 1 criterion, partially meets 5, and fails to meet 12. Hence, the study depicted that a huge gap exists between theory and practical implementation of the EIA system in Ethiopia.

At this juncture, it is good to appreciate that the study was conducted long before a decade and so many improvements have been made since then. However, it objectively indicates the existence of a huge gap in EIA system application in Ethiopia even 8 years after its introduction by Proclamation no. 299/2002. The question is why does the gap exist? Many factors contributed to it, but lack of complementarity between environmental laws and investment laws, inadequate legal coverage, poor reviewing practice of EIA studies, and poor monitoring and evaluation process can be mentioned as the main reasons. Let us see one by one.

a) Lack of Complementarity between Environmental and Investment Laws

As discussed in the first section, development and environmental protection are in tension thereby demanding effective regulation for striking the balance. Investment, being an aspect of development, exhibits this tension. Environmental laws of the country require doing EIA and receiving authorization from the Environmental Protection Authority before the commencement of the investment activity except when the project is free from conducting an EIA study.[52] However, investment laws do not specifically require conducting EIA as a criterion to get an investment permit. The investment proclamation of the country is very general about environmental protection. The relevant provision of the newly passed investment law reads as follows[53]:

54. Duty to Observe Other Laws and Social and Environmental Sustainability Values

1/ All investors shall carry out their investment activities in compliance with the Laws of the country.

2/ All investors shall give due regard to social and environmental sustainability values including environmental protection standards and social inclusion objectives in carrying out their investment projects

[48] Habtamu, *supra* note 45, p.7

[49] Mesfin Bayou and Mellesse Damite, An Overview of EIA in Ethiopia, Gaps and Challenge (2008).2

[50] Ibid

[51] Dominik Ruffeis, Willibald Loiskandl, Seleshi Bekele Awulachew & ElineBoelee, Evaluation of the environmental policy and impact assessment process in Ethiopia, Impact Assessment and Project Appraisal (2010), 28:1, 29-40, DOI: 10.3152/146155110X488844; This study adopted Tedros and Quinn (2007) criteria for evaluating the EIA system in Ethiopia.

[52] Environmental Impact Assessment Proclamation No.299/2002, *supra* note 33, Articles3 and 5.

[53] Investment Proclamation No. 1180/2020, FEDERAL NEGARIT GAZETA, 26th Year No. 28, Addis Ababa, 2nd Day of April 2020, Article54 (1-2).

The above provision of the investment law imposes two obligations on the investors: to comply with the laws of the country and to give due regard to social and environmental sustainability values while doing the investment activities. Both obligations are very general and far from directly guaranteeing an investor to make an EIA study to get an investment permit. The duty to make an EIA study is conceived only if one interprets "…in compliance with the laws of the country" broadly. According to the investment law, an investor can get an investment permit provided that s/he fulfills other requirements. Officials in investment commissions or other licensing agencies are hardly aware of environmental standards and environmental protection authority directives.[54] In other words, s/he is not prohibited from getting the permit for the simple reason that s/he did not conduct an EIA study.[55] This creates an opportunity for commencing the implementation of projects without doing an EIA study although they are supposed to do it. Again, no provision in the investment proclamation law requires the Investment Agency of Ethiopia to consult the Environmental Protection Authority as far as the EIA study is concerned before rendering an investment permit. The investment law would have complemented the environmental law had it made conducting an EIA study mandatory or cross-referred to it. Similarly, no legislation compels sectoral and financial institutions to coordinate with the Environmental Protection Authority and obtain environmental clearance before rendering relevant services.[56] However, making institutional links and coordination is one of the essential features of environmental regulation that contributes to the protection of the environment by serving as checks and balances as already explained in the first section of the paper.

b) Legal Gap in the Process of Conducting EIA

By and large, the Ethiopian environmental regime is characterized by a ''rule-oriented approach''.[57] Despite this, the system has still legal lacunae. One of the areas where such gaps exist is in the process of conducting EIA. Environmental Protection Authority published EIA guidelines in 2003 and the directives in 2008. The guidelines and the directives were prepared based on Art. 5 (1) of EIA Proclamation No.299/2002 which reads as ''every project which falls in any category listed in any directive issued under this Proclamation shall be subjected to environmental impact assessment.'' The guideline provides a list of projects and activities which require full, preliminary, and no EIA studies.[58] It highlights aspects of potential environmental impacts related to water, air, noise pollution and etc.[59] However, the guidelines are not binding as they are not yet approved by the Council of Minster.[60] This means that proponents may not be forced to obey the guidelines and they can avoid dealing with environmental protection organs.[61]

[54]James Krueger and *et al,* 'Environmental Permitting in Ethiopia: No Restraint on ''Unstoppable Growth?'', *Haramaya Law Review*, Vol.1, No1 (2012), p87.

[55] Habtamu made similar analysis on the previous investment law, Proc. No.769/2012 (See Habtamu, *supra* note 45, p.66).

[56]Mulugeta Getu, 'The Ethiopian Environmental Regime Versus International Standards: Policy, Legal, And Institutional Frameworks', *Haromaya Law Review*, Vol.1, No.1 (2012), p70.

[57] Ibid

[58] Dominik Ruffeis and *etal*, *supra* note 51, p34

[59] Ibid

[60] Habatamu Lanjore, *supra* note 45, p49.

[61] Ibid

Similarly, the directives are not effective because they are not approved. Hence, the EIA law is incomplete and inadequate as the implementing laws are not in place.

c) Poor Reviewing, Monitoring and Auditing

A body responsible for the task of reviewing, monitoring, and auditing the environment has a different name from time to time. Originally, it was Environmental Protection Organ established by Proclamation No. 9/1995, later re-established as Environmental Protection Authority by Proclamation No. 295/2000. Recently, it was the Ministry of Environment, Forest and Climate Change under Forest Development, Conservation and Utilization established by Proclamation No.1065/2018. More recently, the Federal Executive Organ Establishment Proclamation No.1263/2021 established the Environment Protection Authority as an autonomous federal government body having its legal personality and accountable to the Ministry of Planning and Development.[62] This body, especially in the beginning, conducts weak or no review, monitoring, and auditing.[63] The reasons are many. First, many EIA studies which are conducted largely by international or national consultants were not submitted to it or submitted belatedly at the operational level.[64] For example, a study shows that only half of the EIA reports produced by donor agencies between 1995 and 2003 were submitted to the Environmental Protection Authority for official review.[65] Second, the institutional capacity of the reviewing body is limited in terms of expertise human resources, and budgets.[66] Third, although the law demands public participation in the review process of EIA, this is lacking in practice; if at all it exists, it is not genuine.[67]

To conclude, although the EIA system is considered an essential tool for economic regulation of the environment, the system has gaps both at entry and in its process thereby questioning the adequacy of the regulation.

3.1.2. The Permit or Licensing *System*

Environmental permitting is one of those very important areas in environmental governance where the process of deciding between environment and development can be made clear.[68] It is a decision measuring an economic project against an explicit set of environmental criteria.[69] It involves balancing and choosing between environment and development.[70] In its broadest sense, it includes any type of license or permit that has at least one environmental criterion.[71] Therefore, the permit system is one of the criteria-based regulatory mechanisms as an intervention approach in regulating the environmental issue we briefly discussed in the first section of this paper.

In Ethiopia, environmental permits are needed for different purposes and are found in different environmental laws. Accordingly, an environmental permit is needed for any discharge of waste into water bodies[72],

[62] Definition of Powers and Duties of Executive Organs Proclamation No.1263/2021, FEDERAL NEGARIT GAZETA, 28th Year No.4, Addis Ababa, 25th January 2022, Articles 59 (1) cum.89 (1).

[63] Dominik Ruffeis and *et al*, *supra* note 51, pp.35 & 37

[64] Id p.35.

[65] Ibid

[66] Id p37

[67] Id p.35

[68] James Krueger and *etal*, *supra* note 54, p74

[69] Ibid

[70] Id., p.82

[71] Ibid

[72] Ethiopian Water Resources Management Proc.No.197/2000, FEDERAL NEGARIT GAZETA, 6th Year No. 25, Addis Ababa, 9th March 2000, Article11(1)

collection and disposal of solid or hazardous waste[73], operating businesses that cause air or water pollution[74], starting a project or business that has environmental impacts and requires an impact statement.[75] Because of this, the permit system has not only the function of registration as well as control but also enhances government transparency.[76]

As regards permitting institutions, environmental institutions such as the Environmental Protection Authority and regional environmental agencies do very little of the environmental permitting.[77] These institutions have legal authority only to issue permits for hazardous waste[78] and, in practice, do not issue any permits or licenses at all.[79] The Environmental Protection Authority has the power to conduct environmental impact assessments, but this power will be exercised only if a licensing authority (or a bank) refuses to go forward without the Authority's (EPA's) approval.[80] Ethiopian Investment Commission, and different Ministries like the Ministry of Water and Energy, the Ministry of Trade and Integration, etc. are licensing institutions.

In the context of industries, the licensing agencies grant a license to a factory after verifying that the effluent is not a pollutant or will not exceed the limit set under the relevant environmental standard and it will not entail damage if released into the environment.[81] The problem with this is that licensing agencies do not have the expertise required for making such a judgment as doing this needs to conduct EIA, a task entrusted to the Environmental Protection Authority. Environmental Protection Authority, however, cannot properly discharge this duty since environmental standards are not fully prepared and implemented. Moreover, the scope of the duty to verify the licensing agencies is limited to some specified industrial sectors only.[82]

A license granted can be renewed, suspended, or revoked. For example, an investment permit shall be renewed annually before the issuance of business license.[83] It can also be suspended if the investor fails to submit accurate and timely information, obtains the permit based on false information, uses an investment permit incompatibly with the objective, and fails to review without good cause.[84] Furthermore, it can be revoked if the investor fails to commence investment project implementation, fails to rectify the issue that caused the suspension of the investment permit, voluntarily forsakes his investment activity, misuses, or illegally transfers to third-party investment incentives.[85] In factories, the competent environmental organ shall suspend or cancel a license if it has reason to believe that the continuation in operation of the factory

(d) and Ethiopian Water Resources Management Reg. No.115/ 2005, FEDERAL NEGARIT GAZETA, 11 th Year No. 27, Addis Ababa ,29th March 2005, Art.11 (1).

[73] Solid Waste Management Proc. No. 513/2007, supra note 43, Article 4 (2) and Environmental Pollution Control Proc. No. 300/ 2002, *supra* note 40, Article 4 (1).

[74] Prevention of Industrial Pollution Regulation No.159/2008, FEDERAL NEGARIT GAZETA, 15th Year No.14, Addis Ababa, Article 5.

[75] James Krueger and *et al*, *supra* note 54, p.82

[76] Id. p.83

[77] Ibid

[78] Environmental Pollution Control Proclamation No.300/2002,supra note 40, Article 4

[79] James Krueger and *et al*, *supra* note 54, p.83

[80] Ibid

[81] Prevention of Industrial Pollution Regulation No.159/2008, *supra* note 74, Article 5.

[82] Id., Article 3

[83] Investment Proclamation No.1180/2020, *supra* note 53, Article 11(1).

[84] Id. Article 13 (1).

[85] Ibid

may entail serious pollution.[86] An investor whose permit is suspended will be given one year to take corrective measures. If the corrective measure is not taken within one year, the permit will be revoked. An investor whose investment permit is revoked shall return all investment incentives he received to the Ministry of Revenues, the Ethiopian Customs Commission, the Ministry of Finance, and other pertinent organs within one month of the revocation.[87]

3.1.3. Setting Environmental Standards

Broadly speaking, in practice, environmental standards can be set from either first principles or based on existing national or international guidelines.[88] Deriving the standards from first principles requires classification, and prioritization of pollutants, derivation of pollutant exposure processes, and determination of their ecological effects.[89] The information required to develop such principles is drawn predominantly from combinations of extensive epidemiological and toxicological studies which is important to know health and environmental effects.[90] Since this process is expensive, there are a limited number of international sources who collate and interpret the data in order to prepare guidelines.[91] Most countries depend on the existing national or international guidelines.

Coming to Ethiopia, environmental standards are among several issues covered by Environmental Pollution Control Proclamation No. 300/2002.[92] The proclamation authorized the Environmental Protection Authority to formulate practicable environmental standards based on scientific and environmental principles.[93] The proclamation also makes an illustrative listing of sectors where setting such standards is necessary: air, water, soil, noise, etc.[94] However, there were no documents that outlined the national or regional strategies that the ministries and agencies could adopt to translate existing policies, legal provisions, or guidelines for air pollution into practical programs except effluent limits on certain water pollutants and on air pollutants for a specified list of industries which are poorly enforced, a feature of non-effective environmental regulation.[95]

Moreover, the Environmental Protection Authority together with the United Nations Industrial Development Organization developed draft guideline ambient environment standards in 2003.[96] In preparing environmental standards, baseline data is very important. That is why the draft guideline itself recognizes that baseline data is important for the implementation of environmental quality standards particularly about the following:

[86] Prevention of Industrial Pollution Regulation No.159/2008, *supra* note 74, Article7 (2).
[87] Investment Proclamation No 1180/2020, *supra* note 53, Article 13 (5).
[88] Environment Standard Guideline, Introduction.
[89] Ibid
[90] Ibid
[91] Ibid
[92] Environmental Pollution Control Proclamation No.300/2002, *supra* note 40, Article 6 .
[93] Id., Article 6 (1)
[94] Ibid.
[95] Getnet Mitike and *et al*, 'Review of Policy, Regulatory and Organizational Frameworks of Environment and Health in Ethiopia, *Ethiopian Journal of Health Dev*., 30 (1 Special Issue) (2016), p1 and James Krueger and et al , *supra* note 54, p.85.
[96] The Environmental Protection Authority and United Nations Industrial Development Organization, Guideline Ambient Environment Standards for Ethiopia (Prepared under the Ecologically Sustainable Industrial Development Project US/ETH/99/068/ETHIOPIA,2003; Hereinafter, referred as Environment Standard Guideline).

- *forming a basis for zoning; where general or special standards should apply;*
- *assessing the assimilative capacity of the receiving environment;*
- *identifying the areas that require stringent or less stringent application of standards; and,*
- *formulating rehabilitation and/or conservation measures*.[97]

In developing the 2003 draft guideline, where sufficient national baseline information is available, it is used as a starting point to assess it against international guidelines to adjust to national standards. Where there is no sufficient national baseline information, additional baseline data collection was undertaken to improve or adapt the initial standards to own country's situation. However, many of the guideline standards have been adopted directly from international guidelines as recommended for developing countries. Accordingly, the draft guideline lists quality standards on four things: air, water, soil and groundwater, and noise standards. Its role in controlling pollution might be immense. However, it is not tested as it is a mere draft and not a binding document. But, the crucial thing in the course of making this kind of environmental standard development is to consider adaptability. A good characteristic of environmental regulation, as indicated in section one of this paper, is the one that is easily adaptable to the context.

3.1.4. Environmental Litigation Procedure (Citizen Suits)

In civil cases, a person who initiates a case is expected to show his/her vested interest in the case.[98] In environmental litigation, a person can initiate a case without showing this vested interest. Such a process of initiating a case without showing a vested interest in an environmental case is known as public interest litigation. Public interest litigation is a "legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected".[99] It has several purposes: provides effective protection of the weaker sections of the community; makes the government in general and the executive, in particular, accountable and act according to its established duty to abide by and enforce legal norms; remedies democratic deficiency; makes the consideration of transparency in decision making real; protects and sustains democratic governance and the rule of law; promotes access to justice before judicial bodies; allows participative justice, etc.[100]

Because of its multifaceted purposes, public interest environmental litigation has been introduced into Ethiopia since 2002 by the Environmental Pollution Control Proclamation. The relevant law reads as follows:

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[97] Environment Standard Guideline, Introduction

[98] Ethiopian Civil Procedure Code, Art. 33 (2).

[99] Indian Supreme Court Judgment *Janata Dal v. H.S. Chowdhary* with Writ Petition (Crl.) No 114 of 1991 *Dr. P. Nalla Thampy Thera, Petitioner Versus Union of India and Others,* Respondents Criminal Appeal Nos. 304-311 of 1991 and Writ Petition (Crl) No. 114 of 1991 as cited in Yenehun Birlie, Public Interest Environmental Litigation in Ethiopia: Factors for its Dormant and Stunted Features, *Mizan Law Review*, Vol.11, No.2 (2017), p305.

[100] Guardial Singh Nijar, "Public Interest Litigation, A Matter of Justice: An Asian Perspective" (2006), available at https://www.aseanlawassociation.org/9GAdocs/Malaysia.pdf, p3 <accessed on August 26/2017>, as cited in Yenehun, id, p309

11. Right to standing

1) Any person shall have, without the need to show any vested interest, the right to lodge a complaint at the Authority or the relevant regional environmental agency against any person allegedly causing actual or potential damage to the environment.

2) When the Authority or regional environmental agency fails to give a decision within thirty days or when the person who has complained is dissatisfied with the decision, he may institute a court case within sixty days from the date the decision was given or the deadline for a decision has elapsed.[101]

The above provision is explicit in that it allows a person to lodge a complaint before an administrative body established for the protection of the environment (environmental protection authority at the federal or regional), or a court without the need to show any vested interest. However, a study conducted by Yenehun shows that little progress has been recorded in utilizing this innovative litigation tool.[102] Several reasons account for this: established executive dominance political tradition which does not invite for reviewing its action whereas the nature of public interest invites such revision, Ethiopia's predominant civil law legal system which considers public interest litigation as enforcing the civil interest of the public and expects public institutions like Ministry of Justice for its execution[103], poor culture of judicial activism to challenge executive action or decision, absence of political will which partly emanates from the parliamentary where the executive is elected by the legislature and where the great majority of laws and policies are initiated by the executive [104], the inadequacy of access and awareness of environmental information, especially among citizens, etc.[105]

3.1.5. Incentives

The other mechanism for regulating the environment is to give incentives to those who protect the environment. Normally, respecting environmental laws is the duty of everyone. If that is the case, one may ask a question: should someone be given an incentive for discharging his/her obligation or for someone who protects the environment by going beyond their duty? Even though it is an obligation of everyone, including investors to respect countries' environmental laws, it is advantageous if there are incentive mechanisms for those investors who respect the laws and work in an environmentally friendly manner.[106] This will help not only to protect the environment but also to enhance a good environment for the attraction of Foreign Direct Investment.[107] This

[101] Environmental Pollution Control Proclamation No. 300/2002, *supra* note 40, Article 11.

[102] Yenehun, *supra* note 99, p304.

[103] Contrary to this, common law legal tradition considers public interest litigation as an interest separate from that of the state –moreover, an interest which is often in direct conflict with the interest represented by the government''. Hence the expectation for the litigation is not limited to government institutions (state and non-state actors can take part in it).

[104] However, opting for parliamentary system alone is not adequate to discourage application of public interest litigation. For example, India and England have parliamentary form of government. However, public interest litigation in these countries, especially in England is very much progressive because of strong culture of judicial independence (Yenehun, *supra* note 99, p339).

[105] For detail discussion on barriers to effective implementation of public interest litigation see Yenehun, *Id.,* pp.331-340.

[106] Habtamu Lanjore, *supra* note 45, p55

[107] Ibid

is so because investors prefer to invest in countries where there are incentives than where there are no incentives.

It may be cognizant of this fact that some Ethiopian environmental laws recognize incentives as regulatory tools. For example, Pollution Control Proclamation No.300/2002 provides the following:

Art.10. Incentives

1) *Incentives for the introduction of methods that enable the prevention or minimization of pollution into an existing undertaking shall be determined by regulations issued hereunder.*
2) *Importation of new equipment that is destined to control pollution shall, upon verification by the Authority, be exempted from payment of customs duty.*[108]

However, the provision is general and difficult to implement without details. What type of equipment prevents or minimizes pollution? A regulation issued under the proclamation, Reg. No.159/2008 is also silent about incentives to be provided. Nonetheless, it is possible to envisage it includes instances where investors use solar energy sources or use wastes in a recycling manner though they have no legal obligation to do that. Since this is important to foster environmental protection, it is logical to guarantee incentives for such activities.[109]

Similarly, Art.16 (2) EIA Proclamation No. 299/2002 provides that environmental agencies may provide financial and technical support for ‘‘any environmental rehabilitation or pollution prevention or clean-up project’’. Again, this is not clear what such support would cover, but the provision should be interpreted to at least include EIA studies.[110] However, the EPA has no funds or budgetary provisions for the incentives.[111] Moreover, there are no guidelines for implementing the incentive provision.[112] In order to encourage the performance of EIA, it would be beneficial to widen the scope of available incentives to include tax exemptions/holidays and market access.[113] Furthermore, the government could make EIA a criterion for renewing permits and allocating credit or land.[114]

In short, although incentives are recognized as one form of environmental regulatory tool in Ethiopia, it is difficult to apply as it is not supported by detailed guidelines and necessary budgets.

3.1.6. Environmental Liabilities

By and large, environmental liabilities can be administrative, civil, or criminal. Administrative liabilities are liabilities imposed on a person by an administrative body mainly by the Environmental Protection Authority as remedies. The Authority can take administrative or legal remedies proactively or reactively in case when there is actual or potential damage to the environment.[115] This

[108] Pollution Control Proclamation No.300/2002, *supra* note 40, Article 10.
[109] Ibid
[110] Tesfaye Abate, ‘Environmental Impact Assessment and Monitoring’, *Haramaya Law Review*, Vol.1, No.1, (2012), p.121.
[111] Solomon Kebede, The Law and EIA Governance in Practice: EIA Proclamation No 299/2002, 2006, unpublished manuscript as cited in Tesfaye, *Id.*, p121.
[112] Mellese Damtie and *et al*, Overview of Environmental Impact Assessment in Ethiopia: Gaps and Challenges 51(2008) as cited in Tesfaye, *supra* note 1110, p121.
[113] Tesfaye, *supra* note 110, p121.
[114] Ibid
[115]Tsegai Berhane and Merhatbeb Teklemedhn, Environmental Law, Teaching Material ,Prepared under the Sponsorship of the Justice and Legal System Research Institute(2009), p166

entails, among other things, installation of sound technology, recycling of waste, cleaning up or payment of the cost of cleaning up the polluted environment, and any measure up to the closure or relocation of any enterprise in order to prevent harm.[116]

Civil liabilities are liability regimes adopted by countries to make private entities accountable for harm they create on the environment knowingly or negligently.[117]They happen when nuisances of public or private nature exist. Public nuisance is an act affecting the public at large or considerable portion of it; and it must interfere with the rights which members of the community might otherwise enjoy.[118] In such type of public nuisance, the damage to the environment could be manifested by affecting both private interests which could be entertained on the basis of Arts. 33 (2) of Civ. Pro. C and 2091 of the Civ. C; and diffused public interests which could be handled on the basis of Arts. 37 (2) (b) of the FDRE Constitution and 11 of Pollution Control Proclamation.[119]

Private nuisance is using or authorizing the use of one�to property or of anything under one's control so as to injuriously affect an owner or occupier of property by physically injuring his property or by interfering materially with his health, comfort or convenience.[120] An action is brought against the hand committing the injury, or against the owner for whom the act was done.[121] Nuisance remedies can be compensatory damages, abatement, and injunction.[122]

Criminal liabilities are reflections of growing awareness among the judiciary of seriousness of environmental wrongdoing, laws and courts are increasingly punishing wrongdoers by imprisonment.[123] Criminal liabilities are encompassed in the Criminal Code, and other enabling environmental statutes. To avoid any possible contradiction between the Criminal Code and the other enabling environmental statute, the Criminal Code provides that nothing in this Code shall affect regulations and special laws of criminal nature provided that the general principles embodied in this Code are applicable to those regulations and laws except as otherwise expressly provided therein.[124] Reiterating the above position, the Pollution Control Proclamation provides that unless the provisions of the Criminal Code provide more severe penalties, the penalties laid down under this proclamation shall be applicable.[125] Accordingly, criminal liabilities are provided under Criminal Code[126], Pollution Control Proclamation[127], and Environmental Impact Assessment Proclamation.[128] They can take different forms- fine and/or imprisonment

[116] Pollution Control Proclamation No.300/2002, *supra* note 40, Article 3.
[117]Kibru Debebe, Civil Liability for Environmental Damage in Ethiopia: Legal and Institutional Analysis, Master's Thesis (2020) p1.
[118] Tsegai Berhane and Merhatbeb Teklemedhn, *supra* note 115, p167.
[119] Id. P.168.
[120] Ibid
[121] Id p.169.
[122] Ibid
[123] Dinah Shelton and Alexander Kiss, *Judicial Hand Book Environmental Law*, Printed at the Publishing section of the United Nations Office at Nairobi (2005), 59.
[124] The Criminal Code of the FDRE Proclamation No.414/ 2004, FEDERAL NEGARIT GAZETA, 9th of May 2005, Addis Ababa, Article 3.
[125] Pollution Control Proclamation No.300/2002, *supra* note 40, Article12 (3).
[126] The Criminal Code of the FDRE Proclamation No.414/ 2004, Articles 235 and 519.
[127] See Pollution Control Proclamation No 300/2002, *supra* note 40, Articles 8, 12-17.
[128] Environmental Impact Assessment Proclamation No 299/2002, *supra* note 33, Article18

depending upon the nature of the case. They can also be imposed both on natural and legal persons.

3.2. Institutional Mechanisms

At present, the powers and duties of federal executive organ is defined by Proclamation No.1263/2021. The proclamation established the Environment Protection Authority as an autonomous federal government body having its own legal personality.[129] It is accountable to Ministry of Planning and Development.[130] The Ministry is entrusted with many tasks one among which is to initiate policies, strategies and laws with respect to climate change and environment.[131] With regard to the powers and functions of the Environment Protection Authority, the proclamation provides that the powers, duties and organization of the Authority shall be determined by Council of Ministers.[132] The anticipated regulation is not issued yet. However, it is expected that the Authority will have a minimum powers and duties which it had under Proclamation no.295/2002 thereby leading and managing the country's overall environmental affairs.

Although the Environment Protection Authority is the main institution established for this purpose, other Ministries like Ministry of Water and Energy, Ministry of Agriculture, Ministry of Mines, Ministry of Irrigation and Lowland, Ministry of Industry, Ethiopian Forest Development, Petroleum and Energy Authority, Ethiopian Investment Holdings, the Ethiopian Biodiversity Institute, and other similar regional offices are all institutional frameworks for protection and regulation of the environment.

Despite these efforts, Mulugeta argues, environmental protection in Ethiopia remains in its infancy due to a focus on short-term economic gain, lack of commitment, under-staffing and lack of capacity in many offices, lack of effective enforcement mechanisms, and loose coordination among responsible agencies.[133] He is of opinion that while there has been progress, it has been incommensurate with the nature and degree of threat that Ethiopia is experiencing.[134]

4) Conclusions and Recommendations

It is possible to ensure economic development without harming the environment with effective environmental regulations which reflect characteristics of enforceability, adaptability, interagency cooperation and coordination, and the discretion of enforcers. This paper examines the adequacy of economic regulation for protection of the environment in Ethiopia. Accordingly, the protection of the environment in Ethiopia has constitutional, policy and legal frameworks. There are many environmental laws. Many of them are nationally enacted; some of them are domesticated treaties. Still, some of them are sectoral and some others are cross-sectoral. They provide legal and institutional mechanisms for regulating the environment.

Environmental impact assessment, the permit or licensing system, setting standards, allowing citizen's suits (public interest litigation procedure), incentives, setting ranges of environmental liabilities are the major legal mechanisms for regulating the environment. Environmental Protection Authority is also

[129] Definition of Powers and Duties of Executive Organs Proclamation No.1263/2021, *supra* note 62, Article59 (1).
[130] Id. Article 89 (1)
[131] Id. Article 28.
[132] Id., Article 89 (2).
[133] Mulugeta Getu, *supra* note 56, p64
[134] Ibid.

established as an autonomous institution to play regulatory role.

However, it is difficult to say the economic regulation of the environment in Ethiopia is adequate as some of anticipated implementing guidelines or directives are not prepared or even when prepared, not approved yet. This is so mainly in case of environmental standards and EIA guidelines which are essential regulatory mechanisms in protection of the environment. Moreover, where legal frameworks of regulatory mechanisms are clear, they are poorly enforced because of lack of fund and capacity of human resources. Enforcement of regulatory mechanisms, as already explained under section one, is a knitty-gritty in the protection of environmental protection. This is manifestation of inadequacy of economic regulation of the environment since, borrowing Neil Gunningham's expression, for environmental legislation to 'work' it must not only be well designed but also efficiently and effectively enforced. Hence, there is a need to fill these gaps so as to have adequate economic regulation of the environment in the country. Accordingly, the paper suggests the following specific recommendations:

- The 2003 draft EIA guidelines, the 2008 draft EIA directives, and the 2003 draft environmental standards should be approved and implemented. Other economic laws such as investment laws should complement environmental laws for example by clearly obliging the investors to conduct EIA.
- The institutional capacity of the Environmental Protection Authority should be strengthened in terms of finance and technical expertise so that it effectively review, monitor and audit EIA studies; and properly implement environmental standards and other incentive mechanisms.
- Enhancement of judicial activism and public awareness creations are important to make public interest litigation more practical.

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Original Article

Globalization of Computer Networks: The Need for Accession to Regional Cybercrime Treaties

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Abstract

Cross-border communication and data sharing are now more feasible than ever due to the globalization of computer networks. Criminals exploit this connection, making the criminal justice system more vulnerable. The Federal Democratic Republic of Ethiopia is aware of the national security challenges that have been exposed while integrated into the global information network. To do this, a lot of work is indispensable to build capacity and implement international best practices, robust policy, and an effective legal framework. Ethiopia adopted the Information Security Policy in 2011, with the legal objective of preventing, deterring, responding to, and prosecuting acts of crime against information and information infrastructure, and protecting the confidentiality, availability, integrity, and authenticity of information. Most of the principles in the policy were incorporated in Computer Crime Proclamation No.958/2016. The Proclamation criminalizes different offenses on a computer or a computer system with new legal mechanisms and procedures to prevent, control, investigate, and prosecute computer crimes and facilitate the collection of electronic evidence. However, the legitimacy of criminal justice authorities to secure electronic evidence is argumentative, as it is not subject to any conditions or safeguards for human rights as rule of law safeguards. Then the purpose of the paper is to provide a comprehensive understanding of Ethiopian cybercrime, highlighting the benefits of harmonizing national law with other cybercrime treaties to combat cybercrime effectively.

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1. Introduction

Numerous academic works have attempted to define computer crime. However, there is no single clear definition of the word. The challenge of cybercrime starts with the lack of a clear definition. Although there is no singular legal definition for the term, more common or general references are used, such as cybercrimes, electronic communications, information and communication technologies, or high-tech crime. In addition, international and regional legal instruments are not defined with clarity and specificity due to the term's complexity, multiplicity, and universal nature.

For instance, the Council of Europe Cybercrime Convention, which is the first international treaty on crimes committed via the Internet and other computer networks, deals with lists of acts,[1] (for instance, confidentiality, availability, integrity, infringements of copyright, computer-related fraud, child pornography…) and other crimes rather than providing the meaning for the term. This Convention serves as a guide for the member states to develop comprehensive national legislation against cybercrime and as a framework for international cooperation between state parties to this treaty.[2] Not only for member states or invited to the Budapest Cybercrime Convention but also beyond the Signatories, the convention serves as a guide or at least as a source inspiring domestic legislation for many countries,[3] this also includes Ethiopia.[4] This Budapest Convention is supplemented by Protocol No. 189 on xenophobia and racism committed through computer systems.[5] The convention currently complemented again the second additional protocol on enhanced cooperation and disclosure of electronic evidence.[6] The Protocol and the draft Protocol simply supplement the Budapest Convention with a few additional features of cybercrimes. The African Union Convention on Cyber Security and Personal Data Protection does not provide a clear definition of the term but simply identifies a list of acts that could constitute cybercrime.[7]

Ethiopia's Computer Crime Proclamation No. 958/2016 is legislated to provide authorities with legal mechanisms and procedures to prevent, control, investigate, and prosecute computer crimes and facilitate the collection of electronic evidence in Ethiopia. Article 2 of this proclamation defines computer crime as a crime committed against a computer, computer system, computer data, or computer network. Not only these, but also a conventional crime

[1] Council of European on Cybercrime Convention, (European Treaty Series - No. 185, 2001) (hereafter, BC),Art.211, availableat:https://www.refworld.org/docid/47fdfb202.html [accessed 20 January 2024]

[2] Ibid., Preamble, Par 1

[3] The global state of cybercrime legislation 2013-2021: A cursory overview, The technical report prepared by the Cybercrime Programme Office of the Council of Europe (C-PROC) under the projects GLACY+,Cyber East, I proceeds 2, Cyber South and Octopus Project 30 June 2021

[4] See Computer Crime Proclamation No.958/2016 the substantive criminal law part from Art 3- 7 used Budapest Convention on cybercrime 2001, from Art 2-6 as guideline for each provision.

[5] Council of Europe, Additional Protocol to the Convention on cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, 28 January 2003 availableat:https://www.refworld.org/docid/47fdfb20f.html [accessed 25 February 2024]

[6] Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence, opened for signature by the States Parties to Budapest Convention on Cybercrime (Treaty ETS 185) on 12/05/2022

[7] African Union Convention on Cyber Security and Personal Data Protection, 2014, (hereafter, AUC) Art 29 & 30.

committed utilizing a computer, computer system, computer data, or computer network, and Illegal computer content data disseminated through a computer, computer system, or computer network can be taken as computer crime by this proclamation.

Currently, several countries, including the global South, have made progress in the development of ICT infrastructure as a process of digitalization. This progress in the development of information and communication technologies (ICTs) drives economic and social developments to achieve sustainable development goals (SDGs).[8] For developing countries, including Ethiopia, sustainable development (Agenda) includes ICT goals and is expected to be the driving factor for economic and social development. However, there are still dark sides to these revolutions in ICT, and cybercrime is the dominant one. This creates the use of ICT in unexpected ways and ways in 2030 that aggravate critical infrastructure and other individual rights.[9] This makes the criminal justice response to cybercrime too complicated.[10] Furthermore, combating cybercrime through the criminal justice system in the global south, especially in Ethiopia, seems to be the residual work of the government, while security responses are the primary role of the government authorized to protect national security.

The responses of the state to cybercrime could be through legal regulatory measures or non-legal regulatory means.[11] Here, nonlegal regulatory responses are most of the time institutional responses towards hybrid cyber threats and cyber-attacks. In most cases, it is a technical response to critical public infrastructure, such as power grids, financial institutions, aviation authorities, and utilities.[12] This could be handled by INSA in Ethiopian cases, as it is authorized as a cyber command institution in this country.[13] These nonlegal regulatory measures could be taken most of the time through Internet shutdown, and web filtering, and these could be all about cyber security concerns. On the other hand, fighting cybercrime through a legal regulatory response is about governing cybercrime issues by law, and it could be done through the formal justice system. Different types of policies and laws govern Security threats, and it could be done through applying these laws. In Ethiopia, these laws are FDRE's Constitution, [14]National Information Security Policy,[15] Computer Crime,[16] hate speech and disinformation prevention and suppression law,[17] Electronic

[8] Faturoti, Bukola, Internet Access as a Human Right and the Justiciability Question in the Post-COVID-19 World (2024) 15 (1) European Journal of Law and Technology.

[9] Obsa Degabasa [2024]. Cybercrime Threats and Trends in Ethiopia: A Critical Legal Analysis. Wallaga University Journal of Law, 1(2), p 22.

[10] Ibid

[11]International Law series, volume IV Addis Ababa University –School of Law, ISSN:2708-1745, The Internet and Policy Responses in Ethiopia New Beginnings and Uncertainties

[12] Ibid

[14] Thee Federal Democratic Republic of Ethiopian Information Network Security Agency Re-establishment Proclamation No. 808/2013 Art 5

[14]Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995 available at: https://www.refworld.org/docid/3ae6b5a84.html [accessed march 2024]

[15] National Information Security Policy of the Federal Democratic Republic of Ethiopia September 2011

[16] The Federal Democratic Republic of Ethiopian Computer Crime Proclamation No. 958/2016 (hereafter, ECC)

[17] The Federal Democratic Republic of Ethiopian Hate Speech and Disinformation Prevention and Suppression Proclamation No.1185 /2020

Signature Proclamation,[18] INSA Re-establishment Proclamation No. 808/2013,[19] Personal Data Protection Proclamation No.1321/2024,[20]…etc. However, the focus of this article is on the computer crime law of 958/2016.

Computer-related crimes are on the rise in the 21st century due to the proliferation of computers, their integration into all human activities, and the Internet being the environment that dominates communication.[21] As a result, the criminal justice system, in general, and criminal law, in particular, face legal challenges. These problems are different from ordinary crimes in that cybercrimes are technology-related crimes that cannot be properly handled by regular criminal justice institutions. As a result, the criminal justice system will expect to be adequate,[22] to impose punishment on criminals and protect against damage to people, data systems, computer, computer systems, computer networks, and other critical infrastructure. In doing this, it is expected that criminal law will be strong and adequate in criminalizing acts, defending individual rights, facilitating international cooperation to aid in the collection of electronic evidence, and enabling the investigation and prosecution of a crime using fundamental rules of evidence and criminal procedure. However, this is complicated by other factors that countries cannot address alone. This is due to the difficulties that law enforcement agencies face when dealing with cross-border legal issues and data access issues. This required countries to participate in the harmonization process of cybercrime laws, allowing countries to effectively combat cybercrimes.

2. Global and Regional Initiatives

These initiatives emphasize the relevance of both binding and nonbinding agreements in the worldwide battle against cybercrime, and the investigation relies on certain dominant legal documents. There are different initiatives in reaction to cyber-crime attacks; Some nations have approved national laws and others have agreed to follow some regional legal instruments that have been adopted.[23] The UNODC is developing a comprehensive international treaty to combat the use of information and communication technologies for illegal purposes. This requires multistakeholder participation, including civil society and academics. Interpol's effort, on the other hand, aims to strengthen the ability of law enforcement organizations around the world to combat cybercrime through training, operational support, and information exchange.[24]

[18] The Federal Democratic Republic of Ethiopian Electronic Signature Proclamation No.1072/2018

[19] The Federal Democratic Republic of Ethiopian Information Network Security Agency Re-establishment Proclamation No. 808/2013

[20] The Federal Democratic Republic of Ethiopian Personal Data Protection Proclamation No.1321/2024

[21] Cited at note 11.

[22] Black's Law Dictionary defines "adequate" as sufficient, commensurate, equally efficient, equal to what is required, suitable to the case or occasion, satisfactory…etc. The American Heritage College Dictionary defines "adequate" as sufficient to meet a need. The operational definition that the researcher intended to use for the term adequacy is the Criminological Concept of Adequacy (sufficient to prevent, control, investigate, and prosecute the suspects of Cybercrime or computer crimes and facilitate the collection of electronic evidence) in Ethiopian criminal justice system as indicated at the preamble 4th paragraph of The Federal Democratic Republic of Ethiopian Computer Crime Proclamation No. 958/2016.

[23] https://www.unodc.org/unodc/en/ngos/harnessing-global-responses-to-a-new-un-cybercrime-convention.html Last accessed on December 4, 2024

[24] Ibid

2.1 Global Perspective of the Budapest Convention (for all countries)

The Budapest Convention on Cybercrime, commonly known as the Council of Europe Convention on Cybercrime, is the oldest and most important regional initiative combating cybercrime. It was made available for signing in Budapest, Hungary, on November 23, 2001, and went into effect on July 1, 2004. This agreement is the first international pact aimed at combating cybercrime by standardizing national laws, strengthening investigative procedures, and increasing international cooperation.[25] The Convention has had a global impact on cybercrime legislation, and several nations outside of Europe have embraced it as well. It establishes a comprehensive framework for countries to participate in the fight against cybercrime, making it a cornerstone of global efforts to address this growing threat. The Convention established pillars to guide its vision and implementation. Domestic Criminal Law Harmonization: The goal is to unify the legal provisions of the signatory states on offenses involving the confidentiality, integrity, and availability of computer data and systems. [26]The convention establishes certain procedural powers for the collection of electronic evidence. Establishes procedures for rapid international cooperation, which is frequently required given the transnational character of cybercrime. The Convention also addresses the issue of protecting rights and liberties while guaranteeing cyber security.[27]

2.2 Budapest Convention and Ethiopian Computer Crime Law 958/*2016*

The analysis will be the Budapest Convention on Cybercrime and The Ethiopian Computer Crime Proclamation No.958/2016. The Budapest Convention provides a framework for international collaboration between State Parties to this convention and guidelines for creating comprehensive national laws against cybercrime. The convention specifies rules for procedural processes (investigative and prosecution methods), international legal support (such as extradition or cross-border access to digital evidence), and substantive laws (minimum standards for what is criminalized). This legal framework provides cybercrime legislation that is expected to serve at least three purposes.28 These are first the criminalization of conduct ranging from illegal access to systems interference, computer-related fraud, child pornography, and other content-related offenses. Second, there are procedural law tools to investigate cybercrime and secure electronic evidence concerning any crime,[29] and the third is efficient international cooperation.[30]

These three legal purposes will be helpful to see the framework and effectiveness of

[25] Cited at note 3
[26] Ibid
[27] Ibid
[28] Cited at note 23, p.23, The content of Budapest convention on cybercrime framework embodies Criminalization of the act, Procedural laws and the International cooperations. These components work together to create a comprehensive legal framework for combating cybercrime on a global scale.

[29] See Art 14 to 21 of the Budapest convention, which provides a set of procedural tools for law enforcement, such as the search and seizure of computer data, real-time collection of traffic data, and interception of content data.
[30] See Art 23 to 35 of the Budapest convention, which establishes a framework for international cooperation, including mutual legal assistance, extradition, and the establishment of a 24/7 network to facilitate immediate assistance in cybercrime investigations.

Ethiopia's computer crime law.[31] These might be crimes committed against or via computers. The categories include substantive criminal law, such as offenses against confidentiality, integrity, availability of computer data, and systems. Computer-related crimes, such as fraud and forgery, are among the ranges of offenses criminalized under the first function.[32] Criminalization also includes content-related offenses.[33] This also includes issues of the human rights of an individual, the right to privacy,[34] freedom of expression,[35] and other human rights that are recognized under different international and regional human rights instruments.[36] When it comes to these international instruments, a balance is needed between combating cybercrime and upholding human rights. Adequate cybercrime legislation is necessary to control cybercrime, and legitimate legal procedures and mechanisms are expected. To be effective, these are expected from Ethiopian laws. Certain human rights are legally prohibited in certain situations (although some rights may not be curtailed owing to international human rights legislation. These restrictions are authorized when they are in pursuit of a legitimate aim, by existing law, and necessary and proportionate to the threat that justified their implementation.[37] The concrete range of legitimate goals depends on the applicable human right and may include the interests of public safety, national security, and protection of the rights of others.[38] In addition to the need for the restriction to serve one of the legitimate aims mentioned above, the restriction must be based on national law. This law must be accessible to citizens to enable them to regulate their behavior and reasonably foresee the powers of authorities in the enforcement of this law and the consequences of non-compliance. It must be precise and avoid providing State authorities with unbounded discretion to apply limitations.[39] Vague and overbroad justifications, such as unspecific references to national security, extremism, or terrorism, do not qualify as adequately clear laws. Necessary means that the restriction must be something more than useful, reasonable, or desirable. Moreover, there must be an appropriate relationship between the legitimate aim pursued by a state and the actions of the state to achieve that legitimate aim. In other words, the actions must be proportionate to the interest to be protected. This implies that the restriction is the least intrusive instrument among those which might achieve the desired result. States have some latitude in the way they fulfill their obligations under international human rights law.

The procedural rules that give criminal justice authorities the ability to obtain electronic

[31] Look at the preamble of the Proclamation no 958/2016(The fourth paragraph………. it has become necessary to incorporate new legal mechanisms and procedures in order to prevent, control, investigate and prosecute computer crimes and facilitate the collection of electronic evidence is standard of adequacy to combat cybercrime in Ethiopian context)

[32] See BC. Art (2 to 11) and ECC. Art (3 to 6).

[33] See BC. Art 9 and ECC. Art (12 to 14).

[34] Universal Declaration of Human Rights (hereafter, UDHR) Article 12., International Covenant on Civil and Political Rights 1966 (hereafter, ICCPR). Article 17., The European Convention on Human Rights of 1950, (hereafter, ECHR) Article 8, and The American Convention on Human Rights of 1969. (hereafter, ACHR) Article 11

[35] UDHR. Art 19., ICCPR. Art 19., ECHR Art 10, ACHR Art 13 and Article 9(2) of the African Charter on Human and Peoples' Rights of 1981. (hereafter, ACHPR)

[36] Ibid

[37] Ibid

[38] Ibid

[39] see Human Rights Committee, General Comment No. 34 ,2011

evidence related to cybercrime are the second primary objective of cybercrime legislation.[40] Determining the crime committed and by whom is the purpose of criminal justice, in general, and the legislation on criminal procedure, in particular.[41] Criminal justice is focused on ensuring the criminal process, as well as the capture and punishment of perpetrators (investigation and prosecution). [42]The criminal procedure serves two purposes in this regard. This could serve as one way to implement substantive criminal law and another way to distribute power among those involved in criminal justice (police, prosecutor, judge, victim, and defense lawyer).[43] The exact value anticipated in a fair criminal justice [44]is related to outcomes such as reliable conviction of the guilty and exoneration of the innocent. This function is a collection of specific procedural rules that specify in detail the authority that the law enforcement organ may exercise when looking into a crime committed against or using computers set up under the first function. As a safeguard for the rule of law, these procedural powers must be subject to restrictions and protections for individual rights.[45] However, these restrictions and protections for individual rights in Ethiopian computer crime law are argumentative as there are no safeguards.

The third function of cybercrime legislation is almost the extension of the second function to the international arena, providing a mechanism for international cooperation in matters not only related to cybercrime but also police-to-police and judicial cooperation to any crime involving electronic evidence.[46] Global connectivity[47] and the ICT revolution have resulted in globalization in computer networks or internet penetration of the Internet even at the African level while increasing and increasingly easy to use, ensuring its availability to both criminals and victims. Criminals use this as an opportunity and use it for their culpable purposes. As a result, collecting electronic evidence has become a global issue that requires collaboration between nations. Harmonized national substantive cybercrime laws that punish cybercriminals and national procedural laws that establish the standards of evidence and criminal procedure are essential for international cooperation. By harmonizing bilateral, regional, and multilateral cybercrime instruments as needed, international cooperation can also be made easier. Legal compliance with regional and multinational cybercrime instruments also requires their ratification or accession.

[40] See BC. Art (14 to 15) and ECC. Art (29 to 38)

[41] See Wondwossen Demissie, Ethiopian Criminal Procedure A textbook (School of Law, Addis Ababa University, (2012).

[42] Ibid

[43] Ibid

[44] The term “fair criminal justice process” is to indicate criminal procedure conducted fairly, justly, and with procedural regularity by an impartial judge and in which the defendant is afforded his or her rights under the Federal Constitution or state constitution or other law. Among the factors used to determine fairness is the effectiveness of the assistance of counsel, the opportunity to present evidence and witnesses, the opportunity to rebut the opposition's evidence and cross-examine the opposition's witnesses, the presence of an impartial judge, and the judge's freedom from bias.

[45] See BC. Art 15

[46] See BC. Art (23 to 24). and ECC. Art 42.

[47] The term “global connectivity” refers the ability of the internet to provide the possibility of seamless communication throughout the whole planet. This has a wide range of advantages. Individually, it makes possible for those who relocate or travel to stay in touch with friends and relatives all around the world.

Concerning the Budapest Convention on cybercrime, signatories must act on a national level to combat cybercrime, including modifications and additions to substantive legislation and criminal procedure law (to establish the procedures for criminal investigations and prosecutions). The Convention further provides signatories with guidance on mutual assistance and acts as a mutual legal assistance treaty (i.e., an agreement between countries to cooperate on investigations and prosecutions of certain or all offenses proscribed by both parties under national law). Regarding international cooperation under the Council of European Conventions, Parties shall cooperate through the application of relevant international instruments on international cooperation in criminal matters.[48] The agreement is based on uniform or mutual legislation and domestic laws, to the widest extent possible, for investigations or proceedings concerning criminal offenses related to computer systems and data or for the collection of evidence in the electronic form of a criminal offense.

The adoption of appropriate legislation against cybercrime for criminals or activities designed to affect the integrity of critical infrastructures at the national level is important.

This requires coordinated action related to prevention and response by the government through legal instruments (legal-regulatory response). Establishing legal sanctions for cybercriminals and preventing harm to people, data systems, services, and infrastructure is expected to be robust. Such a law is also expected to be helpful in protecting individual rights, enable investigation and prosecution of a crime committed online, and facilitate cooperation between/among/ cybercrime matters of different jurisdictions.

However, several technical reasons make cybercrime difficult to combat. One is the attribution in the investigation of cybercrime. The investigation is difficult because any computer connected to the Internet can communicate with any other multiple computers on the Internet. This is what makes the globalization of computer networks. Cybercrime inevitably often has an extraterritorial aspect that can give rise to complex jurisdictional issues that involve people present and acts that are being carried out in many different countries. In addition, the investigation of computer crimes and the gathering of appropriate evidence for criminal prosecution can be an extremely difficult and complex issue, due primarily to the intangible and often transient nature of data, especially in a network environment. Technology renders the investigation and recording process of evidence extremely vulnerable to defense claims of errors, technical malfunction, prejudicial interference, or fabrication. Such claims may even lead to a ruling from the court against the admissibility of such evidence.

Having these difficulties in hand, legal measures play a key role in the prevention and combating of cybercrime, especially legal challenges. These are required in all areas, including criminalization, procedural powers, jurisdiction, international cooperation, and the responsibility and liability of the Internet service provider. While doing this, the use of criminalization and criminal law calls for respect for human rights such as freedom of

[48] See BC. Art.23.

expression,[49] privacy,[50]and other constitutional rights that must be respected. Concerning these international instruments, such as the International Covenant on Civil and Political Rights, put it as everyone shall have the right to freedom of expression,[51] similarly, the FDRE Constitution incorporates the right to freedom of expression as everyone has the right without any interference.[52] Regarding the right to privacy, the FDRE Constitution clearly stipulates that everyone has the right to privacy, and this right shall include the right not to be subjected to searches of his home, person, or property, or the seizure of any property in his possession.[53] Similarly, UDHR has boldly given attention to the right of privacy, as no one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, or to attacks upon his honor and reputation. And everyone has the right to the protection of the law against such interference or attacks.

Thus, currently, the administration of criminal justice including both terrestrial and virtual justice needs adequate and legitimate policy and legal frameworks. In digital societies,[54] cybercrime is frightening and can represent an almost endless list of different criminal justice concerns that may arise from technical to legal challenges and solutions ranging from technical to legal that require a policy and legal response through the harmonization of dominant cybercrime treaties.[55]

2.3 The significant benefits of the Budapest Convention on Cybercrime Globally

The convention establishes a legal framework for mutual legal aid, which facilitates cross-border investigations and prosecutions.[56] Furthermore, the treaty establishes clear extradition rules, which serve to ensure that cybercriminals are brought to justice regardless of where they are located.[57] The Second Additional Protocol to the Budapest Convention on Cybercrime concerns greater international cooperation in cybercrime and electronic evidence. This protocol is intended to increase the efficiency and effectiveness of international cooperation among the convention's parties. The convention harmonizescybercrime definitions, minimizing legal disparities and enabling a uniform strategy for combating cybercrime.

[49] Cited at note 16. Art. 29

[50] Ibid. Art. 26.

[51] ICCPR). Art. 19(2).

[52]Cited at note Art 29(2)

[53] Ibid, Art 26/2

[54] The notions of" digital society" reflects the results of the modern society in adopting and integrating information and communication technologies at home, work, education and recreation, and as the result digital innovations are reshaping our society, economy and industries with a scale and speed like never before.

[55] Common challenges in combating cybercrime as identified by Eurojust and Europol June 2019 (Since the Court's rulings, the lack of unified retention of electronic communication data across the EU has proven a key challenge to investigating cross-border cybercrime. The operational experiences of both agencies have shown that technically collection of electronic communication data is the key to the successful investigation and prosecution of serious crimes, including cybercrime…………. Comprehensive analyses performed by Eurojust and Europol Data Protection Function after the 2014 CJEU ruling, have underlined the value of electronic communication data for criminal investigations and prosecutions and have shown that most of the law enforcement and judicial authorities support a legislative framework at the EU level.)

[56] The Budapest Convention on Cybercrime addresses mutual legal assistance in Article 25. This article outlines the procedures and requirements for countries to provide mutual legal assistance to each other in the investigation and prosecution of cybercrimes.

[57] The Budapest Convention on Cybercrime provides extradition in Article 24. This article indicates the procedures and requirements for extradition for cybercrime offenses covered by the convention.

The convention contains materials for training law enforcement and judicial agencies, which will improve their ability to investigate and prosecute cybercrimes.[58] This technical aid helps to build the infrastructure required to effectively combat cybercrime. The Budapest Convention on Cybercrime promotes human rights through its provisions.[59] Specifically, Art. 15 focuses on the safeguarding of human rights and liberties. It ensures that the measures adopted to prevent cybercrime are balanced with the need to protect fundamental human rights such as privacy and freedom of expression.[60] The treaty incorporates measures to preserve human rights and to prohibit the abuse of cybercrime legislation for political gain.

Measures to counteract cybercrime shall be implemented in a way that protects people's privacy. The convention also covers a wide range of cybercrimes, ensuring a variety of cyber dangers.

By aligning its legislation with the Budapest Convention, Ethiopia can strengthen its legal and institutional framework, increase international cooperation, and improve its overall cybersecurity posture. This will help protect citizens and companies from the growing threat of cybercrime.

2.4.Malabo Convention (African perspective)

The African Union Convention on Cybersecurity and Personal Data Protection, often known as the Malabo Convention, is regarded as one of the most significant regional initiatives since the Budapest Convention. It was adopted on 27 June 2014 and intends to build a legislative framework for cybersecurity and data protection in African countries.[61] This project demonstrates the growing realization of the need for comprehensive cybersecurity measures and the cooperation of African governments to effectively combat cybercrime.[62]

The Malabo Convention on Cyber Security and Personal Data Protection entered into effect on June 8, 2023, a decade after being adopted on June 27, 2014. This milestone was achieved on 9 May 2023, when Mauritania ratified the convention, making it the 15th ratification required for it to become effective.[63]

The Malabo Convention is currently the only legally binding regional data protection convention outside of Europe, establishing a comprehensive framework for cybersecurity, personal data protection, and electronic commerce in Africa. It aims to streamline data protection legislation, increase digital rights,

[58] The Budapest Convention emphasizes the importance of capacity building and training in various sections, particularly in the context of international cooperation and procedural measures. The Cybercrime Convention Committee (T-CY) and the Cybercrime Program Office of the Council of Europe (C-PROC) play significant roles in providing training and technical assistance to member states to enhance their capabilities in combating cybercrime.

[59] International Human Rights Instruments Standards is expected as minimum protection under the convention. Article 15 aligns with international human rights instruments, such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights, reinforcing the commitment to protecting human rights in the digital age. By incorporating these principles, Article 15 ensures that the fight against cybercrime does not come at the expense of fundamental human rights, including the right to privacy.

[60] Ibid

[61] Cited note at 9

[62] Ibid

[63] The Malabo convention officially enter into force June 8,2023 , https://www.michalsons.com/blog/au-convention-on-cyber-security-and-personal-data-protection-malabo-convention/65281 Last accessed on December 1, 2024

and strengthen cybersecurity measures in African Union member states.[64]

2.5 The significant benefits of the Malabo Convention for African countries

The Malabo Convention establishes a comprehensive framework for cybersecurity, strengthening national cybersecurity measures, and protecting critical infrastructure. The Malabo Convention on Cyber Security and Personal Data Protection covers better cybersecurity in multiple provisions, with Article 25 explicitly focusing on cybersecurity measures. This article describes the member state's responsibility to implement legal, technical, and organizational measures to safeguard the security of electronic communications and key information infrastructure. The agreement stresses the protection of personal data, requiring worldwide standards for data privacy and security.65 Ratification of the Malabo Convention would increase collaboration with other African countries in combating cybercrime and protecting personal data.[66] Art 29 of the Malabo Convention on Cyber Security and Personal Data Protection outlines member states' obligations to promote and enhance capacity building in the field of cybersecurity and personal data protection, emphasizing the significance of training. Capacity building can help member states develop the skills and expertise required to effectively address cyber threats. It emphasizes the importance of training, education, and awareness-raising activities to strengthen individuals' and institutions' capabilities in combating cyber threats and protecting personal data.

3. The Budapest Convention on Cybercrime Vs. Malabo Convention on Cyber Security and Personal Data Protection

The Budapest Convention on Cybercrime establishes a comprehensive framework for combating cybercrime and protecting electronic evidence.67 Its framework and primary objectives include, but are not limited to, the following. Criminalization of cybercrime defines various cybercrimes, including illegal access, data interference, system interference, and computer-related fraud.68 It sets procedures for law enforcement, such as computer data search and seizure, faster data preservation, and real-time traffic data collection. 69 The convention facilitates international cooperation in

[64] The AU took important action on cybersecurity at its 2024 summit, https://www.chathamhouse.org/2024/02/au-took-important-action-cybersecurity-its-2024-summit-more-needed accessed on December 2, 2024

[65] The Malabo Convention on Cyber Security and Personal Data Protection addresses data protection in Article 8, in which this article provides the obligations of member states to introduce a specific national legal framework for the protection of personal data, aimed at safeguarding fundamental rights such as freedom of expression and the right to privacy.

[66] The Malabo Convention on Cyber Security and Personal Data Protection addresses regional cooperation in Article 28, in which the article gives the obligations of member states to cooperate at the regional level to enhance cybersecurity and protect personal data. It emphasizes the importance of collaboration among African Union member states to effectively combat cyber threats and ensure the security of electronic communications.

[67] BC Art 1 Provides the purpose of the convention, which is to pursue a common criminal policy aimed at the protection of society against cybercrime, through the adoption of appropriate legislation and fostering international cooperation.

[68] Cited note at 27

[69] BC art 19. outlines the procedures and requirements for the search and seizure of computer data, ensuring that law enforcement agencies have the necessary tools to investigate and prosecute cybercrimes effectively.

cybercrime investigations, including mutual legal assistance, extradition, and the establishment of a 24/7 network for immediate assistance.70 The convention aims to harmonize national laws, improve investigative techniques, and increase cooperation among nations to effectively combat cybercrime.71 The Budapest Convention on Cybercrime has a broad scope of applicability, addressing various aspects of cybercrime and electronic evidence. These include Illegal Access: Unauthorized access to computer systems and networks. Data Interference: Unauthorized alteration, deletion, or suppression of computer data. System interference: Disruption of the functioning of computer systems. Misuse of devices: Possession and distribution of devices or software designed for the commitment of cybercrimes. Computer-Related Fraud: Fraudulent activities involving computer systems. Child Pornography: Offences related to the production, distribution, and possession of child pornography. The convention protects human rights and liberties. [72]This convention can be considered purely a digital criminal justice treaty. The Budapest Convention on Cybercrime is a global treaty. Although originally adopted by the Council of Europe, it is open to all countries around the world. This global applicability enables a complete and coordinated international response to combating cybercrime and securing electronic evidence. Budapest Convention on Cybercrime includes additional themes beyond the core provisions. These themes are addressed through their additional protocols. First Additional Protocol (Racism and Xenophobia) This protocol criminalizes acts of a racist and xenophobic nature committed through computer systems. It aims to combat hate speech and related offenses online. Second Additional Protocol (Enhanced International Cooperation) This protocol focuses on enhancing international cooperation and the disclosure of electronic evidence. It provides additional tools and measures to facilitate cross-border investigations and improve the efficiency of mutual legal assistance. These additional protocols expand the scope of the Budapest Convention, addressing specific issues, and enhancing the overall framework for combating cybercrime and securing electronic evidence. Implementing the Budapest Convention is a continuous process that involves regular evaluations, updates to national laws, and ongoing international collaboration to address emerging cyber threats.

The Malabo Convention, officially known as the African Union Convention on Cyber Security and Personal Data Protection, is a comprehensive framework designed to improve cybersecurity, protect personal data, and promote electronic commerce in Africa. The African Union adopted the convention on 27 June 2014, in Malabo, Equatorial Guinea. The convention sets out principles and guidelines for the protection of personal data,[73]

[70] See BC Art 35. Speaks the creation of a network of contact points available 24 hours a day, 7 days a week, to provide immediate assistance in cybercrime investigations and facilitate international cooperation.

[71] See BC Art 2. It indicates the need for member states to adopt legislative measures to criminalize certain activities related to cybercrime, ensuring a consistent legal framework across different jurisdictions.

[72] See BC Art 15 It Ensures that measures taken to combat cybercrime shall be balanced with the need to protect fundamental human rights, such as the right to privacy and freedom of expression.

[73] See AUC Art 11 Data Protection Authority's Mandates the establishment of a national data protection authority (DPA) with administrative independence to monitor and enforce data protection laws, Art 13

ensuring individuals' privacy rights are safeguarded. It advocates initiatives to improve cybersecurity in member states by addressing digital threats and vulnerabilities.[74]

The convention establishes guidelines for secure electronic transactions, thus increasing trust and confidence in digital commerce.[75] The convention contains under Chapter One issues related to electronic commerce, under Chapter Two personal data protection, and Chapter Three issues related to cybersecurity and cybercrime. This indicates that the Malabo convention is not purely a criminal justice convention; rather, it can be considered as general information technology law including non-criminal justice issues. The convention specifically targets African Union member states, encouraging them to adopt and implement its provisions to create a harmonized legal framework throughout the continent.

4. Conclusions and Recommendations

The Ethiopian government has paid attention to creating the legal and legislative framework required to combat the widespread use of cybercrime. To preserve confidentiality, availability, integrity, and authenticity of information. Ethiopia has adopted the Information Security Polic while its legislative purpose is to prevent, deter, respond to, and prosecute acts of crime against information and information infrastructure. The Computer Crime Proclamation No. 958/2016 is the official translation of the policy. The law has made several deeds illegal as a means of preventing and combating cybercrime. The Ethiopian Computer Crime Proclamation No. 958/2016 is a relatively recent addition to the body of law that makes a variety of acts illegal as cybercrime. Various unique evidence and procedural rules have also been introduced, which will help with the investigation and prosecution of cybercrimes. The Proclamation is rife with a host of issues, such as illegal access to a computer,[76] illegal interception, interference with a computer system, causing damage to computer data,[77] as a crime against computer systems and computer data, and as computer-related crimes such as computer-related fraud, electronic theft, and combating child pornography.[78]

However, the development of new international legal instruments is an opportunity to strengthen international cooperation mechanisms and obtain extraterritorial evidence in practice and to build the capacity of law enforcement and criminal justice institutions.[79] This maintains the inadequacy caused by the lack of jurisdiction in cybercrime offenses. In this regard,

Provides the core principles governing the processing of personal data, such as consent, lawfulness, confidentiality, and transparency and Art 16 to 19 Confers various rights on individuals concerning the protection of their personal data, including the right to access, rectify, and delete their data. These articles collectively provide a comprehensive framework for personal data protection within the Malabo Convention.

[74] See AUC Art 24. This article mandates that every member state develop a national cybersecurity policy and strategy. In addition to that Art 26 to 28 outline the establishment of various institutions and procedures to identify and respond to cybersecurity incidents, promote cybersecurity principles, and ensure international cooperation.

[75] See AUC Art 2 to 8 These articles outline the legal framework for secure electronic transactions, promoting trust and confidence in digital commerce within the African continent.

[76] ECC., Art 3

[77] Id, Art 4-6

[78] Id, Art 9-12

[79] BC. Art 23.

criminalization of acts, harmonization,[80] of domestic laws with international and regional laws, accession to existing international or regional cybercrime instruments and application of existing law determine whether the law is adequate,[81] to govern the issue.[82]

Everyone can see that The Ethiopian Computer Crime Proclamation No. 958/2016 has drawn the law from the Budapest Convention on Cybercrime except for the conditions and safeguards for human rights. It is possible to review one by one. For instance, in the case of substantive criminal law part ECC Art 3, as Illegal Access Criminalizes unauthorized access to computer systems. Under the Budapest convention, Art 2 defines illegal access to computer systems. Similarly, data interference, unauthorized alteration, deletion, or suppression of computer data are criminalized under Art 4 of BC and Art 4 of ECC without any difference. With regards to system interference, ECC Art. 5 Criminalizes actions that disrupt the functioning of computer systems, and similarly BC Art. 5 defines system interference as the intentional hindering of the functioning of a computer system. Criminalization regarding misuse of computer devices and data. ECC Art. 7 addresses the possession and distribution of devices or software designed for committing cybercrimes, while BC Art. 6 criminalizes the misuse of devices, including the production, sale, and distribution of tools intended for committing cybercrimes. Definitions of terminology are also similar, for instance, what traffic data explained under BC Art 1(d) is the same as with ECC Art 2(6). Similarly, computer-related forgery was criminalized under ECC Art 9, whereas the BC criminalized it under Art 7. Computer-related fraud issues are criminalized under ECC Art 10, while under BC Art 8. Under these provisions almost all elements for the criminalization of an act are the same that establish crime, for instance, the act should be without authorization, excess in authorization, and intentionally or non-public computers without the right to do so. On the other hand, content-related offenses like child pornography were criminalized in both Budapest convention under Art 9 and under Ethiopian computer crime law under Art 12 with no difference.

Regarding procedural measures, The Ethiopian Computer Crime Proclamation 958/2016 adopted what was the Budapest Convention including provisions for the search and seizure of computer data, preservation of data, and real-time collection of traffic data. The difference between the two here is that The Ethiopian Computer Crime Proclamation no.958/2016 has not adopted what is mentioned under Art. 15 of Budapest convention conditions and safeguards during search and seizure for criminal justice authorities. These conditions and safeguards during the investigation are a guarantee of human rights protection and maintain due process of law. On the other hand, criminal law by itself is the highest government interference

[80] The context of "harmonization" is both in terms of substantive and Procedural provisions (harmonization of substantive provisions of cybercrime law helps facilitate international cooperation (prevents cybercrime safe havens,) and harmonization of procedural provisions of cybercrime laws facilitates, among other things, global evidence collection and sharing through international cooperation.

[81] Cited at note 22

[82] It also contains a series of powers and procedures such as the search of computer networks and lawful interception. Its main objective, set out in the preamble, is to pursue a common criminal policy aimed at the protection of society against cybercrime, especially by adopting appropriate legislation and fostering.

in the freedom and liberty of an individual. Conducting a search and seizure of this digital ecosystem of an industry without conditions and safeguards will be an exception. In addition to that, the purpose of a fair and reliable criminal justice system is to maintain the conviction of guilt and exoneration of innocent, this will be more achieved if regional and global cooperation is done to do so.

The Ethiopian Computer Crime Proclamation 958/2016 Art. 42 Emphasizes the need for international cooperation in combating cybercrime. While Budapest Convention Art. 23 to 35 Establish a comprehensive framework for international cooperation, including mutual legal assistance, extradition, and a 24/7 network for immediate assistance. The Ethiopian Computer Crime Proclamation has indeed adopted several principles and provisions from the Budapest Convention to combat cybercrime. However, as the country has not yet ratified, the benefits of international cooperation that the convention holds were not utilized. Currently, more than 69 countries have ratified the Budapest Convention on Cybercrime, including those outside of Europe. For Ethiopia international cooperation is almost all about bilateral agreement rather than treaty-based one. But ratifying the Treaty makes Ethiopia more beneficial, at least for now it can allow cooperating with 69 countries around the world. This, on the other hand, advances international cooperation to fight cybercrime.

Regarding the conditions and safeguards during the investigation, what was adopted by the Budapest Convention on Cybercrime is up to the standard for human rights protection, which is also the state commitment. The lack of these conditions and safeguards for Ethiopian computer crime 958/2016 attracted criticism that the country is expected to do so. It should be in line with international human rights instruments. Again, in line with this, Ethiopia will benefit if she ratifies it. In addition to that, training for packages of the Budapest convention on cybercrime is something valuable for Ethiopians in which skilled manpower will be realized to invest gate and prosecute the cybercrime. One of the big problems to invest in and prosecute cybercrime is the lack of skilled manpower.

Currently, Ethiopia has not yet ratified the Malabo Convention on Cyber Security and Personal Data Protection. While the convention has entered into force, many African Union member states, including Ethiopia, have not yet completed the ratification process.

Ratification of the Malabo Convention is critical for harmonizing cybersecurity and data protection regulations across Africa, increasing cooperation, and improving the overall cybersecurity posture of the continent. The convention aims to harmonize data protection and cybersecurity laws in Africa, facilitating cooperation and coordination between member states. It enhanced Security by promoting robust cybersecurity measures, the convention helps protect critical information infrastructure and reduce cyber threats. The convention provides a legal framework for electronic commerce, which can help Ethiopia develop its digital economy and promote e-commerce. In general, the Malabo Convention represents a significant step toward strengthening cybersecurity, protecting personal data, and promoting digital commerce in Africa. The convention promotes regional cooperation in the combat of cybercrime, enabling Ethiopia to work more effectively with other African countries to address transnational cyber threats. Ethiopia introduced a law on personal data

protection in here jurisdiction, which is called Federal Democratic Republic of Ethiopian Personal Data Protection Proclamation No.1321/2024. However, ratification helps to align Ethiopia's data protection standards with international norms and ensure robust protection of personal data, even in cross-border contexts. By adhering to the Malabo Convention, Ethiopia can benefit from improved international cooperation in data protection, including sharing best practices, technical assistance, and support in addressing cross-border data protection challenges.

Regarding information sharing ratification, the convention facilitates better information sharing and collaboration with other countries, improving the overall effectiveness of cybersecurity, cybercrime prevention, and response efforts.

Regarding encouraging consistency in regulations, the Malabo Convention urges member states to adopt consistent cybersecurity and data protection laws. This harmonization of legal frameworks supports the AfCFTA's objective of creating a unified market by reducing regulatory barriers and ensuring a level playing field for businesses. It also promotes economic development through enabling digital economic growth. Both the Malabo Convention and the AfCFTA contribute to the growth of the digital economy in Africa. By providing a secure environment for digital transactions and protecting personal data, the Malabo Convention supports the AfCFTA's efforts to boost intra-African trade and economic development. The Malabo Convention and the AfCFTA are complementary initiatives that together improve the digital and economic landscape of Africa. By promoting cybersecurity, data protection, and secure digital transactions, the Malabo Convention supports the AfCFTA's goal of creating a robust and integrated African market.

It also increases investor confidence. The Malabo Convention creates a more secure, predictable, and investor-friendly environment, which can attract both domestic and foreign investments. A robust legal framework for cybersecurity and data protection can increase investor confidence, attracting more investment in Ethiopia's digital sector.

So, by adhering to the Malabo Convention, Ethiopia can strengthen its legal and institutional framework, improve cybersecurity measures, protect personal data, and improve international cooperation, contributing to a safer and more secure digital environment. The Directive also establishes foreign currency saving accounts (FCY) for various entities and individuals, opens the securities market to foreign investors, and permits industry parks and Special Economic Zones to engage in transactions. Overall, these changes aim to liberalize and streamline foreign exchange transactions and regulations in Ethiopia. Looking at their contents and the amount of modifications they have made to the previous forex regime, these new regulations do have far-reaching repercussions on FDI in Ethiopia. Yet the practical effects of the new law on FDI are yet to be seen.

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Original Article

Tackling Brain Drain through Laws and Good Governance to Support Economic Development

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Abstract

We are in a free world where freedom of movement is guaranteed. Even though freedom of movement is a fundamentally important freedom that everybody wants to have, unrestricted migration hurts economic growth; which is a powerful instrument to reduce poverty and improve the quality of life. This however is possible only with skilled human powers that migrate from place to place most of the time. Brain drain is very high in developing countries as skilled workforces migrate in search of better jobs in high-income countries. Ethiopia is not different from the above fact which resulted either from unrestricted free movement or the inexistence of good governance/political persecution. By emigrating qualified staff, the home state can no longer benefit from the results of investing in the training and qualification of human resources; the cost of which is an expense that it no longer recovers. Most of the time, migrant workers carry out activities that are inconsistent with their profession; since they are compelled; if not by force, by situation to accept jobs that are inferior to their profession. This results in profession discontinuity and loss of skills gained through practice; which negatively impacts the profession financed and time spent on learning a profession unutilized due to allowed migration. This urges enactment of restrictive laws on migration that result in brain drain in the home country on one hand, and demands good governance on the other hand to tackle brain drain caused due to maladministration and bad governance. The finding claims brain drain affects the economy of sending countries, and restricting free movement and outlawing skilled labor is the best option for sending

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countries including Ethiopia to support their economic development with skilled manpower.

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1. Introduction

The migration of intellectual manpower from less developed countries to more developed countries is a global phenomenon.[1] Such kind of phenomenon is commonly known as "brain drain" which is coined for the first time in the 1960s by the British Royal Society.[2] According to IZA World Labor, the term "brain drain" refers to the international transfer of human capital resources, and it applies mainly to the migration of highly educated individuals from developing to developed countries.[3] Brain drain, also known as human capital flight, is a serious issue in many parts of the world, as skilled professionals seek out work abroad rather than returning to work in their home country. Many are driven away by high unemployment, but issues like political oppression, lack of religious freedom, and simply not being able to earn a big enough paycheck also play a significant role in exacerbating the brain drain. The phenomenon is not only a serious economic issue but one that often puts the health and safety of the nation's citizens at risk, creating long-term and potentially disastrous results for countries with high brain drain rates spanning several decades.[4]

It was said once on the global forum, "Migration of skilled professionals to promote development is a global issue, and is of concern to both poor and rich countries, albeit from opposite perspectives."[5] Rich countries need highly skilled professionals for knowledge-intensive economic activities, and, because of local shortages, these people must be recruited from poor and emerging market economy countries. For poor countries especially Africa and Asia the loss of specialists in IT, engineering, and medicine, has impacted far beyond the numbers involved.[6] This brain-drain migration process denies these poorer regions the optimum utilization of the skills of those now in the Diaspora. To use Africa as an example: more than 100, 000 sub-Saharan Africans living in Europe and North America are professionals ironically, about the same as the number of expatriate professionals

[1] Nadia Sajjad, Causes and Solutions to Intellectual Brain Drain in Pakistan; the Dialogue Volume VI Number 1

[2] British Royal Society described brain drain as the outflow of scientists and technologists to the United States and Canada. It is normally used as synonymous with the movement of Human Capital, where the net flow of expertise is heavily in one direction as correctly said by Nadia Sajjad, in his article published in the dialogue volume VI Number 1.

[3] IZA World of Labor 2014: 31, the brain drain from developing countries.

[4] 10 Countries Facing the Biggest Brain Drain, https://www.onlineuniversities.com/blog/2011/07/10-countries-facing-the-biggest-brain-drain.

[5] Aderanti Adepoju (2007), highly skilled migration: balancing interests and responsibilities and tackling brain drain p1.

[6] The African continent has experienced mass migration not only to Europe but also to other parts of the world, and as previously mentioned; a large number of these migrants include students that are seeking education outside their country of origin. The United Nations estimates that about 3 percent of the world's population (191 million people) lived in a country other than their country of birth, with 33 percent having moved from a developing country into a developed country. See Journal of Sociology and Social Welfare, 2007 for details.

employed by aid agencies as part of the overall aid package at a cost to the region of about $4 billion.[7]

The 2005 UN report revealed the magnitude of the brain drain to sub-Sahara Africa over the next decades focusing on healthcare professionals. Accordingly, since huge numbers of professionals have flown out, sub-Saharan Africa needs to train an additional 1 million doctors, nurses, pharmacists, and laboratory technicians it currently produces. The report blames rich countries for contributing to the crisis by creating a 'fatal flow' of health professions from the region.[8] Ethiopia for instance, produces a large number of qualified professionals; especially in the medical field, but is experiencing one of the worst brain drains of any country in the world.[9] Attracted by better prospects overseas and in other African nations and pushed out by political persecution, Ethiopia's best and brightest haven't been sticking around after graduation. A recent study presented at the National Symposium on Ethiopian Diasporas revealed some shocking numbers, with the country losing about 75% of its skilled professionals over the past ten years. This exodus of highly qualified professionals has had a huge impact on the country, leaving it with too few physicians, engineers, and scientists to fill positions the country desperately needs to thrive economically.[10] This huge loss in turn urges ***sending countries*** to take necessary measures to tackle this problem. Given settling this problem, the article investigates some push and pull factors for brain drain and forward solutions.

Organizationally, the article is divided into five sections. Following this introductory section, section 2 explores the realities of brain drain in global and African contexts. This reality is observed in literature owing to the difficulty of getting empirical data. Section three is the push and pull factors of brain drain. The fourth section, explores the advantages and disadvantages of brain drain. Finally, the fifth section draws conclusions and recommendations.

2. Realities of Brain Drain in Africa and Global Context

"Brain drain" occurs when significant numbers of highly skilled nationals leave their State of origin to seek livelihoods abroad. This phenomenon can have detrimental effects on the economies of States of origin countries by hampering the growth and development of industries and service sectors where highly skilled nationals are needed.11 An estimated 70,000 skilled professionals emigrate from Africa each year. Countering "brain drain" therefore should be the primary concern for African countries so as to mitigate its effects on national economies.12 Recently, the migration phenomenon has witnessed globally changing geo-political prominence drain brain as the world sees larger numbers of migrants than at

[7] United Nations (2003), "Reversing Africa's 'brain drain': New initiatives tap skills of African expatriates", Africa Recovery, Vol. 17, No. 2, New York.

[8] United Nations (2005), "Africa needs 1 million health professionals" Africa Renewal, Vol.18, No 4 (January), New York.

[9] David H. Shinn Adjunct Professor, Elliott School of International Affairs Adjunct Professor, Elliott School of International Affair (2002), the George Washington University, Reversing the Brain Drain in Ethiopia.

[10] Binyam Tamene (2007), Ethiopia: Rate of Ethiopia Brain-Drain Alarming - Study https://allafrica.com/stories/200709040438.html

[11] The REVISED MIGRATION POLICY FRAMEWORK FOR AFRICA AND PLAN OF ACTION of AU (2018 – 2027) DRAFT p18.

[12] Ibid at 4.

any other time in history.[13] Internationally, the number of migrants reached 244 million in 2015.[14] This is 41% plus of the year 2000 migrant figure. Migrants from Africa reached 34 million, and nearly half of them were women.[15] The migration of highly skilled Africans out of the continent has left many of the countries short of skills to meet the challenges of the twenty-first century. It is believed that the brain drain phenomenon began in Africa just after the independence of many countries, and has continued over the years.[16] According to Wusu, the number of Africans heading out of the continent was initially small during the 1960s, but this later increased due to the deterioration of social, political, and economic conditions.

It is estimated that 27,000 highly educated Africans migrated to developed countries between 1960 and 1975; migration increased to 40,000 annually during the following decade. The number peaked at about 80,000 in 1987 but has leveled to about 20,000 a year since 1990.[17] The battle for brains, or 'talent hunt', is propelled by the dynamics of knowledge-based economies, and based on the possibilities offered by technology and the globalization of economic activities. In many developed economies, highly qualified labor for knowledge-intensive activities is being recruited from poor and emerging market economy countries. For Nigerians and Zambians, highly skilled professionals constitute about half or more of expatriates living in OECD countries; 20% of nationals of Benin, Tanzania, Zimbabwe, Cameroon, Lesotho, Malawi, and South Africa in the Diaspora are highly skilled professionals; more Ethiopian doctors are practicing in Chicago than in Ethiopia; over half of Malawian nurses and doctors have emigrated, and more Malawian doctors practice in Manchester, UK than in Malawi; 550 of the 600 Zambian doctors trained in medical school over the last decade have emigrated; Ghana has lost 60% of its doctors to Canada, Britain and the USA; 75% of Zimbabwe's doctors have emigrated since the early 1990s. About 23 000 university graduates and 50 000 executives leave sub-Saharan Africa annually and about 40 000 of them with PhD degrees now live outside Africa.[18] All these figures show how the brain drain is affecting African countries in general. At the 38th Annual Medical Conference of the Ethiopian Medical Association, there was debate on the matter of brain drain in Ethiopia particularly on medical training calling at least training cost must be recovered if they fail to return to Ethiopia.

The problem of brain drain is addressed both in the UN 2030 agenda for sustainable development as well as the AU 2063 agenda. Agenda 2063 states that the eradication of poverty will be achieved, inter alia, through investing in the productive capacities (skills and assets) of our people. It also calls for

[13] Ib id.

[14] United Nations Conference on Trade and Development, ECONOMIC DEVELOPMENT IN AFRICA REPORT 2018, Migration for Structural Transformation, Patterns and trends of migration.

[15] See For Detail Http://Www.Un.Org/En/Development/Desa/Population/Migration/Publications/Migrationreport/Docs/Migration-Regions-Infographics.Pdf.

[16] Wusu, O (2006). Politics and Economics of Africa, Vol 6. Nova Scotia Publisher, Inc p91.

[17] Ib id at 92.

[18] IOM, 2004, Towards the development of an International Agenda for Migration Management, Berne Initiative Regional Consultations Resource Document, International Organization for Migration (IOM), Migration Policy and Research Department.

strengthening technical and vocational education and training through scaled-up investments, establishment of a pool of high-quality TVET centers across Africa, fostering) greater links with industry and alignment to labor markets, to improving the skills profile, employability, and entrepreneurship of especially youth and women, and closing the skills gap across the continent; and building and expanding an African knowledge society through transformation and investments in universities, science, technology, research, and innovation; and through the harmonization of education standards and mutual recognition of academic and professional qualifications. Student and labor mobility can defuse the pressure of the youth bulge and result in "brain gain" and "brain circulation" if the youth can gain new skills through education and labor mobility. SDG 4 ensures inclusive and equitable quality education and promotes lifelong learning opportunities for all supports student mobility and stipulates in Target 4.b by 2020, substantially expand globally the number of scholarships available to African countries, for enrolment in higher education, including vocational training and information and communications technology, technical, engineering and scientific programs, in developed countries and other developing countries.[19] This knowledge production should however be maintained by tackling brain drain.

3. Push and Pull Factors of Brain Drain

The outflow of talented emigrants from developed market economies is covered in general using push-pull factors.[20] Push and pull factors regarding brain drain appear to be rooted in the unequal economic development of the emigration and immigration countries. These factors will be dealt with as follows.

3.1 Push Factors

Looking first at the "push" factors, political persecution contributes much to the brain drain. The political environment need not be as severe as the Red Terror to encourage an exodus of skilled individuals. Poor human rights practices, political and/or arbitrary arrests coupled with a backlogged court system, intolerance of political dissent, lack of academic freedom, civil conflict and the ravages of war, illegal regime change, and favoritism based on ethnic affiliation are among the political reasons for the brain drain.

Political persecution which is related to bad governance takes the lion's share in causing brain drain. As envisaged in the post-2015 development agenda, governance will play a crucial role in shaping the Sustainable Development Goals by reducing brain drain. It is only possible to be achieved with governance; indeed with three aspects of governance.[21] These three aspects are: good governance, which focuses on processes of decision-making and their institutional foundations; effective governance which focuses on the capacity of institutions to resolve problems of public policy and implement effective rules and equitable governance, which focuses on distributional outcomes and equitable treatment, including of the very poor and marginalized, is a third element of governance as goal. Generally, these three aspects of governance have

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[19] Supra note 11 at 14.

[20] Supra note 1.

[21] Biermann, F., Stevens, C., Bernstein, S., Gupta, A., Kabiri, N., Kanie, N., … Scobie, M. (2014). Policy Brief 3-Integrating Governance into the Sustainable Development Goals.

synonymy with democratic governance; and it is possible when democratic values and norms are engraved into the functioning of the state, society, and its institutions.[22] Where there is no democracy and institutions that promote good governance ineffectively, which in most cases is prevalent in developing countries; brain drain is very high. Therefore, developments more importantly, Sustainable Development Goals (SDGs) are likely to fail unless more attention is given to addressing governance challenges which are crucial for the realization of sustainable development goals through reducing the outflow of skilled manpower to the outside world. All of these factors, in addition to others, occur somewhere in Africa today and some of them currently apply to Ethiopia. Several observers of the Ethiopian brain drain put political causes at the top of the list; others suggest the economic explanation is more appropriate.[23] As daily living conditions become more difficult, many professionals will look for opportunities elsewhere. A country with a weak economy, high unemployment, low wages, and considerable poverty is a prime candidate for a major brain drain. Ethiopia certainly fits this description. As said by a law student at Mekelle University, in a graduation paper regarding brain drain, Ethiopia's poor economy, together with political instability, are the two principal causes of brain drain problems.

Low salaries for professionals are often cited as the major culprit. Nigerian Internet whiz, Philip Emeagwali, who now lives in the United States, argued that unreasonably low wages paid to African professionals are the primary cause. The Permanent Secretary of Kenya's Ministry of Health, Julius Meme, commented last year that low salaries for Kenyan doctors are the main reason that they leave the country. He pointed out that Kenyan doctors earned a maximum of $414 per month compared to their South African counterparts who received up to $2,600 monthly. Even this salary, of course, pales to that received in the United States. Dr. Seyoum Teferra reported that the average annual salary in 1997 for an Ethiopian professor at AAU was about eight percent of that of his counterpart in South Africa and just over 12 percent of the prevailing professorial salary in Zimbabwe. This shows low salaries also contribute to the brain drain problem in Ethiopia even though it cannot be considered a principal one; since low salaries weren't major problems before the 1974 revolution.

A related concern is the matter of professional opportunity, benefits, and development. This includes issues such as training and research opportunities, morale and job satisfaction, and human resource and management policies. Institutions that do poorly in these areas are more likely to lose staff to the brain drain. Most developing countries do not have particularly friendly working environments, healthy budgets, clear policies, and generous research funds. Dr. Demissie Tadesse of Alert Hospital found all of these factors to be wanting in Ethiopia in a paper he presented to the 38th Annual Medical Conference in Addis Ababa. He also cited the relative lack of

[22] OECD. (2016). Official Development Assistance. *OECD Data*, (August), 5. Retrieved from http://www.un.org/esa/ffd/ffd-follow-up/inter-agency-task-force.html%5Cnhttps://data.oecd.org/oda/net-oda.html.

[23] Experts who have studied the brain drain point to a basket of economic reasons for causing or exacerbating the problems.

involvement of professionals in the decision-making process. I would add in the case of universities that a reluctance to grant autonomy to the university leadership at each campus contributes to low morale and encourages the seeking of employment overseas.

Some of the problems are seemingly mundane. Professionals become discouraged if they cannot afford to live in decent, albeit modest, housing. Poor supervision and limited career advancement opportunities add to the frustration. A study by Rachel Reynolds on the brain drain as it affects the Igbo[24] ethnic group found that an important factor in their decision to leave Nigeria was the lack of university teaching positions. Poorly equipped institutions where computers and access to the Internet are limited pose a serious handicap. Nigeria's Director of Information Technology told the 10th General Conference of the Association of African Universities in Nairobi last year that any university without full Internet connectivity over the next two years will not be able to fulfill its teaching and research role. Libraries that house a modest number of mostly out-of-date books, broken or dated lab equipment, and doctors who are not provided with rubber gloves for use during patient examinations underscore the problem.

One should not underestimate the lack of psychological satisfaction that many professionals encounter in their working environment in the developing world, including Ethiopia. If they conclude that they cannot accomplish what they were trained for, they become frustrated. Lack of access to professional literature and miniscule research budgets add to the problem.[25] So, a vicious cycle whereby professionals depart the country due in part to limited research opportunities, and then those who leave contribute to the problem by reducing the number of scholars who can conduct research is common in Africa in general and Ethiopia in particular. None of the above-mentioned "push" factors is easy to solve and they afflict all developing countries to some extent. The ones that could be ameliorated by huge amounts of money will be especially difficult to deal with in a country as poor as Ethiopia. Nevertheless, government policymakers and the managers of institutions such as universities and hospitals that employ significant numbers of professionals must understand that all of these factors contribute importantly to the brain drain.

3.2 The "Pull" Factors

Pull factors are as difficult as the "push" factors to resolve, in countries like Ethiopia that are experiencing a brain drain where there is no control over the "pull" factors. In most cases, these are the reverse sides of the "push" issues. If the economy is weak and wages are low in the country losing skilled personnel, the economy tends to be strong and wages high in the gaining country.[26] This is certainly the situation in North America and Europe. In a relative sense, it is even true for a country like South Africa that loses large numbers of professionals each year to North America and Europe but gains others from less developed

[24] Rachel R Reynolds (2004), an African Brain Drain: Igbo Decision to Emigrate to US, Review of African Political Economy p 275.

[25] For instance, Dr. Yoseph Hassen reported that the research environment in Ethiopia has deteriorated in recent years, due partially to the brain drain.

[26] Flahaux and De Haas Comparative Migration Studies (2016) 4:1 argued that neoclassical theories predicts decreases of migration as societies develop and income and other geographical opportunity gaps decrease upside down.

countries like Ethiopia. Losing countries also tend to have more political conflict and less political freedom while those that benefit from the brain drain have the opposite situation.

Beyond a peaceful political environment and high standard of living, perhaps the most important attraction of countries like the United States and Canada that are net beneficiaries is the opportunity to exercise fully one's professional training. Career advancement and job mobility are usually predictable. More attention is given to human resource policies, supervision, and training. Nations that benefit from the brain drain generally attach higher importance to the development of knowledge than losing countries do.[27] Institutions such as hospitals and universities usually have functional and up-to-date equipment and well-stocked libraries. Internet connectivity is nearly always complete and funded research opportunities are numerous. Benefit packages for health care, life insurance, and retirement are more common and generous.[28] There even tend to be fewer bureaucratic frustrations in developed countries. In this case, they selected the United States as the best place to pursue an education and profession. The importance of professional considerations in the movement of Ethiopians outside the country is considered by Dr. Seyoum Teferra; who cited in particular, their desire for more research, training, and professional advancement opportunities.

Some gaining countries, including the United States, have visa policies that encourage the brain drain. The United States has the Diversity Immigrant Visa Program, better known as the DV program which is intended to encourage the immigration of underrepresented nationalities to the United States. The annual worldwide quota currently is 50,000 immigrants. Ethiopians have made extensive use of the DV program. In 2003, for example, 5,562 Ethiopians were selected at random by computer from all qualified candidates to apply for immigration. This is the third highest number worldwide after Ghana and Nigeria. To be eligible, an applicant must have completed a high school education or equivalent. It was my experience while serving in Ethiopia, however, that relatively few highly skilled individuals made their way to American shores via the DV program.

Other American visa programs target highly skilled individuals. The Immigration and Nationality Act provides an annual minimum of 140,000 employment-based immigrant visas (E category) that are divided into five preference categories. The program includes persons of extraordinary ability in the sciences, arts, education, business and athletics. Applicants in this category must prove they have sustained national or international acclaim and recognition in their field of expertise. Outstanding professors and researchers fall in this category. A second group includes professionals with advanced degrees or persons of exceptional ability in the arts, sciences or business. Another category includes investors who can invest at least a half million dollars. There are some very specific requirements for "E" visas. I have impression that few Ethiopians have used them.

The United States offers a variety of visas for temporary workers. The H-1B classification

[27] Terrazas, M. A (June 2007). Beyond regional circularity: The emergence of an Ethiopian diaspora. Migration Information Sources. http://www.migration.

[28] For instance, Rachel Reynolds on his study on the Igbo who now live in the Chicago area found that a desire for higher education and professional achievement were the primary reasons they chose to leave Nigeria.

applies to persons in a specialty occupation that requires theoretical and practical application of a body of highly specialized knowledge requiring completion of a specific course of higher education. The O-1 classification applies to persons who have extraordinary ability in the sciences, arts, education, business, athletics or extraordinary achievements in the field of motion pictures and television. The Q classification is for participants in an international cultural exchange program for the purpose of providing practical training, employment, and the sharing of the history, culture and traditions of the alien's home country. Again, I don't believe very many Ethiopians have come to the United States using these kinds of visas. Several earlier presentations today suggested these special visas contribute in a more important way to the migration of Ethiopians to the U.S.[29] These all are causing brain drain though pull factor to developing countries as whole and Ethiopia too.

4. Pros and Cons of Brain Drain

Brain drain has both advantages and disadvantages. To start from cons of the brain drain, weakens economy by weakening employment structure. This happens as skilled workforce leave in search for better opportunities in developed countries.30 This can be observed as the phenomenon of brain drain is a vicious circle of underdevelopment, which brings shortage of educated and skilled workers in home countries.31 Another disadvantage of brain drain is wastage of money. It waste the money in the sense that the origin countries can no more collect what is paid for education of the migrating skilled man powers. Workers who emigrate will be replaced by expatriates with the same capabilities; but, they will ask for more expensive fees that lead to the inefficiency of the domestic economy. Brain drain causes huge losses to the human capital. This can be explained as education is one of the most important factors to improve the human capital; and if the educated people migrate then it is loss of human capital.

Detrimental effect of brain drain to economy is addressed by IZA. For instance, IZA Research Report No. 49[32] revealed the decrease of employed population in Romania due to migration of working force from the country to the European Union resulting the decrease of local economy and decrease of the country's GDP due to the reduction of work potential and intellectual resources. In this regard, Monica underlined the disadvantages of free movement of people especially, for the country from which peoples migrate as follows:

"The inconvenience of labor migration for the country of home are: the loss of investment in human capital through the migration of highly skilled labor, the generation of a labor shortage

[29] Woldeyensae, Y. (September 2007). Optimizing the African brain drain: Strategies for mobilizing the intellectual diaspora towards brain-gain. A paper submitted at the Conference of Rectors, Vice Chancellors and Presidents of African Universities (COREVIP) in Tripoli, Libya, October 21-25, 2007.

[30] Gillian Brock, Prosperity in Developing Countries, the Effects Departing Individuals Have on Those Left Behind, and Some Policy Options, in GILLIAN BROCK & MICHAEL BLAKE, DEBATING BRAIN DRAIN: MAY GOVERNMENTS RESTRICT EMIGRATION? 36, 37 (2015).

[31] Essays, UK. (November 2018). Brain Drain Causes and Effects. Retrieved from https://www.ukessays.com/essays/economics/the-theory-of-brain-drain-economics-essay.php?vref=1

[32] Martin Kahanec (2012), Skilled Labor Flows: Lessons from the European Union; Report under the World Bank ASEAN Labor Markets program funded by AusAid P9; see also Monica Madalina (n 2) 44.

in some areas, the stagnation of the economy, the aging of the population, and the decline in GDP due to the loss of creativity and neutralization the labor capacity of those who go to work abroad or even the decline in the competitiveness of the national economy as a result of the decrease in the qualitative characteristics of the labor resources".[33]

Meanwhile, economic growth is the most powerful instrument for reducing poverty and improving the quality of life in both developed and developing countries.[34] This however is possible only with skilled human powers that migrate from place to place most of the time. Such migration affects the economy of sending countries; from which skilled human power migrate. Restriction of free movement and the outflow of skilled labor is the best option for sending countries a brain drain, which may hurt them in terms of gross domestic product (GDP).[35] Some researches[36] shows brain drain resulted in losses in the economy. Thus, one can conclude that the free movement of people has a negative effect on productivity; investment, trade, and knowledge transfer to improve the overall efficiency of sending and receiving labor markets; which in turn affects economic development that has a direct relation with poverty reduction. Whatever its source, migration has important impacts (either positive or negative) on societies, and these can be controversial. The economic impact of migration is no exception.[37]

These days, we are facing a global migration crisis of extraordinary proportion[38] as headlined by different media outlets. As of 2015, there were slightly more than 240 million migrants in the world. This all is a brain drain that negatively affects the economy; mainly sending countries. Even for destination countries, the concentration of immigrants hurts the economy in economic sectors, occupations, and regions; as market forces rush to fulfill unmet demand which could result in economic problems and cultural anxieties of local populations.[39] This is especially the case for domestic populations who have easily substitutable skills and occupations.

Besides the disadvantages, brain drain can also bring advantages to force the economic growth of the home countries. Reversing brain drain to brain gain happens in China and India. They managed to change brain drain into brain gain by decreasing the unemployment level, the improving quality of human resources, and the optimization of production capacity in the home countries boosting available alternate investment resources.[40] Remittance is another pros/advantage of brain drain to home countries.[41] Globally, volume of remittances

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[33] Monica Madalina (2018), Advantages and Disadvantages of Labor Migration, the Annals of the University of Oradea. Economic Sciences, Tom XXVII 2018, Issue 1 P45.

[34] Dani Rodrik (2007), Harvard University One Economics, Many Recipes: Globalization, Institutions and Economic Growth p 4.

[35] Supra note 33 at 9

[36] For instance, as cited by Ronald Skeldon (2014) on his article entitled migration and poverty, Ghana, for example, has lost 60 per cent of the doctors trained in the 1980s and a total of about 60,000 highly skilled workers are reputed to have fled African economies during the last half of the 1980s. The loss of large number of Russian technicians may also be a significant factor in the rising poverty observed in the Central Asian republics.

[37] OECD Migration Policy Debates (2014) p 1

[38] World Bank (2018), *Moving for Prosperity: Global Migration and Labor Markets;* Policy Research Report. Washington, DC: World Bank. doi:10.1596/978-1-4648-1281-1. License: Creative Commons Attribution CC BY 3.0 IGO p10.

[39] Ibid 11.

[40] Supra note 31.

[41] Adams RH. Policy research working paper 3069. International Migration, Remittances, and the Brain Drain. A Study of 24 Labor-Exporting Countries.

transfers to developing countries far exceeds Official Development Assistance (ODA), and has important macro-economic effects, by increasing the total purchasing power of receiving economies.[42] Despite these advantages, in my opinion, the cons of brain drain waits than its pros/advantages as we are stretching hands for remittance losing the original hand that can produce much more than sending remittance. This calls for the need to tackle brain drain.

Until now, problems that could be caused by free movement of people are addressed. The following part addresses how limiting the free movement of people could reduce poverty on one hand and support economic development on the other hand. The assumption is that, laws affecting free movement of people reduce poverty in such a way that, working force will not leave the country as wished. Restriction forces professionals stay in their home country and make their profession work for their country; contributing their knowledge for productivity thereby causing once country harvest fertile mind's creativity.

One of prominent migration policy debate across the world is distortion of labor market that eventually results in political conflict and cultural classes when large numbers of undocumented migrants enter certain country. For instance, according to a study conducted by AU Commission and IOM,[43] free movement deteriorate the already fierce job competition among citizens themselves when emigrant comes; which may result in unemployment when migrant are workers with higher skills. This destabilizes the area and paves the way for poverty. On the other hand, laws restricting free movement reduce such entry stabilizing the situation of migration that distorts labor market. In doing that laws restricting free movement of people reduce poverty and directly contributes to economic development. That is why most countries including U.S.A and EU are designing laws restricting free movement of people to their region. When restriction is backed with legal ground, youths with intention to migrate will not spend their precious time wondering to get a way for migration; rather they will create job in their home country and reduce poverty through productivity. In doing that, such law contribute to economic development that also reduces poverty.

Laws limiting free movement of people are an answer to brain drain which is dangerous for economic development particularly for sending country. Youth migration from rural to urban centres is common these days. Due to that, urban areas are becoming extremely overcrowded and overburdened, putting pressure on insufficient infrastructures,

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The World Bank Report on Poverty Reduction and Economic Management Network Poverty Reduction Group. Washington, DC: World Bank Organization, 2003.

[42] For instance, according to IOM remittance of women migrant workers account for half of the estimated $601 billion in global remittances. International remittances has become a major source of foreign currencies for most African countries and have been found to be more stable, dependable and countercyclical than other forms of foreign currency inflows, such as Foreign Direct Investment (FDI) and ODA, thus sustaining consumption and investment during recessions. In 2015, African economies received - both from overseas and Intra-African corridors – officially recorded remittances amounting to US$ 66 billion. See The REVISED MIGRATION POLICY FRAMEWORK FOR AFRICA AND PLAN OF ACTION of AU (2018 – 2027) DRAFT for detail.

[43] African Union Commission and The International Organization For Migration (2018), Study On The Benefits and Challenges of Free Movement of Persons In Africa p54.

schools, health facilities, sanitation, and water systems.[44] This escalating urbanization has created a new context of poverty in which urban centers are overtaxed and unprepared to absorb increasing youth unemployment. Limiting the free movement is good for tackling such problems on the one hand; while it creates opportunities for pro-agricultural rural youth that elevate economic development on the other hand. This approach helps the government by providing the opportunity to diminish youth migration and marginalization, as well as reduce poverty.

When youths migrate from one country to another, the process of integration and labor market assimilation can be costly and daunting to new immigrants; making them unproductive despite their productive capacity. On one hand, adapting to a new work environment in the host state and newness to social and cultural values as well as language barriers will make immigrants unproductive. To be productive and make migration work for economic development, another cost must be incurred by immigrants in the process of integrating them to the new environment. Such integration requires immigrants to learn language in order to avert language barrier that makes them unproductive; technical training, and cultural integration which takes time. These investments depend on the duration of the stay that immigrant intends in a host country.[45] Meaning that, immigrants intending not to stay much in the host state are not willing to incur these costs which in turn limit their productivity leading them to poverty.

Socioeconomic disparities and security concern are problems directly related with free movement of people.[46] That was the main justification for Donald Trump to ban different Islamic states from entering the U.S.A. and the plan to erect a wall on the boarder of Mexico. Security on the other hand, reduces production resulting in poverty. This means free movement may an increase poverty; on the contrary, limiting free movement makes certain countries stable and creates favorable conditions for work which reduces poverty through laws limiting the free movement of people and supports economic development.

5. Conclusions and Recommendations

The high rate of the emigration of high-level educated workers from developing countries to the developed countries can inflict huge financial losses to the home countries. Although this brain drain phenomenon also has a positive impacts to both host and home countries the loss is even bigger. Thus, it is important to the home countries to find the solution to overcome this problem immediately. Problem of brain drain is common in both developed and developing but effect of brain drain to developing states like Ethiopia is very high. So developing states including Ethiopia have to tackle the problem by lowering push factors that can cause people to move and stay abroad. These factors are the political instability, poor living condition, bad governance/lack of good governance/ and the like.

Although Ethiopia cannot control the "pull" factors that contribute to the brain drain, it can

[44] Charlotte Min-Harris Youth Migration and Poverty in Sub-Saharan Africa: Empowering the Rural Youth; TOPICAL REVIEW DIGEST: HUMAN RIGHTS IN SUB-SAHARAN AFRICA p161.

[45] Supra note 38 at 24.

[46] Supra note 43 at 4.

do something about the "push" factors. Push factors derived from political persecution because of bad governance could be reduced by enhancing good governance. Policy-level intervention such as introducing restrictive laws on the emigration of Intellectuals for the sake of Ethiopia's economic development could also tackle the brain drain. Introducing such a law may not be the only solution; working on the Ethiopians too so that they take responsibility for thinking for their country needs to be focused on. This could also bring change in reducing brain drain if we can buy hearts of skilled manpower. Such education could be broadcasted through media so that Ethiopians start taking some responsibility themselves. I would urge that this include those Ethiopians living in the Diaspora.
institutional framework, improve cybersecurity measures, protect personal data, and improve international cooperation, contributing to a safer and more secure digital environment. The Directive also establishes foreign currency saving accounts (FCY) for various entities and individuals, opens the securities market to foreign investors, and permits industry parks and Special Economic Zones to engage in transactions. Overall, these changes aim to liberalize and streamline foreign exchange transactions and regulations in Ethiopia. Looking at their contents and the amount of modifications they have made to the previous forex regime, these new regulations do have far-reaching repercussions on FDI in Ethiopia. Yet the practical effects of the new law on FDI are yet to be seen.

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Original Article

Analysis of Women's Land Rights: The Practices in North Shoa Zone in Oromia Region

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Abstract

The prevalence of awareness of the law and/or rights and its practices, institutions that support women to exercise their rights, challenges, and effects of failure to exercise women's right to land. This article focuses on identifying and critically analyzing the experiences of women in accessing land rights taking the case of the North Shoa Zone of Oromia National Regional State. The specific objectives were to critically analyze legal and practical challenges to women's right to land as well as to analyze cultural, and other social norms about women's right to land and to explore practical challenges in the case of North Shoa Oromia Regional state. This article followed a qualitative research approach and collected primary data from interviews with judges, prosecutors, defense attorneys, Lawyers, and individual experts from the judiciary, land administration bureau, and other government officials. Moreover, this article has utilized various primary authorities such as international, national, and regional laws, proclamations, regulations, books, and cassation decisions are used in conducting this article. Secondary data were collected from different institutional reports (court, Women's and Children's Affairs Office, social affairs, land administration bureau, and others if any). This article finds and examines women's right to land and the problem encountered women's right to land. Women are considered marginalized groups in the community and many factors affect the right of women's access to land which include lack of awareness of their rights, facing

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financial problems to claim their rights, and interpretation of the law by judges in district court vary from time to time including the issue of registration of the contract of donation on the day of marriage. Thus this article aims to analyze the legal as well as practical challenges that exist in North Shoa about women's land rights. To analyze legal as well as practical challenges that exist in North Shoa the researcher while conducting research identified that women's right to land is affected due to lack of awareness, lack of qualified experts, and this study is not only concerned with identifying the problem rather recommending that the government must take care of women's right as well as other vulnerable groups by analyzing existing problems with possible solutions in implementing all rights of women's through effective and efficient manners, developing an institution which ensure the protection of women's rights since women's plays a vital role in the socio-economic and political arena of the area.

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1. Introduction

The interest in writing articles on women's rights to access to land stems from two reasons: professional background and personal observation of the court cases (including the decisions of the FDRE House of Federation) involving women's access to land. This article is written based on cases entertained in a court of law since several land cases raised when the local women file cases against their relatives, spouses, parents, and so on are evident. As a person who deals with civil cases mostly involving women's access to land rights, this article had ample chance of understanding the women's challenges in accessing rural as well as urban land. The majority of the civil cases are entertained in Oromia courts in general related to the issues including family matters, succession matters, and land administration matters and from this most of the cases in the court of law in North Shoa involve women's land access issues. There are instances where the Women's Access to Land issue reaches the House of Federation and the FDRE constitution is interpreted to safeguard the interests of the women as well as ensure international and national principles related to women's right to land.

History shows a constant exclusion of women's concerns from national policies and legislations, and it's just recently that states started to recognize the rights of women after the adoption of human rights instruments through the instrumentality of the United Nations, Even though there are laws protecting women's access to justice in relation women's right to land at international and national level, discrimination against women has continued to be rendered invisible and making the rights a reality has remained difficult.

Land is one of the most contested issues in Ethiopia's political and legal history. Land is not only property but also highly attached to identity. The issue of land in Ethiopia is interrelated with the socio-political and economic affairs of its people. The Ethiopian constitution dictates that land is the property of

nations and nationalities of the country. [1] When the issue of gender – women as an identity (socially constructed marker) comes in, it gets even more complicated. Taking this socially, politically, and legally complex matter to the courtroom makes it interesting as well as challenging to dispose of.

Land rights are legally recognized land claims enforced by legally established and formed institutions. Women's land rights require a deep understanding of the relationship between legal and social recognitions as well as the relationship between legal provisions and their enforcement. Ethiopian women's right to land includes the right to use, own, access, control, transfer, inherit, or make legal decisions on land. Nevertheless, the inequalities of opportunities in access to and control over resources have made women more vulnerable to poverty than men in many parts of the world.[2]The reason why the writer focuses on this topic emanates from the rationale and common belief that exists regarding the fact that in economies/countries with women's right to land protected, their socio-economic and political development will be enhanced.[3] Different researchers and policymakers understand women's right to land and its proper practice are strongly related to effective and sustainable development, food security, and low socio-political issues. Besides, Ethiopia's law reiterates women have equal rights with men where this research has assessed the legal and practical issues that exist concerning women's right to land as well as access to justice in this regard. [4]

This article was given due focus on the effective implementation of laws, policies, and programs related to women's right to land to play roles to respect, protect, and fulfill women's right to land and other resources in Oromia's National Regional State of North Shoa zone. Besides, the study also helps to bring to light various critical issues related to women's right to land and raises various issues relating to women's right to access justice concerning cases brought before a court of law in the study area. Furthermore, the writer will assess women's rights problems either social, economic, political, or cultural that will impact exercising their rights related to the land ownership of the area under study. Land law or policies is a system that regulates lands and Women's right to land including the right to use, to own, to access, to control, to transfer, to inherit, or to give legal decisions on land.

This article focused on identifying various problems related to women's land rights and Data from Primary and Secondary Sources has been employed and analyzed. Based on the analysis of the facts collected through interviews, and Focus Group Discussions, various problems exist that affect women's right to land. In Oromia in general and Specially in North Shoa Courts Of Oromia Region lack of Awareness about the existence of pro bono service for Vulnerable groups, lack of adequate manpower with legal Knowledge, lack of Legal and institutional framework for

[1] Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995, Article 40(3).

[2] https://www.fssethiopia.org/wp-content/uploads/2021/07/Policy-Brief-No.-43-EN.pdf

[3] Hadera Tesfa, *Women and Land Right in Ethiopia, A Comparative Study of Two Communities in Tigray and Oromiya Regional States,* The Eastern African Sub-Regional Support Initiative for the Advancement of Women (EASSI), 2002, P. 11

[4] *Supranote* 2, at Art - 35

the enforcement of women's rights, interpreting direct law without considering the intention of the law, the cultural stereotype that affects women's right to land are among the main factors for the realizations of the various right that women are having on land including the right to use, transfer, control, as well as there an also economic barrier that hinder women's no to exercise their right or hinder women's not to claim there right in the court of law due to lack of transportation and traveling cost. Data That was gathered and analyzed around the area also shows the existence of challenges with women's right to land in North Shoa Courts of Oromia. Therefore, this research analyzed the overall problems or barriers that hinder the effective utilization of women's rights of women's through collecting data from interviews, FGD group discussions, reviewing various literature, and analyzing Cases that were decided in the North Shoa Zone selected Woreda.

The issue of Women's Access to Land Rights is very crucial it is a widely held belief that economies and countries with protected women's land rights experience enhance socio-economic and political development. Women's rights to land rights have a strong connection with effective, sustainable development, food security, and reduced socio-political issues since Ethiopia showed its great commitment to protecting women's rights in general and their right to use and control land fruits on equal footing with men and the constitution tries to give special emphasis to the protection of women's property rights including acquisition, administration, control, use and transfer of the lands.[5]Even though the laws stipulate the rights of women on equal footing with men, sometimes women face a wide variety of problems in their daily lives, and above all access to land rights is the most damaging aspect. When a woman who is a victim of not having land is not provided with effective access to justice on their right, not only her right to have land is violated but also her right to life, dignity, and own property is also violated; her interest to be respected and counted as an important and equal member of society is also jeopardized, and above all it implies socio-economic development of the country.

Women in any society face major obstacles to their right to land, due to unequal gender norms and relations, women have a lower socio-economic status, compared to the male status which limits their opportunities to access, control over, and ownership of the land.[6] The existence of problems that limit women's rights is also prevalent in the North Shoa zone of Oromia Regional State. This article also tries to identify international and national policy frameworks for women's right to land ownership and the degree to which those rights are secure through review and understanding of whether the court treats women equally to land rights, Women execute judgment given for women's about land rights, cultural problems exist against women's not to have equal right on the land, women's right to land is tolerated in family or marriage, the law recognizes the equal opportunity for women and men about land law, or the barrier or challenges exist against women not to exercise right to land.

This article, therefore, focuses on the critical analysis of women's right to land and their practice at different levels of the court as well as tries to identify international and national

[5] FDRE Constitution Art 34, 35,40, 89

[6] FAO,2011b, World Bank, 2009 PP 63-70

policy frameworks concerning women's right to land and the barrier that affects implementation of women's land right, challenges women's face in exercising their right is identified and analyzed in accordance to the law.

2. Objective of the Study

Thus, this article has the objective to identify the major problems relating to women's right to land and practices in the North Shoa Zone of Oromia National Regional State.

3. Method of the Study

The writer employed qualitative research methods. This is because qualitative research seeks to understand a given research problem or topic from the perspectives of the local population it involves.[7] It will be helpful especially in effectively obtaining culturally specific information about the values, opinions, behaviors, and social contexts of a particular community/population. This may be supported somehow with secondary data to be collected from different relevant zonal institutions' publications and reports. The method to obtain primary data is face-to-face interviews in the study area, concerned officials of land administration, judges, prosecutors, attorneys, and women's and children's administration officials. In addition, the researcher tries to use another primary source FDRE Constitution Federal Land Administration Proclamation, the Federal Rural Land Administration and Use Proclamation, and the Oromia Land Administration and Use Proclamation, with its regulation on women's land rights. This study also uses relevant materials like cassation decisions as secondary sources as well as the research focuses on the law and practices of the concerned organ / Law enforcement agency.

Reports are taken from these courts that engage their judicial power and discussions with selected judges to share experiences on the benefits women gained in exercising their right to land as well as challenges they face with exercising their right were part of the data to be used in the research. This is because, in the Oromia region, district courts have the jurisdiction to entertain cases related to land issues, marriage issues, and succession issues. Besides, discussions with the judges will be helpful as stated before to have a deep understanding of the practice as they know the challenges faced and a practical understanding of cassation decisions in different district-level courts. On the other hand, primary data will be collected from sample women in different districts, discussions with focus groups, and individual experts on the subject.

Furthermore, material resources that the researcher may use include federal and Oromia cassation bench decisions, land-related proclamations and regulations, study reports, land laws, and women's rights materials.

Generally, the researcher applied qualitative methods to clarify concepts, explore problems, analyze practical cases in the court of law, critically analyze the problem, and measures to demonstrate by taking information from various cases relating to women's rights, the decision of the cassation bench both at regional and federal level. It mainly focuses on the analysis of legal documents and works of literature on the selected legislations and laws. Here, the relevant international legal

[7] Qualitative Research Methods: A Data Collector's Field Guide

instrument including the existing literature, policies, and laws will be analyzed.

Land ownership can be a vital source for the development of society, the socio-economic as well as political rights of the society at large are dependent on the land. Secure access to land provides valuable safety for the community so long as secure land rights are ensured. In this research, the researcher tries to analyze women's land rights from the point of international and national legal frameworks. CEDAW by itself states that state parties shall ensure women the right to equal treatment in land and agrarian reform as well as in land resettlement schemes. Both spouses must enjoy the same rights in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property as well as land rights. [8] This chapter presents an analysis of cases entertained in North Shoa court about women's land rights by using such international and national legal frameworks. Practical cases from various FFIC courts related to women's land rights have been presented and analyzed. As per the methodology described in the preceding chapter, primary data was collected by interviewing individuals and based on the focus group discussion conducted. The feedback received from both interviews and focus group discussions conducted were further analyzed with practical cases and their findings were summarized in this chapter. Besides, the summary of findings from primary data was supported and presented in further detail supported by secondary data collected from reports and other publications in the area regarding the study topic.

4. Results and Discussions

4.1 Women's Land Rights: A Practical Case Analysis

The acquisition procedure of land is stipulated under the law. Oromia regional state land law says that says that anyone who wants to be a farmer has a right to get land freely from the government, especially women have the right to free access to rural land without any discrimination.[9] On this issue the researcher tries to interview, the land bureau officers interviewed in Degem and Girar Jarso woreda, and in both Woreda officer of the land administration bureau says that:

> *"The only mechanism of getting land in urban for women is for housing purposes through forming associations with other persons, and in rural, women may ask for land for their livelihood; nevertheless, there is not enough land that was under the administration of the government, and due to this acquisition of lands for women is only done through donation, inheritance, marriage"* [10]

Although the law says that women and men have equal land rights, the community believes that men are "the head of household" and he discriminates the fate of the women's access to land in most cases. Especially, in rural areas, even though the community in the marriage lives together in peace the community gives recognition of the head of the family, to the man, and in case of divorce the divorced woman, traditionally, may lose her right over the land. This discriminatory practice affects

[8] CEDAW Art 16
[9] Proclamation 248/2015 Art 7
[10] Interview with Chuni ketema on October 9, 2023

and prevents women from acquiring ownership of land, even sometimes elders through the ADR mechanism settle disputes by only giving a small plot of land and rarely do women go to the court of law to safeguard their rights.

These days there are attempts to address such issues in urban areas, and in rural areas, the problem seems to be intact. For instance, the Degem Woreda land administrator argued that

> "*Currently, there is some awareness in urban areas on equality of gender, but in rural areas, it is men considered as the head of the family, it is who decides all social, economic, and cultural issues including how they use their lands either for themselves or by giving the contract to the other, in addition to this during marriage concluded for their children it is not women/wife who gives lands rather husband decide in marriage ceremony without the consent of the wife*" [11]

This shows that even if there are clear laws that ensure the equality of men and women in all aspects, practically it shows the inequality of men with women.

Traditionally, the right to own land is curtailed through traditional practices such as "seminar (marriage contract) or 'gojo much' (alimony). Thus, the marriage contract by itself has its problems. Nowadays in Oromia in general and North Shoa in particular, a woman and man conclude marriage through a contract of marriage called "Semania." In this contract, both spouses consent to conclude a marriage, and land is often given to the couples as a gift by their parents – often saying "gojo much" (alimony). However, when the couple divorce, for whatsoever reason, the parents of the bridegroom take his land back or argue that since the husband had no right over the land, literally it cannot be common property of the spouses. There are plenty of cases where the divorced spouses claim to a court of law demanding partition of the land – as common property of the couples. Whereas, the parents intervene in the case and prove that the land belongs to them. Since the court often decides based on the evidence produced (since the land originally belonged to the parents of the divorced husband) – the woman will eventually lose her right to the land. [12] In the above case between *Imabet Xaasoow V. Aster Goraw* husband and wife live for only one and half years. In case the parents intervene the case, the lower court decides that so long as they live together and the family gives lands to the spouse, the land is common irrespective of the year they live together and gives the verdict that land is common property. The family of the husband took appeal and the Oromia cassation bench decided that land is not common property rather it is family property because both spouse lives together only for one and half years, in such scenario either men or woman conclude marriage for the sake of land and this affects the land rights of the family and due to this so long as the marriage does not last for long period the family have right over their lands and decide in favor of the family of the husbands.

[11] An interview with Beharu Dessee, Hailu Ketema. Mulatu Bekele in Degem town on October 10, 2023

[12] Oromia cassation decision on volume 5 between Imabet xasow and Aster Goraw on file number 300610 on July 09 2019

The writer argues that marriage is concluded to live together for a long period, so in case marriage is concluded between spouse families, relatives from both sides give donations of either land or any other property. The Family law stipulates that the property before marriage is personal so long as it is registered as personal property otherwise, it is deemed to be common property, Donations are also given to both spouses and no one challenges any donation on the day of marriage. [13] So, after the marriage is concluded the spouse lives together for the enhancement of family well-being, even if they have children within one and half years, no objection is raised on the land so long as they live together and this ensures the sustainability of the marriage between the spouses. National and international legal frameworks also ensure that both man and woman have equal rights over their marriage and property, but in case the marriage does not last long why does the community by itself take or intervene in the case in the court of law to take lands from both sides in favor of husbands most of the time is that it shows that that family by itself does not need a marriage of the spouse and it brings insecurity of marriage. So the writer recommends that registration of property or land is mandatory for the family by deciding that the land given to both spouses is only common so long as they live together for certain explained years and until the donation contract has such explained year the land is common property for both of the spouse and those who intervene the case from the family case shall have the burden of proof as they do not donate the land for the family. Since the law stipulates that a spouse lives for a long life, limiting the spouse's life based on the divorce issue is not fair and logical so long as love, compassion, and tolerance that exist during marriage must also continue during divorce.

4.2 Right to Use Land

In modern times, women and men have equal recognition under the policy, laws, directives, and another legal framework, but women's protection from non-discrimination of women does practically not exist. In rural communities, even after the marriage is dissolved and the land partition is finalized, women cannot use the land since they don't have a means of production and since they lack agricultural experience – the land will remain the property of her ex-husband or his kinsmen. Even when a woman tries to use the land, the family of her husband disrupts women's usage of the land. The researcher did FGD and an interview about women's right to use land and those who participated in the interview were judges, prosecutors, attorney's land administration bureau officers, women's affairs officers, elders, and those who participated in four FGDs including both men and women, spiritual and social community leaders and expertise of land as well as women's affairs bureau state that women are after they get lands either from their husbands through court litigation or arbitration do not effectively use the land they get due to customary stereotype as well as women's are claiming their land rights at the time of divorce and they have no attitude of ownership of lands while they are in marriage. In addition to this customary practices that promote male supremacy in society still prohibit women not to exercising their rights. The analysis done based on FGD and Interviews as well as case analysis concerning

[13] Oromia Family code Art 73, 79

women's rights shows that legal awareness of women is currently good but still, women in remote areas, and rural areas need due care for the full implementation of their rights irrespective of customary practice on the ground.[14] Generally, the researcher did FGD and an interview about this topic those who participated in the discussion stated that women after they get land due to customary stereotypes do not effectively use their right to use the land.

In addition to this Oromia Family law indicates that personal property means the property that spouses possess on the day of their marriage, or which they acquire after marriage by succession or donation. [15] In most cases, land comes through succession or donation and in case marriage is concluded there are no legal rules that handle the issue of land whether land that one spouse possesses before marriage becomes common or personal. Is unanswered question as well as the other issue that was raised about this is how many years a spouse shall live together to share their parties in case the marriage is divorced is another challenges that affect women's right to land about case-related to land.

In the above-raised issue the argument that exists between judges in the Oromia region North Shoa court, in general, is some judges argue that land is common property of nation nationalities and peoples of Ethiopia and spouses that conclude marriage have full right to exercise and to have an equal portion of the land in case of divorce on one hand and the other group argue that land is personal property so long as one of the spouse have previous ownership and according to family law, the spouse that has personal right before marriage and property that exist before marriage is personal property, the land also becomes the personal property of the individual.[16]

On this issue, the federal cassation bench decides various cases by taking into consideration that land is the common property of nation and nationalities and peoples of Ethiopia, and the only criteria that the federal cassation bench underlines in its decision is whether the spouse whose marriage is dissolved by divorce is use that land during marriage and fulfill their livelihood or not is the main concern of the bench. If we take the case that was decided by the cassation bench on volume 19 file number 113973 case between *Xejitu Urga V. Gemeda Roba* so long as the land which is the cause of the dispute was used by husband and wife for a long period the land is a common property by stating that the right everyone has is the right to use rural land is the right to use it as it exists, So in the case above more than 20 years the spouse lives together and family intervenes the issue and cassation bench decide in the favor of spouse. In addition to this in volume 22 file number 138286 between *Calume Muleta v. calashi qelbesa* both women and men have equal rights in controlling, transferring managing the issue of lands which ensures the equality of men and women.[17]

What the researcher tries to analyze under this topic is that there are plenty of similar case in which the family of the husband intervene in the case and this intervention of the family affects women's rights irrespective of the

[14] FGD done in with social and community leaders in Degem

[15] Oromia Family code Art 73

[16] FGD done in Degem, Girar jarso, Debrelibanos.

[17] Cassation decision Volume 22 File number 138286 case between Calume muleta Vs Calashi Qelbessa

judgment of cassation decision since the case started from the district court up to cassation bench they must attend at the court of law, adjournment needs times not in a week sometimes up to years or above that, they do not have enough money for traveling and transportation, they face challenges in an urban area, while they are going to supreme court at the regional and federal level. Currently, the Oromia court stated that such cost is minimized due to the technological advancement of E-filing among all woredas even though it has its drawbacks.

In addition to this, the other challenges that affect women's right to use is that in case one of the spouses raises an argument of succession. Family law stipulates property that comes from inheritance is deemed to be personal as the researcher raised in the above paragraph. In this issue, the Oromia Supreme cassation also gives the final decision on a case that has a family and succession nature. In this claim so long as the spouse lives together, whether it is registered or not, whether it comes from succession or not is not an issue in land-related cases. At both federal and regional cassation benches main focus on the land issue during the dissolution of marriage is not clear for how many years the spouse lives together to share the land, rather is women and men live together for a long period by using the land for the wellbeing of the family and for the livelihood of the family they have equal right to share lands. At regional and federal cassation bench to protect the rights of women either on land or other issues is highly appreciated since both courts interpret the law through the mechanism of judicial activism by checking, the socio-economic as well as political rights of women, women and men who lives together for long times have equal right over the land during dissolution of marriage. The long period gaps create spouses who need not marriage but rather property by the name of marriage and this disintegrates the family and raises for the Caffee Oromia to enact another land laws that limit the years for spouses to share lands in case of divorce. The issue is whether the spouse uses that land for their livelihood or not, whether they ensure effective utilization of the land is the main concern of the court and decided that land that was obtained through succession but in marriage, the spouse uses that land and one of spouse have half of the right to use that land in case marriage is dissolved or, children of one of the spouses have half right to heir to the land. [18]

Currently, the Oromia rural land proclamation stipulates that for anyone, either woman or man, to have lands or to get lands after divorce, the spouse should have to wait for 10 years. Under Proclamation 248/2015 Article 10/4/ property of lands which is not owned individually or jointly by agreement becomes common property so long as they have been used for ten years as well as the spouses are subsisting on the income from the land for the time being. [19] Under this law, the rationale behind this law is that both woman and man concluded marriage in previous times for the wellbeing of the family without bad acts, currently in need of land from both man and woman conclude a marriage, and due to this Caffee Oromia enact 10 years for a spouse to live together to share lands by aiming that improve land utilization and declining those

[18] Oromia cassation bench Volume 10 File Number 393039 between Tarikuwa uma and Kumsa Dirrirsa

[19] Proclamation 248/2015 Art 10

who conclude marriage for the need of lands. As a researcher I argue and recommend that Land is the backbone of society's socio-economic and political phenomena ensuring access to land for the community is mandatory. The FDRE constitution stipulates that the ownership of land is the Nations, nationalities, and peoples of Ethiopia, and ownership right over the land is not an individual right rather it is a common right, the only right that the community has over the land is the possession right which gives the right to use lands. On one hand, the rationale behind enacting such a period for spouses is to ensure and protect marriage based on the law and to avoid marriage concluded in need of land, and on the other hand land is the common property of all society. The woman or man must stay for ten years to share the land inherited and this affects the rights of women because marriage is concluded on free consent between spouse and family of the husband also gives lands based on their interests, and since conflict is inevitable between spouse, the law must protect women's from not to lose their land rights. In case of conflict occurs and divorce is mandatory so long as the husband does not register his lands as personal property both husband and wife have equal rights of ownership as citizens of Ethiopia and the only difference is possession of rights. In possession of lands, it is not logical for women or men to stay 10 years to share lands So long as in principle marriage is concluded for a long life.

As a researcher, I believe and recommend that once the marriage is concluded the family law stipulates that property that is not personal is common after the day of marriage and anyone who needs land as a personal possession right must register until there is no registration so long as women and men use lands for their family livelihood and those family who donates or lands comes through inheritance is common property irrespective of the year and the husband must register that land is not common rather it is personal and until the husband and family of a husband need to give their land for spouse on the day of marriage without any interference by their free and full consent I believe that it is common property.

The other challenges that exist regarding women's right to land in North Korea are the Land donation contract during marriage. It is the culture of the society to give land on the day of marriage for the spouse from the family of the husband in the family of the wife's house. But in that scenario on the agreement of the marriage the father of the husband gives his land even without the consent of the mother of the husband and donates lands on the marriage contract. The challenge was raised 1/ In case the father of the husband and mother of the husband conclude divorce they file all their lands which belong to their children through donation this affects those who have rights over the land and the spouse raises that she is not signed on the day of marriage and no means of approval 2/ In case the spouse whose land donated is divorced the family of the spouse who gave lands intervene the issue in a court of law 3/ No registration mechanism for those lands that are donated during the day of marriage and due to this all case that is brought in North Shoa produce serious challenges to dispose of fairly. [20]

[20] Previous federal cassation bench decision Volume 19 File Number 113973

One of the cases that the researcher tries to analyze is the case *of Gannat Gannanaw v. Damxo Birhanu.*[21] The lower court reviewed that the land belonged to the family of her ex-husbands, and they gave to the spouse on the marriage days, and used the land for the livelihood of themselves the court overruled the intervention claim of the family of the husband. [22] Under the judgment given in Wara Jarso Woreda, the court reasoned that the "family of a spouse gives land for spouse and the spouse used the land for a long period time, as well as family donates lands as per the culture of the society and due to this, they decided land is property of the spouse and have an equal right to share the lands upon divorce." North Shoa Zone/ High court under file number 90917 overrules Wara Jarso Woreda's verdicts that land was given by the family to the spouse through donation, but such donation upon conclusion of marriage is not being registered in the land administration bureau, due to this land that was used for more than four years between husband and wife is decided for family of husband and this show that different view exists on the land issue and this affects women's right because she lives together for almost 4 years, use the land for their livelihood and the love, compassion, and tolerance from the family of husband on the day of marriage is lost during divorce and such rights affect women's right to own and use lands effectively as they use during the marriage.

The researcher infer that family of the husband whose lands belong intervene the case and such difference of judgment on the same issue affects women's right to lands because in the area women are those who leave the house in case of divorce, and develop a sense of that women's does not have right to claim lands because of land donation is not registered and I recommend that as family laws clearly stipulate the burden of proof is on the husbands as it is personal property because according to customary practice while marriage is concluded family gives their lands to the spouse and on the day the spouse conclude marriage and after that spouse uses that lands together for their family livelihood and no intervention exist while they live together and such intervention is only developed during marriage dissolved and To avoid such scenario husband must register lands as personal property or its family property only given for us until we live together, which brings commitment and honesty among spouse.

In the above case, the family of the husband intervened and their intervention was overruled took an appeal to the North Shoa High Court under file number 90917, and the high court varied the decision of the lower court on 07/02/2016 by saying that land that was decided for spouse in the lower court was registered in by the family of the spouse, mother of husband does not sign on donation contract, donation contract is not registered in land administration bureau.[23] The researcher interviews one of the judges of the high court who resides in the family case benches. In an interview done with the judge noted that:

> " *I have been a judge for more than 12 years on both lower and higher courts and currently am a high court judge in North*

[21] This case was brought to Wara Jarso Woreda court under file number 01936 and decided on June 13 2020
[22] Wara jarso FIC file number 01936
[23] North Shoa High court file number 90917 on October 18,2023

> *Shoa, on the issue raised above and other similar cases, donation contracts for a spouse by families are most of the time not registered in land administration bureau, during the marriage only the family of the husband gives land for spouses and spouses use for a long period and in case divorce occurs, family matters disintegrate and this affect women's right to land either spouse or family is affected, so I recommend that donation contract must be registered in the land administration bureau. In addition to this, most family matters about land in various Woreda courts of North Shoa raise two arguments, on one hand, if the family gives land to a spouse it is not mandatory to register, only using lands for livelihood is enough, on the other hand the argument raised is using the land is not a warranty rather the contract must be registered, and based on the"* [24]

As a researcher, the constitution gives recognition for the customs and culture of the society under Article 34/4/ gives recognition for the marriage concluded by the religion and customary practices. So most of the country marriage in rural areas is concluded through customary practice and this raises the question of what is the customary practice of the society about marriage. From this as a researcher is one of the observers of the custom of the society in the area, the family of husbands in most of the rural areas give land on the day of marriage by donation to use the land for their livelihood, so the spouse uses that lands for their livelihood and the family does not ask about that lands as it is their property, the society in the area lives together and use lands they get through donation during the marriage, and even they gives donation for their children while their children conclude marriage and as long as the land is given for the spouse in accordance to the custom of the society, the land is the common property of the spouse so long as they use the lands for their livelihood and I recommend that no need of registration for those marriage concluded through customary ways except the spouse by itself believes that registration is necessary for himself or family and register the donation contract.

Another case is *Luuccoo Kebede v. Nadhi Geetahun,* [25] the spouses lived together in Jidda from 2015 up to 2019 and they divorced by Jidda court decision. The issue raised was on the land and the court decided that the land was not common and proved by evidence. The high court varied this judgment and held that land is the common property of spouses and have the right to get their shares on file number 72598 on 29/3/2013, after the judgment was rendered family of the husband brought opposition to the high court on file number 72598 on 13/3/2015 and the high court also vary his judgment after hearing all evidence both spouses have no rights since marriage

[24] Interview with Ato Merga Xaasoo, Kumsa Yadeta, Muleta Dadhi, and Fedhas Nuguse in North Shoa high court in November 7, 2023

[25] Luuccoo Kebede v. Nadhi Geetahun. file number 23882 on day February 24 2020

contract which have the gift of lands from the family of husband or those who apply for opposition and by analyzing that transfer of rural land user right by inheritance or gift to another shall be registered by the office and certified by the name of the person to whom the right to use of land is transferred. [26] This shows that the judgments given in lower court and high court vary from time to time, and they play a vital role in affecting women's rights that they have on land.

In the above case, the family of the husband intervened or applied for opposition and the high court overruled their application by saying that the family now the case while the husband and wife have a suit in a court of law and after judgment is given by high court the opposition by family is against the right of parties speedy trial and family of a spouse takes to appeal to the supreme court and the court decide that it is their right to intervene/ apply opposition and reverse the case to the high court and high court analyze the case that the donation contract is not registered by component organ, but on the contract of donation on the marriage days from the family of husbands, husbands father sign the contract of donation. This shows that on one hand, the custom of the society is a donation of the contract on the day of marriage that does not need the full family husband's consent, and on the other hand, those families whose consent is taken claim their right when divorce occurs. From this, the researcher infers that marriage done through customary ways needs due care especially in case the donation of land exists and the spouse must ensure their right since once the land is given for the spouse's use they must protect their right through registration because it minimizes conflict among spouse and in case the family of husband especially the mother of husband does not give consent they must read the contract of donation and as a researcher, I recommend that contract of donation must be registered and such contract is not only for the day of marriage rather for the whole life of the spouse and mandatory to register or the elders "Yaa'ii firaa" Walitti makaa" or on the day of relative combination the family of both spouses must discuss the contract of donation, and such one side contract of donation affects their rights. As a researcher court should interpret the law in line with national, international as well and regional legal frameworks, since as one wing of the government court should analyze family matter cases since marital property rights are governed by statutes of the law like family law, property law, land administration law and contracts agreed by spouse at the time of conclusion of marriage. In addition to this only using registration criteria by the court also affects women and the court should have to analyze in line with the customs of the society sometimes the existence of registration criteria is unknown in some rural areas and the court should have to take not only plain view of the law rather interpret in accordance to the law, customs of the society, generally accepted norms around the area.

The Oromia rural land administration regulation states that the right to use lands through inheritance or donation shall be registered with the office and the certificate of the owner of the land shall be given to the person whose land was given. [27] On the other hand cassation bench of the Federal democratic

[26] Jida Woreda FFIC File number 23882 and North Shoa high court file number 72598

[27] Oromia Rural Land administration regulation Number 151/2005 Art 15/9

republic of Ethiopia decides on unpublished books currently cassation bench decides that due to special circumstances of rural land donation given to a spouse on the day of marriage does not need registration in the land administration bureau by saying that since family gives based on their consents.[28]

The other challenge against women's right to use land is the administrative barrier of the land administration bureau. Because the law stipulates that any contract relating to the land issue in Oromia either donation or contract to use lands effectively, or lands that were obtained through succession must be registered in land administration.[29] But the practice is no registration of the contract, especially on the use of lands through "Land rent" or "Hirta" or "Contract" The man or husband is culturally recognized as head of household, and no cross-check from the land administration bureau existence of consent from women's parties while registering these contract. In case an issue is raised in a court of law between families either a contract of donation, inheritance, or any land rent contract does not register, and in the case of land rent's husband is considered the head of the household and enters into a contract with third parties without the knowledge of another spouse and this develops that those who do not give consent against the parties at the suit and this challenges that existed in Land Administration bureau. The Land Administration Bureau should have a mandatory duty to register all contracts by the law, and there is no practice among the Land Administration Bureau regarding the necessity of other parties in case of land rents and this develops an argument from other parties that their lands are not rented since one party do not gives consents.

In the case of *Tesfaye Negash v. Weyinishet Tesemma*, [30] both husband and wife, lived together for around nine years, when the issue of land partition popup, the husband argued that the land that was used by both of them was not their common property, rather it was his or her husband's land, but the document in the file is land is registered by the name of husband, contract of hirta according to the culture of society is done between husband and his own family, this contract is not registered in the land administration bureau, and the Degem FIC overrule that the land is not the common property of the husband and wife.[31] The high court decided that the land is registered by the husband, the land is used by both of them for a long period, the contract of Hirta is not registered, and gave a verdict that it is the common property of both husband and wife.[32] This tells us that, the court needs to take into consideration, not only the black letters of the law but also the local practices, and norms such as the practice of hirta, and how the spouses utilize their land during the marriage. Thus, it is not only the length of the years in which the spouses retained the marriage, how they have been utilizing the resource and developing it for the common well-being of their family that needs to be taken into consideration. Especially, the courts need to be sensitive to women's rights and the injustices they had to fight in the process of accessing their equal right to the land. The court should not discriminate the spouses either intentionally or

[28] Unpublished Federal cassation File number 235739, 107840,197998,206535

[29] Oromia Rural land administration regulation Number 151/2005 Art 3/12/.7/7/

[30] The case started in Degem town under file number 52316

[31] Degem Woreda FIC File number 52316

[32] See file number 90890 – decided on October 23 ,2022

unintentionally for such a decision has far-reaching consequences on the fundamental rights, freedoms, and liberty of the women. The judiciary need not advance a patriarchal structure through its unfair decisions; rather it has to be a place where women get relief from the unfair treatment they often receive from the families of their ex-husband. However, the judges often see the cases as narrow legal issues for they are trained to decide the cases based on the law. However, I argue that the judges need to also observe the wide-ranging effect of their decisions.

In Debre Libanos Woreda land administration bureau officer also stated that:

> *"the law says that any contract done on rural land must be registered, and during registration parties who have the right to sign the contract must sign in the office, but due to lack of awareness among society, educational barrier among officers of land administration, lack of clear working rule in office contract of lease, or HIRTA is not registered in a certain situation and in case the issue is raised in the courtroom based on the contract, the court orders us whether the contract is registered or not? And land bureau administration officer gives an answer to the court, and in such a scenario, the community has no awareness of how registration is held and gives a contract of leas or hirta by culture and this affects their right to lands since in our culture contract is signed by the husband without knowledge of wife/women."* [33]

There are many international and national legal documents as far as women's land rights are concerned. Article 9/4/ of the constitution states that all international agreements ratified by Ethiopia are an integral part of the law of the land. The Government of Ethiopia has promulgated various land-related laws with FDRE's provisions for protecting the land rights of women. The FDRE constitution recognizes gender equality and equal rights with men regarding the use, transfer, administration, and control over lands Articles 25, 34, 35, and 40 Of the Constitution also prohibit laws and customary practices that discriminate against women. Oromia courts do not have a bench for the right issue like that of federal proclamation 1234/21 but have a constitutional granted duty to interpret the law in line with the above principles. As a researcher I recommend that the judiciary must have a duty to cross-examine all decisions related to women's rights with the principle of justice, the principle of equality and the government also should have a duty to establish a good governance task force at the district level for those who cross check the decision of district court up to cassation bench. Such good governance task force works with NGOs, the Human Rights Commission, and social and women's affairs and ensures

[33] Interview held with Jaalata Shifarraa head of land bureau Administration, Efrem yohanis, Sifan Bekele In Debrelibanos on December 10 2023

responsibility for those who violate stipulated women's rights.

4.3 Challenges to Women's Access to Justice

Women's access to justice includes the right to appear in court which is physical accessibility of courts and the right of any person to appear in court without any fear or discrimination and trust in the justice system. The implementation of this right requires giving awareness to the right holder of its rights and avoiding problems that could become an obstacle when the right holder chooses to exercise his/her rights. In our case, women's right to appear in court is not sufficiently being implemented because for one thing women barely know the legal protections provided in countries' legislations and when they do know major substantive issues and try to take their case to court they face many hindrances from many directions and in case of conflict arise between wife and husband they do not file their case to the court of law about divorce, rather they try to fix and divorce each other according to the culture that exists in the area, and elders sometimes do not share lands rather women's takes only perishable equipment's that they use in house and land remains in the male, women has to opportunity either back to her family or migrating to urban to ensure her life to live, even the community exclude that by saying that marriage is divorced due to her fault for not having or protecting her marriage.

> *" one of the elders who gives his suggestion on the marriage during an interview done in Degem town is working as a customary court judge in the town and most family cases are brought to customary court, which is very important to handle the family issue, but even though the community brought the case to the customary court and handle the issue, the community believes that since the modern court decides family matters, it is unnecessary to bring the case to customary court by believing that judgment execution for the spouse is most of the time difficult due to security issue, and As a customary court judge I recommend that before going to the disputes in the courtroom the society must bring their case to customary court and government must adjust the system of customary court in line with the modern court to handle the case effectively and efficiently to protect, respect and ensure not only women's right."*[34]

As a researcher, the question that was raised under the above issue is whether the customary court of modern court safeguards the interest of women or not. is that most of the community in the zone lives together not only by modern laws but rather by customary laws. Currently, customary courts are established in the Oromia region in general and North Shoa zone specifically. Customary courts safeguard the

[34] Interview done with Ob Nagasa Asafa , Getacho Bayana, Bekele Gari Degem customary court judges in Degem town on date August 21 2023

interest of women by bringing peace between spouses, a family of the spouse community, and other parties in disputes, in customary court no need for registration formality and they protect women's rights based on the custom of society so long as customary courts are based on the customary laws. In addition to this the way they handle the case does not bring transportation costs, it is efficient, effective and does not have formal procedures like that of modern courts and I recommend that the law that imposes family issues must be started from the customary court before it comes to regular courts.

In addition to this, women usually appear in court for issues of divorce cases, and in such situations, those women in most cases are attending their cases by being outside of their homes because mostly the man/husband in the case will keep the common abode by kicking the wife out of the house and those women will face the unfortunate situation of wondering around carrying and holding babies with them and in such circumstance those women will lose hope about going about their case because they will not have a place to put their children, even though the issue of babysitting areas in organizations to welcome women has been taken as one goal of the government it has not been implemented in many areas especially in judicial sectors by the initiative of the government and this is something that needs the attention of the community at large if we are going to improve the right to access to justice for women.

In the above challenges, one attorney suggests the existence of problems during divorce stating that

> "*I am a private lawyer/attorney working almost for more than ten years in North Shoa and the problem that I see about women during divorce is most of the time women do not bring their case to the court of the law, they want to negotiate by through neighboring elders, but if the issue is high, in the culture of society believes that men do not leave his house, rather women left the house, and while the case is brought to the court of law for divorce women with children lack money, comes from the family house and this brings psychological trauma and final they left their case and as a lawyer I recommend that the government should have a duty to implement the right of women's through developing various initiative which enhances women's right as well as the social worker must take training to support women's not to divorce the family.*" [35]

In many circumstances especially in cases of dissolution of property, there are acts by the defendant and other organizations transferring property rights from one person to another without the knowledge of the plaintiff women or absence of willingness on the part of advocates and prosecutors to help the women be able to gather evidence and successfully prove her case. All those situations affect women's right to access justice and should be

[35] Interview done with Lawyer Demelash Adare , Fayisa Ishetu, Birhanu Abraham on November 12 2023

changed through time. most of the time due to cultural influence in North Shoa, It is the only man who owns administers lands, and pays taxes for the government and they cooperate each other with each land administrative body to hide documents, change documents, add unnecessary documents which affect women's right is sometimes affect women's right at the outcome of the case may become against the women's.

One of officer of land administration bureau officers in Fiche town interview stated that

> *"In any activities related to lands men always perform all activities like administering lands, giving contracts of lands, collecting fruits from lands, selling the property obtained from lands, and paying taxes, all the above activities are done by men or husbands and, while women/wife are in house husbands done any activities either legal or illegal and from the side of land administration practically for those contract whose existence of wife Is a mandatory officer of land administration does not take as mandatory issue and only allow for men to sign and this affects women's right and as a professional worker I recommend that women's should have full right to exercise their right as well as control their lands and to do this land administration bureau officer shall have a duty to take care of all contracts related to lands to perform their works according to the laws"* [36]

The other issue that the researcher tries to analyze is the pro bono service expected from an attorney is that, the provision of pro bono services provided by licensed advocates (which is administered by the attorney general office), Legal aid programs launched by NGOs charity organizations, and professional associations (such as Ethiopian Women Lawyers Association and Ethiopian Lawyers association) and Legal aid clinics established within public universities like Salale university. Implementations of the mandatory pro bono service can potentially go a long way in improving access to justice for the most disadvantaged groups such as women but it's not effectively implemented and its wrong implementation most times results in women losing their cases. According to the current practice in North Shoa Judiciary organ either at first instance or high court level there is no clear data that show that pro bono service is concluded according to the law or lawyer would attend to a case when it is scheduled to do so without knowing what the case is about and with no substantive contribution to it and other times other lawyer may or may not attend to that same case and it all depends on the availability and willingness of those scheduled attorneys because there are no such checking mechanisms as to whether they have adhered to such obligation.

One of the attorneys in the district states that

> *"An attorney has a mandatory duty to serve vulnerable groups*

[36] Interview done with Mulgeta Gindo Girar jarso woreda land administration officer on Septmeber 7 2023

> *for 50 hours in a year and almost all attorneys do not need to give pro bono service except experienced attorneys all rural areas vulnerable groups need pro bono service and the number of attorneys in the district area by itself is small and due to this lawyer or attorney does not sacrifice their time since there are no clear regulatory rules except on final days of the year during payment of their bill."* [37]

In this issue an interview held with one of the zonal prosecutors in North Shoa State that

> "*I have worked as a public prosecutor for more than 7 years in the Nort Shoa prosecutor's office and as I observed the law clearly puts the burden on the attorney for 50 hours and another legal service provider, but for disadvantaged group pro bono service is mandatory, and sometimes it is difficult to get effective pro bono service from attorney due to lack of time from attorney side, lack of ways to ensure who needs pro bono service from those who in needs and this affect women's right while in needs and as a prosecutor I recommend that those in need of pro bono service are helped currently even though its scope is not high the government institution office must support all peoples effectively and efficiently based on the evidence since sometimes those in need of pro bono service does not get the service rather those who have the capacity get pro bono service by bringing false document and this affect the right of women's."* [38]

As a researcher, I recommended that the emergence of experienced attorneys to give pro bono service to individual women and other vulnerable groups is mandatory. Pro bono service is an important way for lawyers to contribute to their communities and help those who may not be able to afford legal representation. In addition to this lawyer in the region or zone through pro bono legal services, legal education and training, advocacy, and policy works, participating in community events to protect women's rights, mentoring law students and young lawyers, and engaging in these activities lawyers can make a positive impact on their communities and contribute to the advancement of justice and the rule of law

4.4 Problems from the Demand Side

4.4.1 Lack of Knowledge about Official Procedures and Available Assistance

Women barely know the legal protections provided in countries' legislations and when they do know the general legal protections provided in countries legislations either in common sense or through information from others, they do not know the proper official procedures they have to go through to take their

[37] Interiew with Yobsan Alamu , Ayinalem Nuguse, on July 6 2023 In debrelibanos attorney office

[38] Interview with Tasfaye Hurisa, On November 10 2023 In jida attorney office

case to court. They do not know how they will be eligible for legal assistance and where to find it either. The absence of knowledge about the available assistance mechanisms might be the result of their way of life with a sense of frustration about getting to know the legal system's reluctance to find a way to find support in legal cases or even the fact that judicial and other justice sectors do not present themselves as an institution working for every individual and not just the haves.

4.4.2 Lack of Finance

The majority of women in our country are economically disadvantaged and dependent on their close ones and when they come in conflict with people who they used to depend on, they will come to face the harsh realities of being thrown away and accept injustice. Many women complain about lack of information about substantive rights and the official procedures they have to go through when their rights are violated, yet still, Some women claim that even if they have information about their substantive rights and procedures, they will not be able to go through their cases because they don't afford to pay a lawyer as long as the case goes and they will end up losing their case when they are out of money. In some cases, the court upon a claim of parties hires a defense attorney in case parties apply for a defense attorney from the government. In one case that occurred in Hambiso town husband and wife lived as wife and husband or irregular union for more than 15 years, but conflict occurred between them and the husband claimed his wife to pay the rent of a house in her own house by hiring private attorney, another wife also intervenes in the case, and finally with the support of public defense wife won the case.[39]

4.4.3 Problems from the Supply Side

Lack of willingness to give attention to vulnerable persons

Vulnerable members of society such as women should be given special treatment and care in every circumstance. In the case of access to justice, people from the supply side are not usually open to understanding the challenges women face in bringing their cases to court and resort to assistance mechanisms or procedures. There are also problems in case of litigation that it becomes difficult to gather important evidence and witnesses supporting their case, and they also face discrimination in different sectors that they will not be treated like any other male members of society and they do not get heard.

Lack of adaptability of justice sectors to the needs of women

As per the special care and assistance that women need when they approach courts, justice sectors are expected to be open to disadvantaged women to hear their cases and adjudicate them whenever they are justifiable. Justice sectors as one form of organization that serves the public should not only consider their legal obligations but also the cultural, religious, and other issues that circumscribe women and should work to ease the challenges that women face because of such issues.

Cultural and religious stereotypes

Ethiopia is known as a country with various customary practices as well as religious practices. Barriers that prevent women's access to, control, and use of land and other productive resources often include inadequate legal

[39] Degem FIC File number 52154 on October 25 ,2023 between Mokonin Ararsa and Askala Kabbee

standards and/or ineffective implementation at national and local levels, as well as discriminatory cultural attitudes and practices at the institutional and community levels, low conscious participation of women, and lack of competent political leadership.

The researcher also interviewed those who participated in FGD and Degem Wored women's and children's affairs bureau head stated that

> "*Women face various challenges due to lack of knowledge, low support from the government in creating awareness about their rights, and lack of legally trained professionals in their office in case the issue which affects women's rights is raised we as an office of women's and Children affairs face challenges and I recommend that for social, economic, political and other development of the country women's share parts of all this in the country and the government must give support for the implementation of their rights"* [40]

5. Conclusions and Recommendations

The issue of women's right to land is a complex and multifaceted one that varies greatly across society. In many parts of the world, women have historically been denied access to land ownership and control due to deeply entrenched norms and customary practices. Cultural and social norms often restrict women's ability to own and control land as well as limit their right to access resources, decision-making power, and opportunities for economic empowerment. In the world in general and Ethiopia specifically, efforts to address women's right to land have gained due concern through enacting legal reforms that promote gender equality in land ownership of women either during inheritance or donations. Addressing women's right to land requires a comprehensive approach that addresses the underlying social, economic, and cultural factors that perpetuate gender inequality, and securing women's right to land is crucial for achieving gender equality and empowering women to participate fully in their communities and economies. In Ethiopia as well as in Oromia various challenges affect women's right to land. Specifically in North Shoa women left their right to use land due to economic challenges. In case women face legal issues related to land rights women may struggle to afford legal representation and sometimes they do not get pro bono service which affects the right to land. Legal proceedings also have various costs including court fees, documentation, and administrative expenses in the area study conducted most women left their houses with only daily shelter, and in case the marriage is dissolved in a court of law they do not have an interest in a court of law due to economic problems that they face. In addition to this based on the above analysis existence of weak implementation of laws also affects women's right to land, women also face another challenge upon divorce, women may face the risk of being dispossessed of land that

[40] An interview with women and children's affairs office head Masarat shifarra , Tigist Feyisa and Weyinishet ketema on septmeber 21 2023 in Girar Jarso woreda

was associated with their marital status, especially in the area where the law is not interpreted. Cultural and societal pressures may compel women to relinquish their land rights during marriage, making them vulnerable to land dispossession in case of marriage dissolution. Sometimes due to a lack of decision-making power, women may have limited decision-making power when it comes to land and property acquired during marriage, which can affect their ability to use, manage, or dispose of land assets. Another issue that needs due concern is property acquired during marriage is not registered in the woman's name or as common property and this raises issues in case divorce occurs as well as women's economic dependence on their spouse can affect their ability to assert and maintain land rights, especially if they lack independent financial resources.

In many cultures and societies, family intervention in divorce can significantly impact women's right to land and property. Such intervention often reflects deep-rooted social, cultural, and economic dynamics that can leave women vulnerable in land distributions and ownership rights and women may lack legal protection against unfair or biased decisions made through family interventions, leaving them without adequate resources as well as bringing emotional and psychological pressures, impacting their ability to have lands during dissolution of marriage.

The other issue that needs due concern from the CA analyzed is that nonregistration of donation contracts of land can indeed have significant implications for women, particularly when it comes to land rights and property ownership, and such absence of lack of documentation system can affect women's righto land acquired during the marriage, without a formal record of the marriage, as well as donation contract women face obstacles in providing evidence of their entitlement to a land asset, making it difficult to pursue legal remedies. Sometimes Administrative barriers in the registration of contract of donation on and after the day of marriage affect women because a variety of administrative processes, systems, and practice affects women's right to own and use lands. Administrative bureaucracy, inaccessible documentation or data-centered area, lack of clarity in the land tenure system, lack of support from the government on creating awareness on registration mechanism of donation contracts.

Generally, the writer tries to analyze women's land rights from a practical point of view in analyzing existing laws those barriers that affect women's right to land are not only based on non-implementation of legal rules rather it is due to the lack of knowledge of official procedure and available assistance, lack of finance, lack of willingness to gives to vulnerable groups from the government side, non-observance of justice sector about culture custom of the society about the case of lands, Cultural and religious stereotypes and all this affects women's rights and the government must protect women's rights about land to ensure socio-economic as well as political power of the country.

The problem with women's equal rights to access and use land is multifaceted and needs multiple interventions to address. The problem goes deep into the system (institutional) and culture that requires short-term and long-term interventions. Capacitating legal experts including judges and employees in other concerned offices including the women's affairs bureau, land administration bureau, attorneys, prosecutors, and other stakeholders

to ensure women's right to land and access to justice. In addition to this creating awareness through public media, public gatherings, educational sector to educate all women to make national campaigns on women's rights and the challenges they face.

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1. Introduction

The 2030 Agenda for Sustainable Development recognizes "the need to build peaceful, just, and inclusive societies which provide equal access to justice and are based on respect for human rights." Goal 16 and its target 3 highlight the importance of ensuring "access to justice for all" in achieving sustainable development goals. Free Legal Service (Legal Aid) means giving legal services free of charge to those who cannot afford regular legal services for different reasons. Government organs, non-governmental organs, and higher education institutions may provide this service. Therefore, access to legal aid is central to ensuring access to justice, especially for the poorest and most vulnerable people. As emphasized by the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, legal aid is essential to a fair, humane, and efficient criminal justice system based on the rule of law. Without access to legal aid, millions of people around the world are at high risk of having their rights ignored or violated because of lack of legal knowledge or lack of financial capacity. FDRE constitution and other domestic laws also grant the right to access to justice for all. Even though this right is provided under the constitution, certain groups of individuals may face difficulties in enjoying this right because of their vulnerability, lack of legal knowledge, and because of their low economic status. These groups need legal aid services from concerned organs such as public universities. These categories are Women, children, victims of HIV/AIDS, disabled persons, poor people in

the community as well as internally displaced persons/returnees.

Wallaga University Free legal aid was established to ensure access to justice for indigent societies. Apart from helping society, the centers are meant to help students know how the law is being practiced and implemented in real-life society. Generally, the centre is designed to address societal needs and to enable students to acquire practical knowledge by actively involved in the real life of law in context.

2. Background

Wallaga University is a Public University located in the western part of Ethiopia. As a public university, it has the mandate to teach, conduct problem-solving research, and provide various community service activities. The School of Law is a specific unit of the university that renders free legal aid services for the surrounding community in addition to other community service activities/engagements. Besides producing legal professionals, the School of Law is also engaged in delivering free legal aid services to the indigent sector of the community since 2011, by establishing one legal aid center in Nekemte town. Currently, the school has 23 active and functional legal aid centers out of eight centers located in the conflict zones to assist IDPs/Returnees and Host communities. The centers are located in *East Wallaga Zone:* Sasiga, Gida Ayana, Haro Limu, Jimma Arjo, Sibu Sire, Aanno, Kiramu, Nekemte Prison Center, and Nekemte towns.; *West Wallaga Zone:* Gimbi Woreda Court, Gimbi Prison Administration, Kiltu Kara, Boji Birmaji, Nejo, and Mandi/Mana Sibu, *Horo Guduru Wallaga Zone:* Shambu High Court, Shambu Prison Administration, Amuru, Harato, Guduru, *West Shoa Zone:* Bako and Gedo/Calliya Woreda. Wallaga University legal aid centers have been playing a pivotal role in making justice accessible to those who are in need; particularly the poor and vulnerable groups of society.

To ensure and realize the objective of establishing free legal aid, Wallaga University free legal aid has been working in collaboration with various stakeholders – Local civil society organizations (CSOs), UN agencies particularly UNHCR and UN human Rights, International non-government organizations (NGOs), and the general public and other relevant bodies - within the ambit of the legal establishment. Since its inception, the Wallaga University free legal aid has recorded appreciable successes in defending the masses, especially those who are affected by conflict. In expounding access to justice, it has intervened and undertaken litigation before regular courts and other administrative institutions to issue civil documentation for internally displaced persons. Besides, Wallaga University's free legal aid and other partners have conducted different multi-sectorial assessments and monitoring on matters of human rights abuses on behalf of many defenseless communities in three Wallaga Zones and two districts of West Shoa Zone.

3. Partners of Wallaga University Free Legal Aid

Wallaga University's free legal aid centers have been working in collaboration with different stakeholders like Civil Society Organizations and other relevant bodies within the ambit of legal jurisprudence. Since the work and objective of free legal aid is related to the

promotion and protection of human rights, this task cannot be fully executed by a single institution which in turn requires the collaboration of different institutions for effective and quality service.

Currently, Wallaga University has a memorandum of understanding with the Ethiopian Human Rights Commission (EHRC), Oromia Justice Bureau, and Oromia Supreme Court. Furthermore, UNHCR has been an active partner and supporting legal aid centers since the middle of 2020 to intervene with persons of concerns in the areas of housing, land, and property for IDPs, Returnees, and Host Communities. That means, UNHCR has been supporting Wallaga University's free legal aid centers through different mechanisms such as donating vehicles, motorcycles, computers, generators, and finance for the effective implementation of quality service for the communities.

4. Linkages with the Stakeholders

To be effective, rendering legal aid services requires the cooperation and coordination of various stakeholders. Wallaga University's free legal aid has many stakeholders with which its cooperation is vital in the accomplishment of the center's objectives. Accordingly, the Zonal High Court, woreda courts, and prison administrations provide offices for the center, the East Wallaga Zone Justice office issues special licenses for the center, Women and Children Affairs Offices, and kebele administrations issue support letters that request service from the centers are among the main stakeholders with which Wallaga University has a linkage.

5. Services that centers provide:

- ✓ Legal Advice(Legal counseling)
- ✓ Drafting legal documents such as Statement of Claim and Defense, Memorandum of appeal
- ✓ Advocacy (Representation Service)
- ✓ Participating in Alternative dispute Resolution representing clients.
- ✓ Awareness Creation through different platform
- ✓ Facilitating the issuance of civil documentation such as ID cards and birth certificates for Internally displaced persons

6. Target Beneficiaries are:

- ➢ Women
- ➢ Children
- ➢ Vulnerable and poor people
- ➢ IDPs
- ➢ Refugees
- ➢ Elders
- ➢ People who live with HIV Virus
- ➢ People with disability

7. Strategies/Methodology for Implementation

Recruiting legal aid experts and social workers at each center on a contractual basis which is subject to renewable twice annually. Creating awareness about legal aid services and rights of Vulnerable groups including IDPs/Returnees within the affected communities by using different media such as FM radio, TV, Internet (social media), Flyers, and courtrooms during court sessions) to create a conscious community to prevent and pro-act on the problem. Besides, the center also uses volunteer law school staff and licensed lawyers. The center doesn't compromise the service quality and employs different service quality controlling mechanisms to these ends.

To this end, Feedback and complaint mechanisms such as suggestion boxes were included in the legal centers (report gaps in service provision and access constraints). Organizing capacity development training for project staff (legal experts and social workers from the University) by law school staff and other experts from other concerns on identified gaps while delivering services. This capacity building also extended to local government officials and traditional/Customary Leaders as well as religious leaders and community representations.

To ensure that the legal aid centers/clinics are discharging their responsibilities inconsistent with the objective of their establishment, the Wallaga University School of Law and Free Legal Aid Coordinator office assign a monitoring and evaluation staff.

8. Summary of 2024 Performance Report

The **Wallaga University Free Legal Aid Service** shows tremendous progress from time to time in quality and accessibility and during 2024, some vulnerable groups are benefiting from the service of the center annually. Resisting all the challenges it faced, the center has managed to reach **22,141 individuals**. The service distributions were **3,719 Males** on Counseling/Advice, Representation, and drafting legal documents, and **4538 women** on Counseling, representation, and drafting legal documents. Besides, **6513 Males and 7371 women had** legal awareness's individual reached.

9. Opportunities

As a result of working with different stakeholders and partners, there are several opportunities gained while executing the performance of the 2024 budget of Wallaga University free legal aid. For instance, Women and children especially on Gender Based Violence (GBV) and Child in Emergence were reached by social workers of Wallaga University free legal aid. Participating in the protection cluster led by UNHCR, being a technical committee of the Protection of sexual exploitation and Abuse task force and Access to Justice and Rule of Law technical working group has contributed to free legal ID centers to execute the service effectively and with quality aspects. The UNHCR project has supported the persons of concern by intervening in their needy, particularly Witness per diem and court fees for persons of concern facilitating the implementation of access to justice. The mechanism and procedure of referral pathway cases of GBV and child protection were developed from the coordination and collaboration of both government organs and NGOs

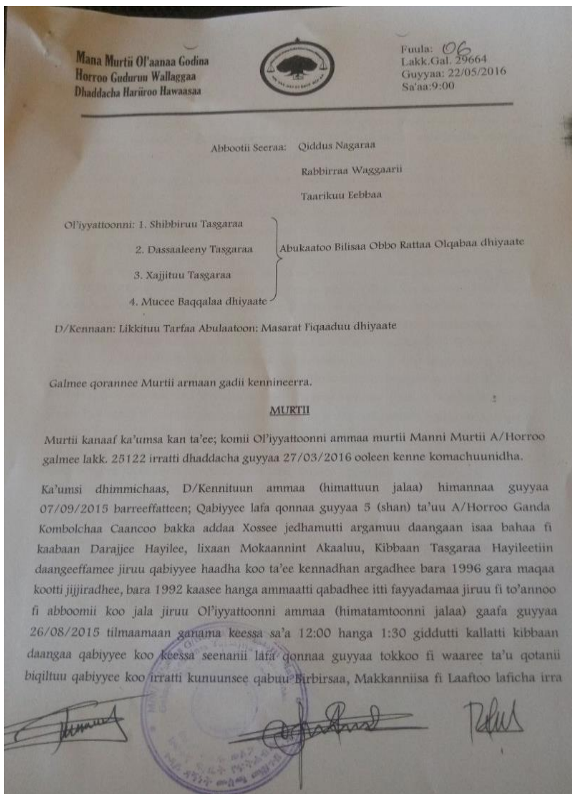
10. Challenges

- ✓ Lack of budget to increase access to centers and have competent staff
- ✓ Security problems with monitoring and supervising the activities at lower levels, particularly Woreda and Kebele. Besides, some centers were closed to function due to volatile security situations and the destruction of office equipment in the center.
- ✓ High employment turnover due to low salary.

11. Summary

Wallaga University's free legal aid center provides legal services such as counseling, drafting legal documents such as claims, defense, and representation on litigations for children, women who are victims of domestic violence, people living with HIV, Persons with Disabilities, IDPs, etc. In addition, the center admits students for clinical courses and externship programs and they acquire basic knowledge of the practical world. Moreover, the center is providing basic legal education and awareness to hundreds of thousands of residents of East, West, and Horo Guduru Wallaga zones and two districts of West Shoa Zone.

Sample of Case Representation conducted by Wallaga University Free Legal aid Service.



Mana Murtii Ol'aanaa Godina
Horroo Guduruu Wallaggaa
Dhaddacha Hariiroo Hawaasaa

Fuula: 06
Lakk.Gal. 29664
Guyyaa: 22/05/2016
Sa'aa:9:00

Abbootii Seeraa: Qiddus Nagaraa
Rabbirraa Waggaarii
Taarikuu Eebbaa

Ol'iyyattoonni: 1. Shibbiruu Tasgaraa
2. Dassaaleeny Tasgaraa
3. Xajjituu Tasgaraa
4. Mucee Baqqalaa dhiyaate
Abukaatoo Bilisaa Obbo Rattaa Olqabaa dhiyaate

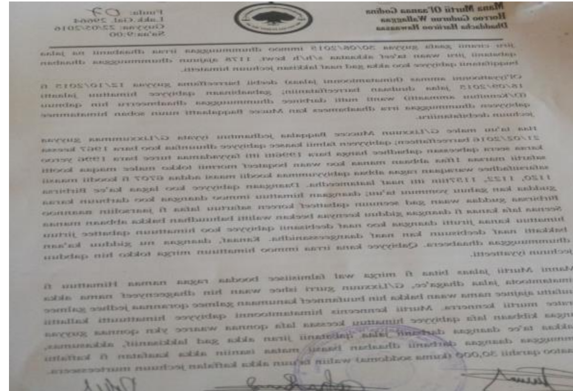
D/Kennaan: Likkituu Tarfaa Abulaatoon: Masarat Fiqaaduu dhiyaate

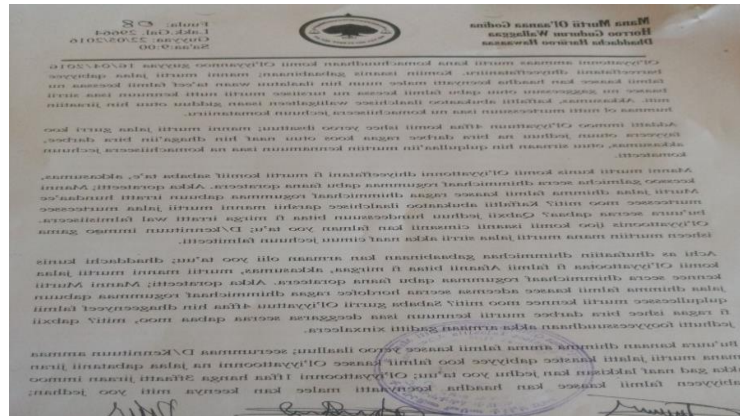
Galmee qorannee Murtii armaan gadii kennineerra.

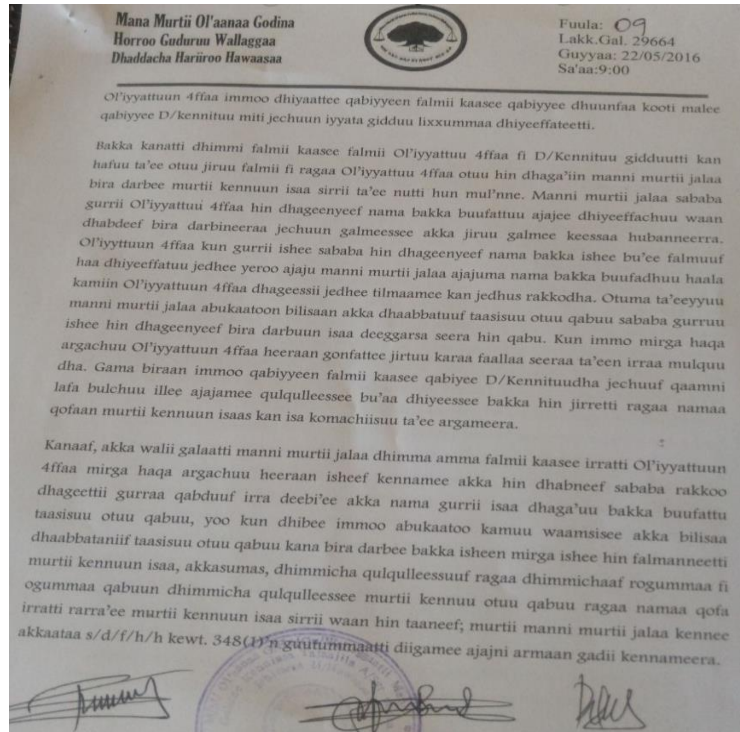
MURTII

Murtii kanaaf ka'umsa kan ta'ee; komii Ol'iyyattoonni ammaa murtii Manni Murtii A/Horroo galmee lakk. 25122 irratti dhaddacha guyyaa 27/03/2016 ooleen kenne komachuunidha.

Ka'umsi dhimmichaas, D/Kennituun ammaa (himattuun jalaa) himannaa guyyaa 07/09/2015 barreeffatteen; Qabiyyee lafa qonnaa guyyaa 5 (shan) ta'uu A/Horroo Ganda Kombolchaa Caancoo bakka addaa Xossee jedhamutti argamuu daangaan isaa bahaa fi kaabaan Darajjee Hayilee, lixaan Mokaannint Akaaluu, Kibbaan Tasgaraa Hayileetiin daangeeffamee jiruu qabiyyee haadha koo ta'ee kennadhan argadhee bara 1996 gara maqaa kootti jijjiradhee, bara 1992 kaasee hanga ammaatti qabadhee itti fayyadamaa jiruu fi to'annoo fi abboomii koo jala jiruu Ol'iyyattoonni ammaa (himatamtoonni jalaa) gaafa guyyaa 26/08/2015 tilmaamaan ganama keessa sa'a 12:00 hanga 1:30 giddutti kallatti kibbaan daangaa qabiyyee koo keessa seenanii lafa qonnaa guyyaa tokkoo fi waaree ta'u qotanii biqiltuu qabiyyee koo irratti kunuunsee qabuu Birbirsaa, Makkanniisa fi Laaftoo laficha irra







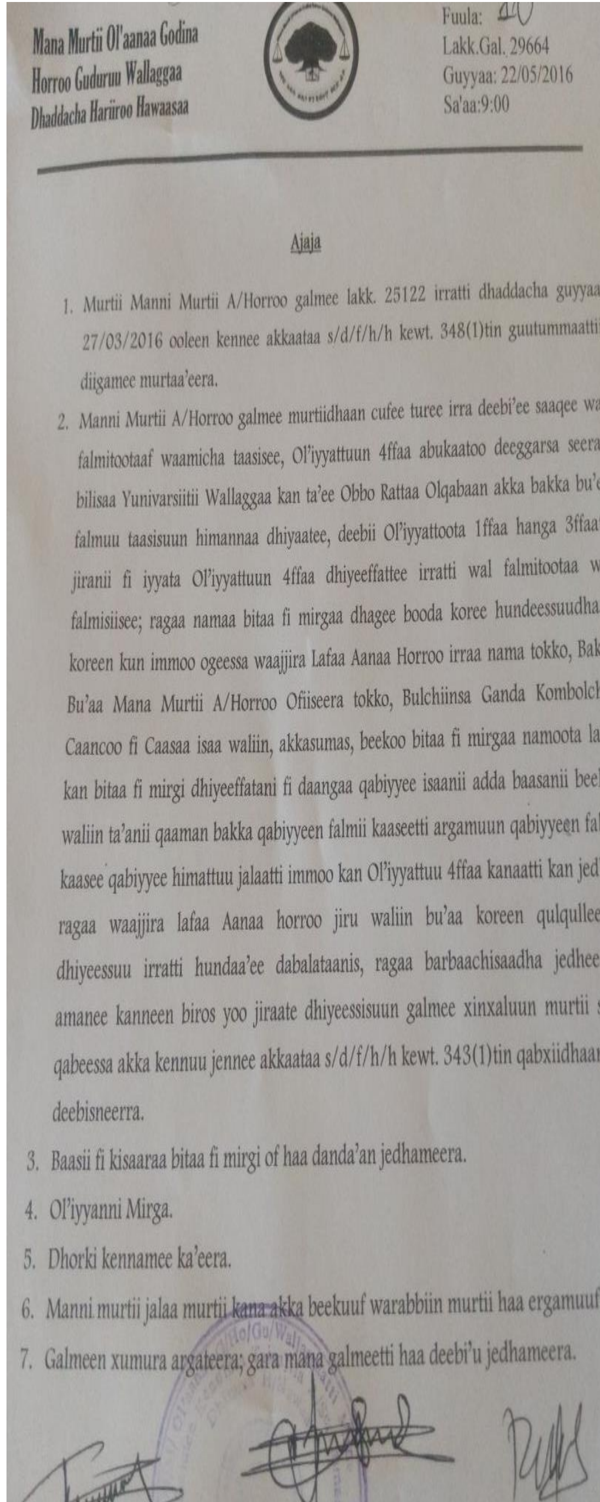
Mana Murtii Ol'aanaa Godina
Horroo Guduruu Wallaggaa
Dhaddacha Hariiroo Hawaasaa

Fuula: 09
Lakk.Gal. 29664
Guyyaa: 22/05/2016
Sa'aa:9:00

Ol'iyyattuun 4ffaa immoo dhiyaattee qabiyyeen falmii kaasee qabiyyee dhuunfaa kooti malee qabiyyee D/kennituu miti jechuun iyyata gidduu lixxummaa dhiyeeffateetti.

Bakka kanatti dhimmi falmii kaasee falmii Ol'iyyattuu 4ffaa fi D/Kennituu gidduutti kan hafuu ta'ee otuu jiruu falmii fi ragaa Ol'iyyattuu 4ffaa otuu hin dhaga'iin manni murtii jalaa bira darbee murtii kennuun isaa sirrii ta'ee nutti hun mul'nne. Manni murtii jalaa sababa gurrii Ol'iyyattuu 4ffaa hin dhageenyeef nama bakka buufattuu ajajee dhiyeeffachuu waan dhabdeef bira darbineeraa jechuun galmeessee akka jiruu galmee keessaa hubanneerra. Ol'iyyttuun 4ffaa kun gurrii ishee sababa hin dhageenyeef nama bakka ishee bu'ee falmuuf haa dhiyeeffatuu jedhee yeroo ajaju manni murtii jalaa ajajuma nama bakka buufadhuu haala kamiin Ol'iyyattuun 4ffaa dhageessii jedhee tilmaamee kan jedhus rakkodha. Otuma ta'eeyyuu manni murtii jalaa abukaatoon bilisaan akka dhaabbatuuf taasisuu otuu qabuu sababa gurruu ishee hin dhageenyeef bira darbuun isaa deeggarsa seera hin qabu. Kun immo mirga haqa argachuu Ol'iyyattuun 4ffaa heeraan gonfattee jirtuu karaa faallaa seeraa ta'een irraa mulquu dha. Gama biraan immoo qabiyyeen falmii kaasee qabiyee D/Kennituudha jechuuf qaamni lafa bulchuu illee ajajamee qulqulleessee bu'aa dhiyeessee bakka hin jirretti ragaa namaa qofaan murtii kennuun isaas kan isa komachiisuu ta'ee argameera.

Kanaaf, akka walii galaatti manni murtii jalaa dhimma amma falmii kaasee irratti Ol'iyyattuun 4ffaa mirga haqa argachuu heeraan isheef kennamee akka hin dhabneef sababa rakkoo dhageettii gurraa qabduuf irra deebi'ee akka nama gurrii isaa dhaga'uu bakka buufattu taasisuu otuu qabuu, yoo kun dhibee immoo abukaatoo kamuu waamsisee akka bilisaa dhaabbataniif taasisuu otuu qabuu kana bira darbee bakka isheen mirga ishee hin falmanneetti murtii kennuun isaa, akkasumas, dhimmicha qulqulleessuuf ragaa dhimmichaaf rogummaa fi ogummaa qabuun dhimmicha qulqulleessee murtii kennuu otuu qabuu ragaa namaa qofa irratti rarra'ee murtii kennuun isaa sirrii waan hin taaneef; murtii manni murtii jalaa kennee akkaataa s/d/f/h/h kewt. 348(1)'n guutummaatti diigamee ajajni armaan gadii kennameera.



Mana Murtii Ol'aanaa Godina
Horroo Guduruu Wallaggaa
Dhaddacha Hariiroo Hawaasaa

Fuula: 20
Lakk.Gal. 29664
Guyyaa: 22/05/2016
Sa'aa:9:00

Ajaja

1. Murtii Manni Murtii A/Horroo galmee lakk. 25122 irratti dhaddacha guyyaa 27/03/2016 ooleen kennee akkaataa s/d/f/h/h kewt. 348(1)tin guutummaattii diigamee murtaa'eera.
2. Manni Murtii A/Horroo galmee murtiidhaan cufee turee irra deebi'ee saaqee wal falmitootaaf waamicha taasisee, Ol'iyyattuun 4ffaa abukaatoo deeggarsa seeraa bilisaa Yunivarsiitii Wallaggaa kan ta'ee Obbo Rattaa Olqabaan akka bakka bu'ee falmuu taasisuun himannaa dhiyaatee, deebii Ol'iyyattoota 1ffaa hanga 3ffaatt jiranii fi iyyata Ol'iyyattuun 4ffaa dhiyeeffattee irratti wal falmitootaa wa falmisiisee; ragaa namaa bitaa fi mirgaa dhagee booda koree hundeessuudhaa koreen kun immoo ogeessa waajjira Lafaa Aanaa Horroo irraa nama tokko, Bakk Bu'aa Mana Murtii A/Horroo Ofiiseera tokko, Bulchiinsa Ganda Kombolcha Caancoo fi Caasaa isaa waliin, akkasumas, beekoo bitaa fi mirgaa namoota lan kan bitaa fi mirgi dhiyeeffatani fi daangaa qabiyyee isaanii adda baasanii beek waliin ta'anii qaaman bakka qabiyyeen falmii kaaseetti argamuun qabiyyeen fal kaasee qabiyyee himattuu jalaatti immoo kan Ol'iyyattuu 4ffaa kanaatti kan jedh ragaa waajjira lafaa Aanaa horroo jiru waliin bu'aa koreen qulqullees dhiyeessuu irratti hundaa'ee dabalataanis, ragaa barbaachisaadha jedhee amanee kanneen biros yoo jiraate dhiyeessisuun galmee xinxaluun murtii s qabeessa akka kennuu jennee akkaataa s/d/f/h/h kewt. 343(1)tin qabxiidhaan deebisneerra.
3. Baasii fi kisaaraa bitaa fi mirgi of haa danda'an jedhameera.
4. Ol'iyyanni Mirga.
5. Dhorki kennamee ka'eera.
6. Manni murtii jalaa murtii ~~kana akka~~ beekuuf warabbiin murtii haa ergamuufi.
7. Galmeen xumura argateera; gara mana galmeetti haa deebi'u jedhameera.

Picture showing while Gimbi Free legal aid center workers are Rendering Legal counseling service for Persons with Disability

While UNHCR donating Generators for free legal aid center

This is while Sibu Sire Free legal experts provide Legal Awareness for communities within the Compound of the court