WU-Journal

Volume 2 Issue 2

Print: ISSN 2226-7522

Online: 3005-7612

Published Biannually by the School of Law Wallaga University

June 2025

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Volume 2 Issue 2 The Official International Journal Of Wallaga WJLAW

WU-LAW

The Official International Journal Of Wallaga

Volume 2 Issue 2

Wallaga University

Journal of Law

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Website: https://journals.wgu.edu.et/

Wallaga University Journal of Law (WUJL)

Volume 2, Issue 2

Published: June 2025

Nekemte, Ethiopia

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Published: June 2025

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DOI: https://doi.org/10.20372/wjlaw.v2i2.1647
ISSN: 2226-7522 (Print) and 3005-7612 (Online)
Wallaga University Journal of Law
WJLaw, February- June. 2025, 2(2), 1-17
Home Page: https://journals.wgu.edu.et

Original Article

Dispute Resolution Mechanism under the African Continental Free Trade Area Agreement

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Abstract

The African Continental Free Trade Area Agreement (AfCFTA) features a detailed judicial-based dispute resolution system modeled after the World Trade Organization (WTO)'s trade dispute resolution method (DRM). The paper undertook an overview of the Agreement. It examined trade dispute mechanisms under it. It also identified and appraised the challenges of the dispute resolution method under the Agreement. A qualitative research approach was adopted, and AfCFTA's dispute resolution method was compared with that of the WTO and similar regional bodies in Africa and elsewhere. The paper revealed that the DRM under AfCFTA is comprehensive and rules-based. The analysis of the AfCFTA's Protocol on DRM was preliminary because the Treaty entered into force in 2019. It was also found that the use of resolution techniques such as parties' negotiations, good offices, mediation, conciliation, and arbitration could enhance DRM under AfCFTA. Its major challenge is that the DRM under AFCFTA is limited to State Parties and disputes.

Article Information

Article History:
Received: 20-02-2025
Revised: 25-03-2025
Accepted: 21-04-2025

Keywords:
Arbitration, Conciliation, Dispute Resolution Methods, Mediation

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Introduction

The African Continental Free Trade Agreement's (AfCFTA) purpose is to open the African market to all the Member States to enlarge their economies and benefit from global trade integration. It further aims to improve the intention of the African Union (AU) to improve trade among members and the whole world.[1] Though a series of efforts have been made to liberalize trade in Africa,[2] this is the first Treaty made by the AU that covers the whole of the continent. Although regional economic communities have existed in various parts of Africa, little has been achieved in ensuring trade liberalization. For example, the Economic Community of West African States' efforts at liberalizing trade had been overcome by regional insecurity, corruption, and fear of domination by members that harbour the belief that Nigeria, being a giant in the zone, would have a lot to gain.[3] Furthermore, ECOWAS appears to be more than a regional trade regulator, as it has, on a number of occasions, regulated the political affairs of Member States.[4] The West African regional body has both economic and political mandates for regional integration and economic growth.[5] Its 1993 Amended Treaty expanded the power of its Directorate of Political Affairs, Peace and Security (PAPS) due to increasing political, religious, and ethnic conflicts in the region.[6]

The AfCFTA has been predicted to be capable of moving intra-African trade from $ 50 billion in 2024 to $570 billion in 2040.[7] The Agreement promises a more efficient trade in goods, mobility of labor, and the development of digital markets across Africa. It is also capable of reducing poverty and unemployment while it fast-tracks foreign direct investment and increases access to local markets.

The AfCFTA's implementation can lead to unprecedented growth and accelerated regional economic and political integration of regional bodies such as ECOWAS, the Common Market for Eastern and Southern Africa (COMESA), the Arab Maghreb Union (AMU), Intergovernmental Authority on Development (IGAD), Economic Community of Central African States (ECCAS), and a host of others in achieving their economic objectives. This paper focuses on the exploration of the dispute resolution mechanism of AfCFTA. The objectives of the study are to:

(i) Undertake an overview of the Agreement.

(ii) examine the innovations introduced by the dispute resolution Protocol under the Agreement, and

(iii) Identify and appraise challenges to dispute resolution under AfCFTA.

2. Overview of the AfCFTA

2.1 History and Objectives

[1]Nigerian Economic Summit Group, 'Economic Implication of the African Continental Free Trade Agreement (AfCFTA) on the Nigerian Industrial Sections'(nd.) <https://nesgroup.org/download_resource_documents/AFCFTA%20on%20Industrial%20Sector_1576844589.pdf 15 March 2024.

[2] For example, ECOWAS, Trade Policy

[3]Chieke Ihejinka, 'ECOWAS: The Dilema of Integration in a Fragmented Sub-Region' https://www.kckccc.edu accessed 15 March 2024

[4]Aljazeera, 'ECOWAS holds emergency session over Senegal crisis and member exits' *Aljazeera,* Feb 24, 2024 < https://www.aljazeera.com/news/2024/2/8/ecowas-holds-emergency-session-over-senegal-crisis-and-member-exits> accessed 16 March, 2024

[5]ECOWAS, 'Political Affairs', ECOWAS 2015 < https://www.ecoslate.g.thub.io/ecowas section> accessed 15 March 2024

[6]Ibid.

[7] Ibid.

The body was approved in January 2012[8] by the continental body to improve African trade. The central aim of the trade agreement was the acceleration of economic development in Africa. The AfCFTA was established on 30th May 2019 as part of the Agenda 2063 of the AU for a harmonized customs service and a common market.[9] The objectives adopted at the session include: the creation of a single market for goods and services; the free market for goods and services; preparing ground for the African Customs Union; "promotion and attainment of inclusive socio-economic development, gender equality, and structural transformation" as stipulated in Agenda 2063.[10]

The Agreement aimed at enhancing economic development among the state parties, promoting industrialization through diversification of the supply chain, and resolving the challenges of multiple and overlapping memberships and fast-track regional and continental integration processes.[11] It has seven important protocols, which it intends to achieve as objectives. These are: "trade in goods"; 'trade in services"; "rules and procedure on the settlement of disputes"; "investment"; "intellectual property rights"; and "competition policy".[12] These protocols are sub-agreements that guide the implementation of the Agreement. They are detailed and comprehensive and highlight the procedures through which the objectives would be achieved.

The aim and the expansive objectives of the Agreement point to the African Union's desire to establish a united continent, with political and socio-economic affiliation to achieve its potentialities as a continent most blessed with natural resources.[13] The AU Agenda 2063 appears to be a strategy for achieving a unified customs union, a political and socio-economic union, and an Africa full of opportunities and economic boom.[14] Based on these objectives, projections have been made on what Africa stands to gain from the effective implementation of the Agreement, namely, a sustainable growth in African trade.[15]

2.2 Organs of AfCFTA

These consist of the Assembly, the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat.[16]

2.2.1 Assembly

[8] African Union, 'The African Continental Free Trade Area' Retrieved from < https://au.int/en/african-continental-free-trade-area> accessed 25 January, 2024.

[9] Richard Frimpong Oppong, Private International Law and the African Economic Community: A Plea for corrector Attention. *The International Comparative Law Quarterly,* 2006(55)4, 911-928.< https://www.semanticscholar.org/paper/Private-International-Law-and-the-African-Economic-Oppong/85544d1644a1a0178e9116ff46908f0dd4a3afec > accessed 16 March 2025.

[10] Agreement Establishing the African Continental Free Trade Area.

[11] Ibid.

[12] Ibid, Art. 3

[13] Nigerian Economic Summit Group (NESG), Economic Implications of the African Continental Free Trade (AfCFTA) on the Nigerian Industrial Sectors'.<https://nesgroup.org/download_resource_documents/AFCFTA%20on%20Industrial%20Sector_1576844589.pdf on 15 March 2024.

[14] Richard Frimpong Oppong (n .); Orji Uka; Cross Border Dispute Resolution under AfCFTA: A Call for the Establishment of a Pan-African Harmonized Private Internal and Legal Regime to Actualise enda 2063, Law Digest Journal Spring 2020, < https://conflictoflaws.net/2020/cross-border-dispute-resolution-under-afcfta-a-call-for-the-establishment-of-a-pan-african-harmonised-private-international-legal-regime-to-actualise-agenda-2063/> accessed 16 March 2025.

[15] NESG, Economic Implications of the African Continental Free Trade (AfCFTA) on the Nigerian Industrial Sectors'.

[16] AfCFTA, Art 9.

This is the foremost decision-making organ of the AU. It has oversight of the strategic guidance on the AfCFTA, which includes taking efforts to boost trade through Boosting Intra-African Trade (BIAT), an innovation developed to promote African trade. It also interprets the Agreement through the Council of Ministers. The Assembly must decide by consensus.[17]

2.2.1 Council of Ministers

This is the second institution established by the Treaty. It comprises Ministers of Trade, or any other Ministers, authorities, or officials that State Parties designate.[18] Its functions are as contained in Article 11(3)(a) – (p). It reports to the Assembly through the Executive Council.[19] Its terms of reference include decision-making, implementation, and enforcement of the objectives of the Agreement. It collaborates with the appropriate organs and institutions of the AU.[20] It also harmonizes policies, strategies, and measures for implementation; delegates tasks to committees; prepares its decisions and those of its other bodies; and supervises work with groups and experts.[21] It issues rules and regulations, directives, and proposes recommendations for the implementation of the Agreement.[22]

2.2.3 Senior Trade Officials

Article 12 presents the functions of this institution. Its composition includes the Permanent or Principal Secretaries or other officials of the State Parties,[23] while its functions are the implementation of the Council of Ministers' decisions, development of programs and action plans for implementation, monitoring, and keeping the Agreement under constant and proper review.[24] Others include the establishment of committees and working groups, overseeing the implementation of the provisions of the Agreement, directing the Secretariat to undertake specific assignments, and performing any other function that may be given to it by the Council of Ministers.[25] The Committee reports to the Council of Ministers, upon whose directive it meets twice in a year.[26]

2.2.4 Secretariat

This is the last institution of the Agreement. It was established by the Assembly, which decides its location and approves its structure and budget. It is established as an autonomous body of the AU with a legal personality.[27] The implication of this is that the Secretariat is to be independent of the AU Commission while its funds are derivable from the overall budget of the African Union.[28] However, the Council of Ministers has the responsibility to determine the schedules of the Secretariat.[29]

2.3 Administration of the Agreement

The Agreement has seven protocols, namely "protocols on trade in goods, trade in services, investment, intellectual property rights, competition policy, and rules and procedures for dispute resolution and digital trade".[30] These protocols were designed to be

[17] Ibid.
[18] Ibid Art 11(1).
[19] This is the Executive Council of the General Assembly.
[20] Ibid, Art 11(3)(a)-(c).
[21] Ibid, Art 11(3)(d)-(h).
[22] Ibid, Art 11(3)(i)-(j).
[23] Ibid, Art 12(1).
[24] Ibid, Art 12 (2)(a) – (c).
[25] Ibid, Art12(2)(c)-(g).
[26] Ibid, Art12(3).
[27] Ibid, Art 13(3)
[28] Ibid, Art 13(4) & (5).
[29] Ibid, Art13(6).
[30] FDI, 'Breaking Down the AfCFTA: What You Need to Know about Africa's Latest Trade Initiative,;(Research FDI, 7 March 2023) https://researchfdi.com/breaking-down-the-afcfta-what-

implemented in Phases I-III. Phase I is on trade in goods and services, Phase II focuses on investment, competition policy, and intellectual property rights, while Phase III is to develop e-commerce and women and youth in trade.[31]

Its highest decision-making body is the Assembly, while the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat provide the structure for its implementation. The position of the Council of Ministers of Trade appears critical in the organogram in that it is the body that breaks down the trade policies into implementable action plans for seamless enforcement by the Senior Trade Officials. In its decision-making, the AfCFTA acts by consensus on substantive issues.[32] In any matter where the consensus could not be achieved by the Committee of Trade Officials, it refers to the Council of Ministers. If the Council cannot arrive at a common agreement on the matter, it shall be referred to the Assembly.[33] However, procedural decisions are made by a simple majority of the Member States that are qualified to exercise the franchise.[34] while the absence of a State Party would not vitiate the adoption of the decisions.[35]

3. Dispute Resolution Mechanism under AfCTA

3.1 Disputes Defined

The term 'dispute' is used either as a noun or a verb. When used as a noun, it means "a quarrel, a controversy, an agreement, a difference of opinion, or a debate."[36] The use of dispute as a verb shows the word in action. It means "argue", "contest", "call into question", "disagree", "debate", "quarrel or discuss."[37] The word "dispute", either as a verb or a noun, involves a contest or a disagreement either within oneself, between a person, or a group and another group.[38]

The nature and conception of a dispute are further exemplified in *Exfin Shipping (India) Ltd v Tolani Shipping Co Ltd*[39] where the English court interpreted the provisions of Section 9 of the United Kingdom's Arbitration Act 1996. The section provides that when a party to an arbitration agreement applies to the court for the commencement of proceedings, the other may apply to the court for a stay of proceedings. The fact of the case was that the plaintiff had requested the recovery of a sum of money outstanding and unpaid to the plaintiff by the defendant. The defendant acknowledged that the sum was owed and was yet to be paid, thereby admitting liability for it. The court held that the refusal to pay the amount due despite the admittance of defendant was a dispute. Therefore, the claim that there was no dispute was rejected. However, their Lordships, in this case, overlooked the fact that the defendant did not refuse to pay the amount owed, as she did not deny liability. The import of the decision is that a dispute between the parties need not be an open conflict, but being passive about the

you-need-to-know-about-africas-latest-trade-initiative/ accessed 16 March 2025.

[31] Talkmore Chidede, 'AFCFTA Phase II and III Negotiations-Update' (Tralac, 10 February 2021) https://www.tralac.org/blog/article/15090-afcfta-phase-ii-and-iii-negotiations-update.html accessed 16 March 2025.

[32] Ibid, Art 14(1)

[33] Ibid, Art 14(2).

[34] Ibid, Art 14(3) & (4).

[35] Ibid, Art 14(5).

[36] M.M. Stanley-Idum and J.A. Agaba, *Civil Litigation in Nigeria* (Nelag & Company Limited, 2015) 25.

[37] The Dictionary.com 2024. Accessed from <https://www.dictionary.com on 22nd February 2024.

[38] M.M. Stanley-Idum & J.A. Agaba, 25.

[39] (2006) EWHC 1090.

agreement already made may constitute a dispute in business transactions.[40]

3.2 Dispute Resolution in AfCFTA

The Agreement is the latest effort by members of the African Union (AU) to introduce a common market among Member States, influence the international economic order, and ensure that the potentialities of the African market are harnessed for accelerated economic growth. A Dispute Settlement Mechanism (DSM) is established to settle all the disputes arising from the State Parties and is administered in line with the Protocol on Rules and Procedures on the Settlement of Disputes (PRPSD).[41] The AfCFTA Dispute Settlement Mechanism (AfCFTA–DSM) is patterned after the World Trade Organization(WTO) Dispute Settlement Understanding (DSU).[42] This is an innovation over the dispute settlement procedures of regional economic bodies in Africa, which are modelled after the Court of Justice of the European Union.[43]

However, the innovation appears not to be the first time that an African trade dispute mechanism would be patterned after the WTO Model.[44] The Tripartite Free Trade Area Agreement, which operated among three regional economic communities in Africa – COMESA, EAC, and which was made before AfCFTA, was based on the EU Model.

3.2 AfCFTA Agreement's Organs for Dispute Resolution

It establishes legal and institutional frameworks for dispute settlement under its PRSPD. The Protocol is established sequel to Article 20 of the Agreement, and its aim is to ensure that the settling of disputes is transparent, accountable, fair, predictable, and consistent with other parts of the Agreement.[45] The Dispute Settlement Mechanism (DSM) is created to settle disputes between State Parties, and it is governed by the Protocol on Rules on the Settlement of Disputes, which in turn establishes the Dispute Settlement Body (DSB).[46] Part IV, Article 20 of the AfCFTA Agreement sets up the Dispute Settlement Mechanism.[47]

The Protocol is a subsidiary document that seeks to put into practical and workable actions the provision of Article 20 of the Treaty on DSM.[48] The implication of this is that the Agreement (AfCFTA) takes precedence over the Protocol, which is the implementing rules and procedures for the Agreement only. Any disparity between the provisions of the Protocol and the AfCFTA is resolved in favor of the latter. This is understandable in view of the importance of the Agreement as the supreme document on continental trade relations.[49] Whenever a State Party initiates a DSM on any particular matter, it cannot make use of any other platform outside the Protocol to resolve the dispute.[50] The restriction is, perhaps, to ensure that the dispute resolution is

[40] M.M. Stanley-Idom & J.A, Agaba, supra.

[41] AfCFTA, Article 20

[42] Olabisi D. Akinkugbe, Dispute Settlement under the African Continental free Trade Area Agreement. A Preliminary Assessment' African Journal of International Comparative Law < https://digitalcommons.schulichlaw.dal.ca/scholarly_works/1232/> 12 March 2025

[43] See Joost Paulweyn, Going Global, Regional or Both? Dispute Settlement in the South African Development Community (SADC) and Overdays with the WTO and Trade, 231 - 304

[44] Ibid

[45] Art. 2, Protocol on Rules and Procedures on the Settlement of Dispute

[46] Art. 20, AfCFTA.

[47] Ibid.

[48] Art. 3(1), Protocol Rules, and Procedures on the Settlement of Disputes (PRPSD)

[49] Ibid, Art. 3(2)

[50] Ibid, Art. 3(4)

not unnecessarily delayed by litigations, which could frustrate the objectives of the Agreement. Organs established by the Protocol for dispute settlement are the Dispute Settlement Body (DSB), the Panel, and the Appellate Body (AB). The functions of each of these bodies in dispute resolution for the success of the Agreement will be discussed *infra.*

3.2.1 Dispute Settlement Body (DSB)

This body resolves conflicts that result from the implementation of the AfCTA.[51] Its membership is made up of the nominees of the State Parties.[52] The body establishes Dispute Settlement Panels (DSP) and an Appellate Body (AB); considers and adopts the Panel and the AP reports; monitors the enforcement of Panels and AP 's decisions, and directs the suspension of concessions and other duties under the AfCFTA.[53] The election of the DSB Chairperson is done by the State Parties.

The meetings of the DSB come up as and when necessary to discharge its functions under the Protocol. The body takes decisions by consensus, which indicates that no decision can be taken when a member is either absent from the meeting or objects to an issue.[54] This may cause delays in dispute resolution because an aggrieved DSB Member may use it as a tool to get back to either the disputing parties or the Assembly. The DSB is the most important dispute settlement organ of the AfCFTA.

3.2.2 Dispute Settlement Panels

The State Parties resolve their disputes by consultation. However, when this fails, they could use other ADR methods such as conciliation, mediation, good offices, and arbitration.[55] The Complaining Party may petition the DSB in writing for the establishment of a panel. The DSB is under an obligation to set up the Panel.[56]

The Complaining Party, rather than relying on standard terms, may propose its own terms of reference. The request for setting up the Panel must indicate efforts already made by the parties in resolving the dispute before coming to the Panel stage. The request must also summarize the legal issues of the complaint.[57]

The DSB holds its meeting not later than fifteen (15) days of receiving the request for the establishment of the Panel, if at least ten (10) days' advance notice of the meeting is given.[58] Not later than ten (10) days after the meeting, the Panel will be set up.[59] The urgency with which the Panel is constituted reflects the commitment of the DSB to the quick resolution of disputes.

3.2.3 The Panel

Panelists are selected from the register of the nominees of the State Parties. Each State Party nominates two (2) people annually to the Secretariat for inclusion in the pool of experts in the area(s) related to the agreements.[60] The list submitted shall be considered and approved by the DSB. This is to ensure that the panelists possess the skills and experience in international trade law and other issues incidental to the actualization of the AfCFTA goals.[61]

Furthermore, the panelists must be objective, reliable, and have sound judgment. They must

[51] Ibid, Art 5(1).
[52] Ibid, Art. 5(2)
[53] Ibid, Art. 5(3).
[54] Ibid, Art 5(6).
[55] Ibid, Art 9.
[56]Ibid, Art 9(2)(4).
[57] Ibid.
[58] Ibid, Ibid, Art 10.
[59] Ibid, Art 10(1).
[60] Art 10(3).
[61] Ibid.

also be impartial, independent from the Party's bias. They should be able to accept a code of conduct formulated by the DSB. Other factors the Protocol identified for being chosen as panelists are integrity, impartiality, fairness, and diversity of background.[62]

These complex requirements for selection as a panelist are necessary to make it difficult for the process of dispute resolution to be truncated.

The Panel is the most important organ of the DSM of AfCFTA. It hears the complaints of the parties, writes the report, which it submits for the consideration of the DSB. Nominations as panelists to serve on a dispute resolution team must be accepted by the Parties to the dispute.[63] These accords with international best practices in international trade law and domestic provisions on fairness and fair hearing.[64]

The Protocol provides standard terms of reference for the Panel unless they are rejected by the parties to the dispute within twenty (20) days from the creation of the Panel.[65] The DSB may also empower the Panel and Chairperson, acting in conjunction with the Parties in dispute, to formulate acceptable and comprehensive terms of reference. The terms of reference, thereafter formulated, shall be circulated to all State Parties.[66]

The Panel has the power to hear the Third Parties who lodge complaints before it. This is subject to the disputing party's agreement that the Third-Party claim is substantial.[67] The Third Party has opportunities for a fair hearing at the Panel under the Protocol. However, the Third Parties may opt to use other methods in the Protocol if proceeding at the Panel will negate their interests.[68]

At its sittings, the Panel adopts flexible procedures for effective and timely dispute settlement. The Panel has a maximum of five (5) months for the consideration of a dispute, while in the case of perishable goods, a maximum of one and a half ($1^1/2$) months is allowed.[69] However, when a solution to the dispute has been found and agreed to by the parties, the Report should be a summary of the case, indicating that a solution has been found.[70] Where the Panel is unable to complete the task within the maximum time allowed, an extension of the period not exceeding nine (9) months could be requested.[71]

The Report of the Panel would be presented for consideration and adoption by the DSB.[72] while the Parties' dissent to it should be written and submitted to the DSB within ten (10) days of its meeting.[73] Copies of the objections shall be served on other Parties to the dispute.[74] To ensure transparency, parties to the dispute have a right to participate in the consideration of the Reports of the Panel by the DSB. A final decision on the Panel's Report should not exceed 60 days of its submission to the DSB.[75] while the Parties have no more than seven (7) days after the Report's adoption to receive a signed copy.[76]

3.2.4 Appellate Body

[62] Ibid.
[63] Art 19(4)
[64] United Nations Business and Human Rights (UNBHR), Art 1.
[65] Art 11.
[66] Ibid.
[67] Ibid, Art. 13(2).
[68] Ibid, Art. 13(3).
[69] Ibid, Art 14(4).
[70] Ibid, Art 14(6).
[71] Ibid, Art 14(7).
[72] Ibid, Art 19(1).
[73] Ibid, Art 19(2).
[74] Ibid, Art 19(1) & (2).
[75] Art 19(4)
[76] Art 19(5)

The Appellate Body (AB) is established by the DSB to hear appeals from the panels. Its composition is seven (7) persons, three of whom shall serve in a case.[77] Members of AB serve a four (4) year renewable term, and they should not be affiliated with any government.[78] Parties to the dispute and Third Parties with a substantial interest in the matter under consideration may also appeal, subject to their complaints in Article 13(2) of the Dispute Protocol. The proceedings of the AB would not go beyond 60 days except in special cases and with the approval of the DSB. In that case, the proceeding may be extended to 90 days.[79]

3.3 Alternative Dispute Resolution Methods under the AfCFTA Agreement

The DSM under the Agreement recognizes ADR methods such as consultation, good offices, conciliation, mediation, and arbitration.

3.3.1 Consultation

The Agreement makes use of consultation to ensure the peaceful resolution of disputes by State Parties. Each State Party considers others and strives to make the environment conducive for peaceful resolution.[80] Opportunities for consultation should be mutually given by the disputing parties.

If Disputing State Parties are ready to resolve the dispute by mutual discussion, the DSB would be informed of the readiness in writing through the Secretariat, while reasons should be stated for the request.[81] Issues should be identified, and the legal basis for the complaint must be stated.[82] The implication of this is that the State Parties agree to make use of the Consultation for dispute resolution. State Parties have ten (10) days to mutually agree to consultation.[83] In that way, the option of consultation has been set aside, and the DSB takes over the dispute settlement by setting a Panel. Unless by an agreement, consultation would conclude within 60 days of its commencement.[84]

The Agreement provides that, as a dispute resolution strategy, consultation should be confidential and non-derogatory to the rights of the State Party.[85] The implication of this is that the outcome of the consultation should be treated with utmost confidentiality and good faith so as not to jeopardize the rights of the other disputing Party. [86] The maximum period for the settlement of any dispute by consultation is 60 days, after which the matter may be referred to the DSB. The seat of consultation may be in the territory of the complaining Party unless otherwise agreed.[87]

he rule for consultation perishable goods is reduced from 30 to 10 (10) days, while the dispute must have been settled not later than twenty (20) days, failing which the complaining party may call on the DSB to establish a panel.[88]

3.3.2 Good Offices

This is a dispute resolution method which is of international disputes. In this procedure, a Third-Party State, with the agreement of the disputing parties, serves as an intermediary to convince the parties to negotiate and settle the matters between themselves, at their terms and

[77] Art 20(2)
[78] Art 20(4)
[79] Art 21(2)
[80] Art. 7(2), AfCFTA
[81] Ibid, Art 7(3).
[82] Ibid.
[83] Ibid, Art 7(5).
[84] Ibid, Art 7(9).
[85] Ibid, Art. 7(7).
[86] Ibid, Art 7(8).
[87] Ibid.
[88] Ibid, Art 7 (9) (b).

without its intrusion.[89] Treaties and international conventions recognize the use of 'good offices' as a means of peacefully resolving international disputes.[90] 'Good offices' come immediately after consultation, and it is immediately followed by mediation, as it stops where mediation commences. Sometimes, good offices and mediation are hardly distinguishable, as both involve the intervention of a third party.[91] The Pact of Bogota states that: [92]

> *The procedure of good offices consists in the attempt by one or more American Governments not parties to the controversy, or by one or more eminent citizens which is not a party to the controversy, to bring the parties together, to make it possible for them to reach an adequate solution between the parties.*

Good Offices stop the formal and direct resumption of direct negotiations, which happens when the dispute has been submitted to a neutral party by mutual agreement of the parties.[93]

'Good Offices' came into legal literature in *Schooner Exchange v McFaddon* [94]when the term was first used to describe a dispute resolution technique. Good Offices end at the point when the parties' negotiations begin. In the peaceful resolution of conflicts, Good Offices do not become involved in the negotiation; its duty is to bring parties together. The difference between Good Offices and mediation is thin. While 'Good Offices' brings parties together for peaceful resolution, without participation in the negotiation, parties to mediation are required to submit their complaints to the third party, who complain to submits it to the third-party negotiator.[95] Hence, in Good Offices, the third party's role is limited to bringing the disputing parties together; in mediation, the third party conducts the negotiation.[96]

3.3.3 Mediation

This method resolves disputes between parties through the intervention of a neutral party. The dispute is settled outside the court. The findings of the mediation are not binding on the parties but may be considered towards their eventual resolution.

Though related, mediation and conciliation are different in some ways. First, in mediation, a third party assists in dispute resolution, whereas an expert is appointed for dispute settlement.[97] Furthermore, mediation requires confidentiality and trust, whereas the confidentiality of the conciliator is a product of the statute or treaty. A mediator is also a facilitator and an evaluator.

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[89] Sompong Sucharitkul, 'Good Offices as a Peaceful Means of Setting Regional Differences' In Peter Sanders (ed), *International Arbitration* (Martinis Nijhoff, 1967) 338- 347 < https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1549&context=pub accessed 17 March 2025.

[90] Pact of Bogota. April 30, 1948.

[91] Ibid, 340.

[92] Pact of Bogota, Art IX.

[93] Ibid, Art X.

[94] 11 US (7 Crunch) 116 (1812) < https://tile.loc.gov/storage-services/service/ll/usrep/usrep011/usrep011116/usrep011116.pdf> accessed 12 April 2025.

[95] Ibid

[96] 11 US (7 Crunch) 116 (1812)

[97] Amrisha Jain, 'Difference between Mediation and Conciliation' *Mediation and Arbitration Centre.* < https://viamediationcentre.org/readnews/MjAz/Difference-between-Mediation-and-Conciliation> on 16 March 2024

The AfCFTA recognizes both mediation and conciliation as ADR tools in dispute resolution.[98]

3.3.4 Conciliation

Conciliation as an ADR is available in the AfCFTA Agreement. It is a dispute settlement procedure that is friendly and non-antagonistic, but it is done through an independent third party called the conciliator.[99] who does not give a judgment or an award, like the arbitrator, but can offer an opinion to the parties that could aid in the settlement of the disputes.[100] It is more formal than the mediator, who also does not give a judgment or an award. Conciliation as an ADR is amply provided for in Nigeria's municipal laws (the Arbitration and Conciliation Act[101] and Trade Disputes Act.[102])

3.3.5 Arbitration

Rather than referring their dispute to the DSB, the parties may decide on arbitration. The moment the decision to resort to arbitration is made, the matter can no longer go through the DSB. However, notice of the intention to opt for arbitration is conveyed to the DSB.[103] Third Parties may only join in the arbitration if the disputing parties concede to it. Parties who opt for arbitration must accept its outcome.[104] However, if any of the parties disagrees with the outcome of the AP, the DSB will reconsider and determine the case. The arbitration award will be implemented in line with Articles 24 and 25 of the Protocol.

4. Challenges to Dispute Resolution Under AfCFTA

4.1 Harmonization of Private Law with Domestic Laws

The AfCFTA comprises 55 countries and more than 1.3 billion people.[105] It comes second to the World Trade Organization (WTO). Given AfCFTA's enormous potential for economic growth in African markets, Orji Uka[106] suggests that many disputes that will necessarily arise from its implementation should be addressed by provisions of the private international law. The legal diversity and plurality in Africa have necessitated this suggestion. The non-harmonization of the private international law in Africa with local legislations and judicial systems has also been noted to be a great obstacle to regional economic integration in Africa, and it has been the bane of the previous efforts in this regard.[107] It is contended that the adoption of the doctrine of *lex situs* would allow disputes from AfCFTA

[98] Protocol on Rules and Procedure for Settlement of Disputes, Art 8.

[99] Pon Staff, 'What are the Three Basic Types of Dispute Resolution? What to Know about Mediation, Arbitration and Litigation' (Blog, 26 December 2025) < https://www.pon.harvard.edu/daily/dispute-resolution/what-are-the-three-basic-types-of-dispute-resolution-what-to-know-about-mediation-arbitration-and-litigation/ > accessed 18 March 2025.

[100] Cap A18, Laws of the Federation of Nigeria 2004, Ss 37 - 42

[101] Cap 18 LFN2004

[102] Cap T8, LFN 2004, S. 69

[103] Art 27 (3)

[104] Art 27 (5)

[105] Orji Uka, 'Cross Border Dispute Resolution under AfCFTA: A call for the Establishment of a Pan-African Harmonized Private International Legal Regime to Actualize Agenda 2063. *Law Digest Journal Spring* 2020 < https://conflictoflaws.net/2020/cross-border-dispute-resolution-under-afcfta-a-call-for-the-establishment-of-a-pan-african-harmonised-private-international-legal-regime-to-actualise-agenda-2063/ accessed 19 March 2025.

[106] Ibid

[107] Richard Frimpong Oppong, 'Private International Law and the African Economic Community: A Plea for Greater Attention' (2006) 55(4) *Law Quarterly* 912-0-928 < https://www.research.lancs.ac.uk/portal/en/publications/private-international-law-and-the-african-economic-community--a-plea-for-greater-attention(24e0501e-e331-40e4-8d35-07709a9745cc).html> accessed 19 March 2025.

to be resolved by the law of the place where the trade infraction occurred.[108] The doctrine allows the use of the laws of origin of the cause in its resolution. It allows the harmonization of domestic laws to the interpretation and application of international treaties and pacts.[109]

4.2 Effect on the Industrial Sector

Another major challenge that the stakeholders have noticed is the effect the African common market would have on the local industrial sector. The fear is real for a country like Nigeria and a giant player in the AfCFTA Agreement because of its "weak non-oil export capacities, infrastructure deficits and a host of other trade-related shortcomings".[110]

It has been further contended that Nigeria's membership of the continental body will expose its soft side of the economy, especially the non-oil sector, which is largely undeveloped, to competition from other State Parties.[111] A central argument is that if the market is deregulated and competition from other African countries is allowed, what will be the fate of the local industries? Although tariff concessions have been suggested as palliatives to local inclusions, these should be based on country-specific trade-offs.[112] Doing these promises a drastic reduction in potential trade disputes among the State Parties and other Third-Party interests.

Experiences could be drawn from the challenges inherent in the operation of the WTO since its inception. First, the AfCFTA Agreement is rules-based. Its panels are special courts operating on a complex system of rules for hearing disputes. Its most significant drawback is that only State Parties could file complaints, and that most members, especially developing nations, do not have the requisite knowledge and expertise for complex legal and rules-based proceedings under the world body, and they lack sufficient resources to pay for external WTO lawyers to handle the litigation.[113] WTO Dispute Settlement System (DSS) is, therefore, outrightly expensive and complicated. It is, therefore, unattainable for developing countries to access the human and financial requirements of the process.[114]

A look at the costs of litigation in the Japan and United States' case on Measures Affecting Consumer Photographic Film and Paper reportedly cost the parties an amount exceeding 10 million US Dollars.[115] The amount involved in the legal tussle was enormous and could be beyond the affordable limit of developing countries. Many State Parties in AfCFTA are developing countries that could not afford expensive legal fees and are lacking in legal knowledge, technical expertise, and experience

[108] Ibid

[109] Ibid

[110] Nigerian Economic Summit, Economic Implications of the African Continental Free Trade Agreement (AfCFTA) on the Nigerian Industrial Sections (The Summit House,).< https://nesgroup.org/download_resource_documents/AFCFTA%20on%20Industrial%20Sector_1576844589.pdf> accessed 3 March 2024.

[111] Ibid

[112] Ibid

[113] Nottage Hunter, 'Developing Countries in the WTO Dispute Settlement System (CEG Working Paper, 2009/47) (2009) < https://www.econstor.eu/bitstream/10419/196308/1/GEG-WP-047.pdf> accessed 19 March 2025.

[114] Ibid.

[114]World Trade Organisation. Dispute Settlement DSS 44-Japan: Measures Affecting Consumer Photographic Film <https: www.wto.org/English/tratop_/dispute/cases_e/ds44_ehtm > accessed 19 March 2025.

[115] Ibid.

to undertake a litigation like that of America and Japan. [116]

The AfCFTA is different from the WTO in its DSU by not distinguishing the status of the State Parties. Moreover, all its members belong to the WTO's categorization of developing and least developed countries.[117] It is apt to state that the categorization of Member States based on their economic strength comes with advantages, as it could be harnessed for stronger trade relations among the group and extending aid and support for the developing and least developed nations. The categorization affords the developing countries opportunities for Special and Differential Treatment.

4.4 Enforcement of Rulings of DSM

Although ample provisions have been made for the AfCFTA Court and Tribunals (DSB, Panel, and Appellate Body), none of these appear to have the power to enforce their ruling against a Member State. Its Protocol states clearly that the acceptance of the recommendations and rulings of the DSB is persuasive.[118] The Enforcement of the rulings is by persuasion within 30 days of the ruling. If a State Party does not agree to the ruling, the DSB is powerless, pending the commencement of arbitration.[119] Article 24 provides for deadlines, failing which the DSB or the Secretariat will not be able to take any binding action, should the State Party concerned insist on non-performance.

It appears the action(s) available to the Member States to enforce the decisions of the DSB or the Arbitration are through compensation, suspension of concessions, and stoppage of other obligations in the interim.[120] The request for the payment of compensation or withdrawal of concessions and obligations appears to be the highest that the State Parties could exact. This situation is understandable in that the AfCFTA deals with sovereign nations that are State Parties. Hence, the erring State Party could only be given trade sanctions, withdrawal of concessions, and an obligation if it neglects its duty, to the detriment of other Parties. This appears to be a setback for trade organizations. Given the diversity of African nations, the challenges of enforcing the DSM constitute threats to the success of AfCFTA.

4.5 Lack of Domestic Dispute Settlement Mechanisms

State Parties may not be able to use the DSM of AfCFTA because many of them do not have domestic mechanisms to identify and resolve trade barriers. Domestic legislation in some of these countries does not align with the DSM. Hence, it is difficult for the State Parties who do not possess adequate skills, finance, and legal knowledge to put forward a case, defend it, and expect success at the DSB. In Nigeria, for example, its municipal laws on dispute settlement (through courts and ADR) do not envisage the complex DSM rules of AfCFTA. The Agreement sets up a dispute settlement system like the WTO. But unlike the world body with dichotomies, the AfCTA's membership is of the same category, with the possibility of enforcing the rulings of the DSB

[116] Ibid.

[117] L.N. Anyiwe and E. Ekhator, 'Developing Countries and the WTO Dispute Resolution System. A legal Assessment and Review' (2012) 2(1), *Afe Babalola University Journal of Sustainable Development and Policy.* 121-128 <https://www.ajol.info/index.php/jsdlp/article/view/122604/112152> accessed 19 March 2025.

[118] Art 24 on Protocol on Rules.

[119] Ibid, Art 24 (3) (c).

[120] Ibid, Art 25(1).

through economic/political sanctions appearing remote.

4.6 Lack of Cultural and Economic Integration

The State Parties lack cultural and economic integration that could make the Agreement work and its DSM implementable. Stable economic growth and development could be fostered by a common currency.[121] Although Africa is strategizing to integrate an economic union by 2027, with a common currency,[122] regional communities like the West African Economic and Monetary Union (WAEMU) and *Communaute Economique et Monetaire del' Afrique Centrale* (Economic and Monetary Community of Central Africa (CEMAC)) have also tried to promote common currency, greater economic integration, and a common external tariff (CET) without success. As AfCFTA has just come on board, it is expected that it would be able to learn from these early efforts, foster greater economic and monetary integration with minimal disputes, capable of being resolved by its DSB. The 2027 harmonized currency system is salutary, and the impact of African trade integration on State Parties differs depending on their pre-AfCFTA trading activities with African countries. Nigeria's trading with African countries is low.[123] Nigeria is a market leader in Africa as its most populous nation. Its trading activities over the years have been largely with Europe, Asia, and North America. It was reported that between 2012 and 2018, only 9% of its trade was conducted with other African countries, whereas it conducted extensive trade with other regions. 40% and 30% of the trade within the same period was conducted with Europe and Asia, respectively, while 91% of the total international trade in Nigeria was done with nations outside Africa, notwithstanding that it was a member of a regional free trade zone, ECOWAS.[124]

It is hoped that if this is achieved, it will assist AfCFTA in achieving its mandate.[125]

4.7 Volume of Trade with African States

The above analysis implies that with the current AfCFTA regime, there must be an orientation shift, especially in trade in goods and services. The composition of the trade must equally change. It is currently skewed in favor of crude oil and primary goods.[126]

4.8 Political Instability and Insecurity

Peaceful dispute resolution under AfCFTA is also confronted with political instability and insecurity. Threats of terrorism, banditry, cross-border crimes, drug trafficking, human trafficking, money laundering, piracy, illicit mining, wildlife poaching, and oil theft, among others,[127] stand in the way of the success of the AfCFTA dispute resolution mechanism. Other security challenges include advanced fee fraud, armed robbery, theft,[128] corruption, and bad governance. Military coups have the potential

[121] The case of European Union is an example.

[122] F. Mangeni & J. Attah-Mensah, *Existential Priorities for the African Continental Free Trade Area* (United Nations Economic Commission for Africa, 2022), 13-32 <https://repository.uneca.org/handle/10855/47860> accessed 19 March 2025.

[123] National Economic Summit Group, 'Economic Implications of the African Continental Free Trade Agreement (AfCFTA) on the Nigeria Industrial Section'(Supra).

[124] Ibid

[125] D. Garba & W.A. Alexander, 'The Challenges of Regional Integration and Effective Implementation of African Continental Free Trade Area (AfCFTA) Policy in Africa', (2023) 16(2) *AJPAS* 712-734 <https://www.ajol.info/index.php/ajpas/article/view/260420/245856> accessed 19 March 2025.

[126] Ibid

[127] Garba & Alexander, (Supra).

[128] D. Garba & W.A. Alexander, 'African Union single passport: The challenges' (2021) 7(1) *CUJPIA,* 13559 –

to negate amicable dispute resolution. The recent withdrawal of Burkina Faso, Niger, Guinea and Mali from ECOWAS,[129] a regional economic body exemplifies the effect of political instability. The withdrawal of the States was a failure of the dispute resolution mechanism under ECOWAS. The States resisted the sanctions imposed on them by other State Parties, which had no alternative but to re-open their border and lift the sanctions.[130] Furthermore, the spate of violence and insecurity in most parts of Africa for varying causes is a challenge to DSM under AfCFTA. In Nigeria, rural conflicts between the pastoralists and farmers and other violent conflicts have posed serious threats to food security in Sub-Saharan Africa. [131] The object of the AfCFTA is to create a free trade area for the continent. This cannot be actualized in the face of violence and famine. The response of the Nigerian Government, being the largest market in Africa, to these has been criticized as lukewarm.[132]

Conflicts have large social and economic costs, with negative impacts on the realization of developmental goals, which include poverty and hunger, poor educational attainment, increased child mortality, and lack of access to essential services.[133] In economic terms, conflicts lead to a reduction in tax revenue, increasing public debt and expenditure on security, which undermine macroeconomic stability and long-term growth.[134]

5. Conclusion

5.1 Summary

The dispute resolution mechanism under the AfCFTA is comprehensive and complex. Its focus, like the WTO, is the resolution of disagreements through legal contest. Its implementation, therefore, requires extensive training and a full understanding of the operations of the bodies it creates in the adjudicatory process. Compared to the WTO, which provides for the dichotomy between developed and developing nations based on the privileges and assistance that could be accessed, AfCFTA does not distinguish the

13572 < https://journals.covenantuniversity.edu.ng/index.php/cujpia/article/view/2606> accessed 19 March 2025.

[129] Timothy Obiezu, 'Analysts examine implication of African states' exit from ECOWAS' (VOA, Jan 29, 2024. < https://www.voanews.com/a/analysts-examine-implications-of-african-states-exit-from-ecowas/7461968.html > accessed 9 March 2024.

[130] African Business, 'Nigeria Re-open Borders with Niger as ECOWAS boundary Isolation Strategy' < https://african.business/2024/03/politics/nigeria-reopens-borders-with-niger-as-ecowas-abandons-isolation-strategy> accessed 16 March 2024.

[131] James Muriuki & Daren Hudson, 'The impact of conflict on food security, evidence from household data in Ethiopia and Malawi'https://agricultureandfoodsecurity.biomedcentral.com/articles/10.1186/s40066-023-00447-z accessed 16 March 2024.

[132] Amnesty International, 'Nigeria: Government failings leave rural communities at the mercy of gumnut' August 24, 2020, Press Release' < https://www.amnesty.org/en/latest/press-release/2020/08/nigeria-government-failings-leave-rural-communities-at-the-mercy-of-gunmen/> accessed March, 2024.

[133] Institute for Economics Peace, 'Global Terrorism Index 2024'< https://www.economicsandpeace.org/wp-content/uploads/2024/02/GTI-2024-web-290224.pdf> accessed 19 March 2025.

[134] International Monetary Fund, 'The African Continental Free Trade Area: Potential Economic Impact and Challenges. (IMF,2020) < International Monetary Fund. The African Continental Free Trade Area: Potential Economic Impact and Challenges (IMF,2020) < https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2020/05/13/The-African-Continental-Free-Trade-Area-Potential-Economic-Impact-and-Challenges-46235> accessed 10 March 2024.

membership status of the members. This implies that all State Parties, irrespective of their economic position, political stability, security, or poverty, are expected to fulfill the same obligations under the Agreement.

5.2 Findings

State Parties are mostly deficient in using the Protocol on Dispute Resolution because many of them do not have domestic mechanisms to identify and use the complex DSB. Like its predecessor (WTO), upon which it is patterned, the AfCFTA DSB requires specialized skills and training to be realized.

It models the WTO's Dispute Settlement Understanding and adopts its GATT Rules. It takes into cognizance the diversity of the State Parties and the need for the peaceful resolution of disputes. It is a newly introduced Protocol, the effectiveness of which has not been tested by the practical realities of trade relations. In its ADR section, it emphasizes the use of consultation, good offices, mediation, conciliation, and arbitration.

Its complex bodies have not been known to regional bodies in Africa (ECOWAS, SEMAC, and EAC). Although innovative and dynamic, it has not been put into practice, The State Parties needed to learn from WTO's DSU, highlight its achievements, and underscore its weaknesses.

AfCFTA promises accelerated developments for international trade co-operation in Africa; its aim and objectives are applaudable, but there is a need to pay attention to the economic peculiarities of the Parties. While some of them have good GDP, many battle with poverty, unemployment, infrastructural deficits and corruption, and insecurity.

5.3 Recommendations

The dispute resolution protocol requires high-level expertise in its operation. This is not available in most of the Member States. However, just like the assistance for developing nations under the WTO, the African Union should rise to the occasion by providing training grants and aid to less developed members for the purpose of human and technical empowerment.

In view of the diversity of cultures, religions, and values in Africa, there is a need for the development of private international law to aid the implementation of the DSM under the Agreement. Doing this will resolve the challenges of conflicts of laws and promote trade facilitation.

Although some regional trade and economic groups have attempted a common tariff and same currency like the European Union, this has not worked due to several factors such as cultural differences, economic disparities, mutual suspicion, and political instability in Africa. It is, however, recommended that for a seamless implementation of the Agreement, these should be done as proposed. The strategies to actualize these by the year 2063, proposed for the harmonization of the common tariffs and the same currency, require immediate implementation if the deadline is to be met. To promote ease of implementation of the treaty, common tariffs, reduction of technical and non-technical barriers to trade in goods and services, and use of currency across the continent are advocated. This will foster trade relations and promote unity amidst diversity.

National and regional insecurities, especially in Sub-Saharan Africa, constitute a major threat to cross-country trades in goods and services. It is recommended that the AU pay particular attention to the resolution of the security challenges for continental trade to achieve its objectives.

A bane to national and international trade in Nigeria is corruption. This cuts across Africa. It is recommended that at the national, regional, and continental levels, serious attention should be paid to addressing the menace.

WJLAW, Febr-June.2025,2(2), 17-33)
DOI: https://doi.org/10.20372/wjlaw.v2i2.1649
ISSN: 2226-7522 (Print) and 3005-7612 (Online)
Wallaga University Journal of Law
WJLaw, February- June. 2025, 2(2), 17-33
Home Page: https://journals.wgu.edu.et

Original Article

Rectifying Historical Injustices: A Resolved or Persistent Constitutional Issue in Contemporary Ethiopia?

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ΩA shorter version of this Paper entitled as "*Rectifying Historical Injustices: A Resolved or Persistent Constitutional Issue in Contemporary Ethiopia*?", had been presented at the National Research Conference at Wallaga University on the title '*Enhancing Societal System Resilience: Language, Culture, Peace, and Development', which was conducted on May 15 and 16/2025,* and has benefited from the colloquy thereof. I am grateful to those who commented on the earlier draft during the conference, as well as to the current anonymous reviewers.

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Abstract

1Ethiopia is a country where its nations hold divergent positions in almost all affairs, including its formation and political, economic, and social matters. The divided political elites divided the Ethiopian people, at least ideologically and morally, and pushed the country to the verge of hell, which made the lives of hundreds of millions miserable in Ethiopia. The Nations, Nationalities, and Peoples of Ethiopia agreed constitutionally that addressing historically unfair relationships and advancing their joint interests are the best ways to fulfill their shared destiny, as stated in the preamble of the 1995 FDRE Constitution. Consequently, this research article examines whether or not this constitutional declaration has advanced after three decades of its adoption. The findings of this article identify that despite the constitutional call for rectification three decades ago, irrespective of the ongoing massive reformations in legal, developmental, and social sectors since 2018, looking into the prevailing internal and scattered conflicts reckoning their sources from unreconcilable causes and ideology, Ethiopia is currently standing on various challenges rather than moving ahead towards national consensus through rectifying the historical unjust relationships. Consequently, Ethiopia has been diving into deep-rooted constitutional and political complications.

Article Information

Article History:
Received: 20-02-2025
Revised: 16-03-2025
Accepted: 25-04-2025

Keywords:
Constitution, Ethiopia, politics, Rectification

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I. Introduction

Ethiopia has passed through at least three types of political transitions and has utilized three constitutional systems in its political and constitutional history. These political transitions include Ethiopia before its unification (before 1900), Ethiopia during the monarchical era (1900-1974), and Ethiopia in the post-Republic system of government (1974- 2025-or to date). Before Emperor Menelik II, Ethiopia was not unified in its existence; it was a scattered and smaller nation. Emperor Menelik II who unified Ethiopia from 1889 to 1913 established the current Ethiopia by conducting a large-scale expansion through war and conquest. Upon the battle of Adwa in 1896 in which the colonialist power, the invading Italian armies were defeated by the Ethiopian forces during Emperor Menelik II; Ethiopia expanded its territory, modernized its national military forces, and infrastructure; as well as, solidified its status as one independent nation in Africa. Hence, Emperor Menelik II formed the modern state of Ethiopia in the late 19th century through war, conquest, and expansion.[1] Haile Selassie I introduced the first written constitution (the 1931 Constitution) and thereby tried to modernize and civilize Ethiopia. [2]The 1931 Monarchical Ethiopian Constitution was revised and replaced by the 1955 Revised Monarchical-based constitution, with slight differences (without affecting the absolute power of the emperor) to cope with the time and political situations at the time.[3]

The quest for national identity (the right to self-determination) and the struggles for equality of the Ethiopian Nations, Nationalities, and Peoples smashed Ethiopia's old-aged, backward, and assimilationist monarchical government to its end. Whereas, the 1974 Ethiopian Revolution kicked the absolute monarchy of Ethiopia into its final grave and barred the monarchical regime of Ethiopia forever. However, the 1974 Ethiopian Revolution was hijacked by the Military and a military dictatorship was introduced to Ethiopia in the post 1974. Therefore, from 1974-1991 Ethiopia was ruled by Military Dictatorship. The Military Administration established a committee called ‘the *Derg’*, which means Provisional Military Administrative Council (PMAC). Of course, the *Derg* government answered the quest for equality, thereby establishing a classless society in Ethiopia following the 1974 Revolution. The *Derg* government nationalized

[1] The Constitutional History of Ethiopia: Available on https://constitutionnet.org/country/ethiopia accessed on 11 January 2024.

[2] The 1931 Constitution of Ethiopia had numerous objectives, including replacing provincial rulers; accordingly, the constitution established a legal basis for replacing traditional provincial rulers with people loyal to the emperor; it constitutionalized the emperor’s power (Chapter II of the Constitution); consequently, the constitution legalized the emperor's absolute power, including appointing and dismissing government officials, granting land, and declaring war; it established a bicameral parliament, with an Upper House- the members were the nobility appointed by the emperor and a Lower House of people elected by the nobility (Chapter IV), and to introduce a modern written constitution to replace the traditional customary laws of Ethiopia at the time.

[3] The 1955 Revised Constitution was introduced for the following reasons: Eritrea was federated with Ethiopia in 1952, and Ethiopia became a signatory of international treaties and internal challenges for change. So, this constitution incorporated some principles from the 1948 UDHR, it guaranteed rights for the people to elect the members of lower houses (members of the chamber of deputies) directly.

the land and extra-urban houses.[4] After governing the country by military decree (without a constitution) for thirteen years, the *Derg* government enacted the 1987 Peoples' Democratic Republic of Ethiopia (the 1987 PDRE Constitution). But neither the *Derg* government nor its 1987 PDRE Constitution answered the quest for national identity (guaranteed the right to self-determination) for the Ethiopian Nations, Nationalities, and Peoples. After the disastrous war had been fought between various Ethnic Liberation Fronts and the *Derg* government for seventeen years (1974-1991), the *Derg* government was deposed from power on 28 May 1991. Following the downfall of the *Derg* government in 1991, federalism was introduced into Ethiopia as a political ideology and constitutionalized as a state structure under the 1995 FDRE Constitution.[5]

Thus, Ethiopia had no written constitution before 1931. From 1931 to 1974, it had a monarchical system of government and monarchical constitutions, which conferred constitutional supremacy in the line of the Solomonic dynasty.[6] Since 1974, especially, upon the enactment of the 1987 PDRE Constitution, Ethiopia has undergone a paradigm shift from a monarchical to a republican form of government. Accordingly, it is possible to categorize the constitutional development of Ethiopia into three, namely, the monarchical constitution (1931 and 1955), the Socialist constitution (the *Derg* Constitution, or the 1987 PDRE Constitution), and the Federal Oriented Constitution (the 1995 FDRE Constitution).

This article has the rationale to examine one core constitutional promise recognized under the 1995 FDRE Constitution. Consequently, it evaluates whether or not the constitutional guarantee which claims as 'fully cognizant that our common destiny can best be served by rectifying historically unjust relationships and by further promoting our shared interests'[7] is enforced satisfactorily or not.

II. General Overview of the 1995 FDRE Constitution

After the *Derg* regime's demise in May 1991, various Liberation Fronts (the EPRDF, OLF, ONLF, and others) entered the Capital City of Ethiopia, Addis Ababa. These groups of Liberation Fronts established a five-year transitional government in Ethiopia which governed the country from 1991 to 1995.[8] Upon the end of the transitional government, Ethiopia adopted the 1995 Federal Democratic Republic of Ethiopian Constitution (referred to as the 1995 FDRE Constitution hereafter) on 8 December 1994. It came into effect on 21 August 1995. This constitution contains a five-paragraph Preamble and it is categorized into eleven Chapters.

[4] After the demise of the imperial power, the military junta—the Derg—came into power. The Derg immediately passed important Proclamations (Proclamation No. 31/1995 and Proclamation No. 47/1975). By enacting Proclamation No. 31/1975, the Derg nationalized all rural lands, while Proclamation No. 47/1975 nationalized all urban lands and extra-rentable houses.

[5] The Constitution of Federal Democratic Republic of Ethiopia, (Proclamation No. 1/1995, Federal Negarit Gazeta, Year, 1 No. 1 August, 1995 (Article 1)).

[6] The nominal and monarchical constitutions of Ethiopia were two: the 1931 and 1955 Revised Constitution of Ethiopia.

[7] See Preamble of the 1995 FDRE Constitution, Paragraph 4.

[8] When a coalition of left-wing ethnic rebel organizations, known as the Ethiopian People's Revolutionary Democratic Front (EPRDF), took control of Addis Ababa on May 28, 1991, and the Transitional Government of Ethiopia, led by the Tigray People's Liberation Front, took the place of the disbanded PDRE.

The Preamble of the 1995 FDRE Constitution starts with the phrase, "We, the Nations, Nationalities and Peoples of Ethiopia……agreed through our elected Representatives," 'to exercise our right to self-determination in full and free, to build a political community founded on the rule of law, and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development.'[9]To fully respect individuals' and people's fundamental freedoms and rights, and to live together based on equality and without any sexual, religious, or cultural discrimination. [10]They further agreed that "by continuing to live with our rich, and proud cultural legacies in territories we have long inhabited, have, through continuous interaction on various levels and forms of life, built up common interests and have also contributed to the emergence of a common outlook"[11]; They agreed that "our common destiny can best be served *by rectifying historically unjust relationships* and by further promoting our shared interests" [12]They agreed that "to live as one economic community is necessary to create sustainable and mutually supportive conditions for ensuring respect for our rights and freedoms and the collective promotion of our interests." [13]And finally, they agreed "to consolidate, as a lasting legacy, the peace and the prospect of a democratic order which our struggles and sacrifices have brought about."[14]

The 1995 FDRE Constitution establishes the federal-based state structure[15] and incorporates the five pillars[16] of the modern constitutional state in its contents.

Of course, this article neither analyzes all the chapters nor evaluates all the paragraphs of the 1995 FDRE Constitution. It evaluates the extent to which paragraph four of the 1995 FDRE constitution which claims as "*Fully cognizant* that our common destiny can best be served by rectifying historically unjust relationships and by further promoting our shared interests" is ensured in the present Ethiopian federation.

III. The Concept of Rectifying Historically Unjust Relationships

Although, it is difficult to define the phrase "historical injustices" in precise terms; the general concept of historical injustice refers to a theory that claims past wrongs have implications for the current political, social, and economic situations of the people living in a certain country.[17] It is claimed that historical injustice and moral wrongs committed by previously living people/ruling groups have a lasting impact on the well-being of the present-day living society.[18]What makes historical injustice more difficult is that both the victims

[9] The 1995 FDRE Constitution, Preamble, Paragraph 1.
[10] Ibid, Paragraph 2.
[11] Ibid, Paragraph 3.
[12] Ibid, Paragraph 4.
[13] Ibid, Paragraph 5.
[14] Ibid, Paragraph 6.
[15] See Article 1 of the 1995 FDRE Constitution; under the title Nomenclature of the State, it says, "This Constitution establishes a Federal and Democratic State structure. Accordingly, the Ethiopian state shall be known as *The Federal Democratic Republic of Ethiopia*."
[16] See Article 8-12 of the 1995 FDRE Constitution: Sovereignty of the people (Article 8), Supremacy of the Constitution (Article 9), Sanctity of Human Rights (Article 10), Secularism (Article 11), and Accountability and Transparency of the Government Officials at all levels (Article 12).
[17]Historical injustice/Race, Gender, & Power Dynamics/Britannica: Available at https://www.britannica.com: Accessed on 13 July 2024.
[18] Ibid.

and perpetrators are now dead.[19] Historical injustice thus concerns the potential claims that the descendants of the victims have against the descendants of the perpetrators.[20]Human histories have been characterized by numerous prejudices and injustices; like slavery, colonialism, war, genocide, ethnic cleansing, forced religious conversions, evictions from the homeland, assimilation, and others.

In the modern democratic and constitutionalized World; various mechanisms have been utilized to rectify these multiple-headed historical injustices and prejudices. The historical injustices that happened due to slavery have been addressed in the USA through acknowledging the past, reparations, apologies, and the like. [21]The historical crimes and wrongs done by the colonial forces upon the colonized nations caused the present ongoing inequalities and discrimination in many parts of the World; and therefore, claimed by numerous scholars, politicians, and organizations to be rectified. As one can realize from history; innumerable injustices have been done to the indigenous people by the colonial forces in different parts of the World. For instance, the colonialists have been 'usurping the Indigenous governance systems, upsetting economic livelihoods, and destroying cultural and religious orders on the African continent, or introduced the policies of cultural genocide and forcible incorporation of Indigenous peoples in North America.'[22]To rectify these colonial injustices and prejudices; especially, in the post-Second World War, the World Nations agreed to abolish colonialism by enacting numerous international laws like the UN Charter, different International Treaties/Human Rights Covenants, Human Rights Declarations, etc. That is why the UN Charter proclaims one of its purposes as 'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.'[23]On the other hand, the UDHR disregarded the status of colonialism by declaring that 'the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the World.' [24]

The Declaration on the Granting of Independence to Colonial Countries and Peoples claims as follows:

'The subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations, and is an impediment to the

[19] Historical Injustice/Oxford Research Encyclopedia of Politics: Available at https://oxfordre.com/politic: Accessed on 24 May 2024.

[20] Ibid.

[21] On December 6, 1865, the 13th Amendment to the U.S. Constitution was ratified, bringing about the legal correction. "Neither slavery nor involuntary servitude, except as a punishment for the crime of which the party shall have been duly convicted, shall exist within the United States," this amendment said, outlawing slavery nationwide. Chattel slavery was officially abolished in all states and territories by this constitutional amendment. Numerous forms of rectifications/reparations have been proposed at local and state levels, including monetary payments, scholarships, land grants, and systemic initiatives to address historical injustices in the U.S.

[22] Lu, C. 2017. Justice and Reconciliation in World Politics, Journal of Moral Philosophy 19(3):307-310 (2022). Available on: https://philpapers.org/rec/SPACLJ: Accessed on 21 August 2024).

[23] Charter of the United Nations, 1945, Article 1(2).

[24] Universal Declaration of Human Rights, 10 December 1948, Preamble, Paragraph 1.

promotion of world peace and cooperation. All peoples have the right to self-determination; by virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights, and the present Declaration based on equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.[25]

Ethiopia is also not free of these historical injustices and prejudices within and against itself. The Ethiopian political history has been branded with slavery, wars, discrimination, dominations, assimilation, suppression, evictions from the homeland, and the like. [26] For these reasons, when the 1995 FDRE Constitution was drafted and enacted, it was believed that the same constitution would rectify these historical injustice relationships in all affairs.[27] Thus, hereunder this article evaluates all these historical injustice relationships that have been prevailing in Ethiopia since its establishment in the late 19th century to this date. It evaluates the extent to which the 1995 FDRE Constitution rectified or exacerbated these injustices and prejudices among the Nations, Nationalities, and Peoples of Ethiopia.

IV. Unjust Relationships in Ethiopia: Its History and Platforms

a) Foundation, Dynasty and Genealogy-Related Unjust Relationship

Ethiopia has been immersed in the history of unjust relationships and standing on distractions of various platforms from its birth to this old age. Beginning from its birth, Ethiopian elites and politicians have failed to reach on consensus satisfactorily on questions, like when Ethiopia was established as a country/state, who founded Ethiopia, and how Ethiopia was founded. Concerning its foundations, some groups extended the foundation of Ethiopia to more than three thousand years,[28] whereas, others dragged it to the late 19th century, and strongly claimed that Ethiopia took its modern shape in the late 19th century under a series of powerful emperors: Tewodros I (ruled 1855-69), Yohannis IV (1872-89) and Menelik II (1889-1913).[29] Ideologically, some political parties and religious institutions believe that Ethiopia has a

[25]Declaration on the Granting of Independence to Colonial Countries and Peoples, Adopted 14 December 1960 by General Assembly resolution 1514 (XV), Paragraph 1, 2 & 7

[26] Many Ethiopian Scholars, especially from the Southern Part of the Country believe that the Abyssinians (the Northerners) colonized the Southerners (the Southern part of Ethiopia), like the Oromo, the Sidama, the Somali, and others. For instance, Professor Asafa Jallata, and Professor Mohammed Hasan developed a colonial thesis; and they argue in their research works that the Oromo were failed under or colonized by the Abyssinians, especially through a large-scale war and conquest of Emperor Menelik II. Additionally, the formation of the Ethiopian Empire through a large-scale war and conquest by emperor Menelik II has been perceived by various Liberation Fronts like the OLF, ONLF, SNLF, and the like, as a black colonialism project.

[27] See the 1995 FDRE Constitution, Preamble, Paragraph 4.

[28] Wendy Laura Belcher (2012), Three Thousand Years of Habesha History and Discourse, Abyssinia's Samuel Johnson Ethiopian Thought in the Making of an English Author, (Oxford University Press, Copyright © 2012 by Oxford University Press, Inc.):1

[29] Jalata, A. (2005 [1993]). Oromia & Ethiopia: State Formation and Ethnonational Conflict, 1868-2004, (Lawrenceville, NJ: The Red Sea Press): 2-6.

history of thousands of years and has a myth that connects Ethiopia to ancient Jerusalem. Consequently, the Solomonic dynasty which ruled Ethiopia for hundreds of years (1270-1974) was molded from this unfounded myth of the connection of Ethiopia with King Solomon of Jerusalem. Accordingly, forging certain people's genealogy to the ancient Jewish (especially, linking the genealogy of the Northern Christian Highlanders, or ethnic Amhara, and Tigirians to the Jewish genealogy) and considering other ethnic groups as usurpers of power to silence them from raising any political questions has created unjust relationships in the Ethiopian political history. This myth created a multifaceted mayhem in the history of Ethiopia. It created unjust relationships in Ethiopia. For example, *second versus first-class citizenship* (to seize political power, you should be from the line of the Solomonic Dynasty through reckoning your genealogy; your throne should be approved and blessed by the Orthodox Church.[30] Consequently, during the Solomonic dynasty, the vast peoples from the Southern parts like the Oromo, the Sidama, the Somalis, and the non-Christians had no legitimacy to claim political power; or if they were claimed, they were considered usurpers of power at the time.[31]

b) Victor and Vanquished Oriented Unjust Relationship

Starting in the 1870s up to 1900, Menelik II expanded its territory to the South, West, and Eastern parts of present Ethiopia by conducting devastating and bloody wars. Succeeding the devastated wars fought by Menelik II in the Southern Peoples, especially the Oromo people, and the Southern Nationalities like Walaita, Kafa, Sidama, Hadiya, and others lost their sovereignty. By 1900 almost Menelik II had succeeded in establishing in controlling much of present-day Ethiopia and, in part at least, gained recognition from the European colonial powers of the boundaries of his empire.[32]

Despite the massive conquests and forced incorporations of vast territories to the Abyssinian Empire by Emperor Menelik II; the Victor and Vanquished relationship was created, resulting in the historically unjust relationships between the people of Southern and Northern Ethiopia. The Northerners, especially the Menelik war Generals, and soldiers became the victors, and the whole Southern Nations, Nationalities, and Peoples who had lost their sovereignty were converted to vanquished status overnight after the wars. This established the official system of *Landlord versus Tenancy* in the Southern parts of present Ethiopia. People like the Oromo, Walaita, Sidama, Gamo, Kafa, Hadiya, and others were reduced to the status of tenants/or sometimes considered as slaves by the victors-the Menelik soldiers (commonly known as the *Neftenyas*, or people holding/having guns). Consequently, these Vanquished/tenants failed to master their destiny and no longer became the makers of their history. For instance, according to Mohammed Hassan, "Menelik

[30] The Ethiopian Constitution of 1931 & 1955, Article 7.

[31] See, the Ethiopian Constitution of 1931, Article 2, and the 1955 Revised Constitution of Ethiopia, Article 2. Both say, "The Imperial dignity shall remain perpetually attached to the line of Haile Selassie I, a descendant of King Sahle Selassie, whose line descends without interruption from the dynasty of Menelik I, son of the Queen of Ethiopia, the Queen of Sheba, and King Solomon of Jerusalem."

[32] Mohammed Hassen (1994), Some Aspects of Oromo History That Have Been Misunderstood, (Journal of Oromo Study, Volume I (2)):77-91.

gave both the people and their land to his mainly Amhara-Tigray armed settlers known as *Neftenya*s. The *Neftenyas* played a pivotal role in politics and dominated the political landscape of the Southern Peoples (the Vanquished) and considered them as their cattle and slaves.[33]

c) Center-Periphery-based Unjust Relationship

The center-periphery unjust relationship has been created from different perspectives in the political history of Ethiopia. As elucidated hereinabove, the Neftenyas whose majorities were from the North (Amhara-Tigray origin) controlled the center and dominated the political and economic power of the country. Their culture became the culture of the country; their language became the language of the country, which means, the language of education, religion, military, courts, and all economic and social transactions.[34]Their religion (the Ethiopian Orthodox Church[35]) was legally recognized as a state religion.

The economic sector was controlled by officials from the North, especially, the Amharic-Orthodox background. Walelign Mokennen said, "To be a genuine Ethiopian; one has to speak Amharic, listen to Amharic music, accept the Amhara-Tigre religion, and wear the Amhara-Tigre Shama in international conferences."[36] Mekuria in his writing under "genuine Ethiopian and convertible tribes" put the cultural, political, and social status to become a genuine Ethiopia as follows:

> *The imperial ideology privileged Abyssinian culture and way of life. Therefore, the general understanding was that the Abyssinians were the historic 'staatvolkor'*[37] *bearers of the Ethiopian identity or Ethiopiawinnet. Assimilation was needed to convert non-Abyssinian "tribes" into "genuine" Ethiopian citizens. The message that the educational and political institutions imparted to them was that it was their duty to learn the language and adopt the dominant group's culture to participate in the social and political affairs of the empire.*[38]

Therefore, the struggle for recognition had become the basic political agenda for the peripheries or people from the South of Ethiopia. Until the 1991 Ethnic revolution, Ethiopia's quest for national identities (recognition) had been conducted for centuries. Hence, the question under this article is whether or not the 1995 FDRE Constitution brought people categorized as center and peripheries to the same stage.

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[33] Ibid.

[34] The Ethiopian Constitution of 1931, Article 126, says, "The official language of the Ethiopian Empire is Amharic."

[35] Ibid, Article 126, It says, 'The Ethiopian Orthodox Church, founded in the fourth century, on the doctrines of St. Mark, is the established church of the Empire and is, as such, supported by the state. The emperor shall always profess the Ethiopian Orthodox Faith. Then name of the emperor shall be mentioned in all religious services.

[36] Walligne Mekonnen, "The Question of Nationalities in Ethiopia", Struggle5(2) (USUAA), 1969: 4-5

[37] 'Staatsvolk' is a German term that refers to the population of the territory belonging to a state

[38] https://oromia.today/history/walelign-mekonnen-the-question-of-nationalities-and-ethiopias-persistent-crisis/. Accessed on 4 July 2024.

V. Rectifying Historically Unjust Relationships in Ethiopia: Evaluating the Constitutional Contents and its Practices in the Post-1995

Thus, under this sub-topic, the writer would like to evaluate rectifications in various natures which include historical, constitutional, and political nature. The emphasis is given to assessing the constitutional contents and the prevailing practices on rectifying the historically unjust relationship in the following manner:

A. The Introduction of Federal-Based Constitution

Adopting the 1995 FDRE Constitution was the first and foremost step toward the rectification of unjust historical relationships. The Nations, Nationalities, and People are considered to own this constitution. The same constitution starts with the phrase, 'We, the Nations, Nationalities and Peoples of Ethiopia.'[39]Historically, Ethiopia had no home for diversity and was considered as the prison of the nationalities. Accordingly, the Ethiopian empire was the prison house for the various nationalities until the enactment of the 1995 FDRE Constitution. Therefore, it is possible to take the 1995 FDRE Constitution as a big weapon with which the Ethiopian Nations, Nationalities, and Peoples broke up the prison house (the Ethiopian oppressing empire) and make themselves free to determine their destiny under the umbrella of the right to self-determination. This constitution not only gives recognition to various Nations, Nationalities, and Peoples; but also, guarantees the unconditional right to self-determination up to secession for them.[40]

For this reason, the embarkation of this constitution with its fundamental principles, like the nomenclature of the state as a '*federal democratic republic,' with its golden principles, like the sovereignty of the people, the supremacy of the constitution, the sanctity of human rights, secularism, and accountability and transparency of* government officials. [41]For this reason, the Ethiopian Nations, Nationalities, and Peoples have enjoyed these pillars of modern constitutional principles as one core historical rectification through constitutional enactments.

B. Declaration of the Right to Equality in Ethiopia

Equality in general and equality of ethnicities, languages, and religions, in particular, had remained taboo in historical Ethiopia until the enactment of the 1995 FDRE Constitution. Mainly, the right to equality of ethnicities, languages, and religions was recognized under the contents of the 1995 FDRE Constitution. [42]History has told us that in historical Ethiopia, all ethnicities were not equal, all languages were not equal, and all religions were not equal. Ethiopia had utilized hierarchical societal structures during the monarchical eras for centuries. For instance, during Emperor Menelik II and Emperor Haile Selassie I, the emperor was the head of everything, sacred and immune from any accusation. [43]The societal

[39] See Preamble of the 1995 FDRE Constitution.

[40] Ibid, Article 39.

[41] See the 1995 FDRE Constitution, Article 8-12.

[42] See Article 25 of the 1995 FDRE Constitution, entitled 'Right to Equality': "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or another social origin, color, sex, language, religion, political or other opinion, property, birth, or other status."

[43]See Article 5 of the 1931 Ethiopian Constitution: It claims "By virtue of his imperial blood, as well as by the anointing which he has received, the person of the emperor is sacred, his dignity is inviolable and his power

structure in Ethiopia during the monarchical eras roughly looked like, the emperor at the top, Nobilities, Government Officials, Civil Servants, Traders and Businessmen, Laborers, and Peasants at the bottom. Hence, in practice, there was a class-oriented society that had superior and subordinate relationships at the time. This societal structure had remained a core political culture until such a hierarchical societal structure was smashed by the 1974 Ethiopian Socialist-oriented revolution. Accordingly, the 1974 Revolution which established a classless society in Ethiopia for the first time in history can be considered as a stepping stone for introducing the right to equality. In its preamble, the 1987 PDRE Constitution starts with a phrase that declares equality, justice, and social prosperity as follows:

> *"We, the working people of Ethiopia, based on a centuries-old glorious history, are engaged in a great revolutionary struggle to extricate ourselves from our current state of backwardness and to transform Ethiopia into a socialist society with a high level of development where justice, equality, and social prosperity prevail.*[44]

Even though the 1987 *Derg* Constitution declared the right to equality in Ethiopia under the guise of socialism; it had failed because of two reasons. Firstly, the *Derg* government had declared the equality of nationalities, languages, and religions, half-heartedly; the supremacy of one language (Amharic), one culture (Northern Culture or Amhara culture remained the dominant culture during the *Derg* Era), and Orthodox religion was the dominant religion in Ethiopia practically; even though the *Derg* government was secular.

That is why, this writer argued that the 1995 FDRE Constitution can be recognized as a champion of the right to equality. Moreover, the right to equality of Nations, Nationalities, and People and the right to equality of religions have been recognized under the constitution.

The declaration of equality under the 1995 FDRE Constitution is appreciable, yet the declared equality right under the 1995 FDRE Constitution has some problems that need to be rectified. Hereunder, problems/unjust relationships/ those that need rectifications under the 1995 FDRE Constitution are assessed briefly.

Equality of Language

Language is essential to life, helping to shape one's sense of self and to predict which opportunities will be open and which will be closed. [45]Accordingly, Language is a unique feature of humans and a fundamental political issue in human societies.[46] First and foremost, language equality is one of those that needs rectification. It is clear that in a multinational state like Ethiopia where more than eighty languages are spoken, ensuring equality of all languages is impossible; because, it is

indisputable. He is consequently entitled to all the honors due to him in accordance with tradition and the present Constitution."

[44] See Preamble of the 1987 People's Democratic Republic of Ethiopia Constitution (the 1987 PDRE, or the 1987 *Derg* Constitution), First Preamble 1.

[45]Vernon Van Dyke, Human Rights, Ethnicity, and Discrimination (Westport: Greenwood Press, 1985):32.

[46]Fernand de Varennes, Language, Minorities and Human Rights (The Hague: Martinus Nijhoff Publishers, 1996):1

impossible to use eighty languages as working languages at the federal level. It is inevitable to ignore many languages and select few of them as working languages at the federal level. Thus, selecting and recognizing a national working language that maintains a fair balance between the competing claims of the different linguistic and ethnic groups is vital to political stability. [47]Nevertheless, the fact that declaring one language (Amharic language) as a federal working language in Ethiopia under Article 5 of the 1995 FDRE Constitution should be rectified. Accordingly, Ethiopia should declare a multilingual language policy at the federal level as the same as the Union of South Africa (which uses eleven languages as working languages at the federal level); like Canada, which uses two languages; namely, English and French languages, India which uses twenty-two languages as working languages.

Especially, disregarding Afan Oromo as a federal working language till this date which more people than the Amharic language speak is not only glaring inequality but also, it is a mockery of justice that can best prove how the Oromo and their language has suppressed in Ethiopian history till this date.

The worst scenario with language usage concerns public services like hospitals and other social services. In Ethiopia to get the best medical service you should know the Amharic language in Ethiopia. Big governmental and non-governmental hospitals use Amharic to provide health services; especially, in big cities like Addis Ababa. When you refer to referral hospitals, like Black Lion, Phawulos, Menelik, Yekatati, and other best Hospitals available in Addis Ababa from the regions, any patient and his helper should know and speak Amharic fluently to get the best services. If you don't speak Amharic fluently; it is almost difficult to get hospital services in the best hospital practically. This affects the right to equality and equal access to public/health services which is already guaranteed under the constitution.

Additionally, court services are another challenge. To get federal court services, you should know Amharic; as the only federal court language is Amharic in the present Ethiopian Federation. Hence, to access federal court services, one should be able to write, read, and speak Amharic fluently. This affects the right to access justice, which is already guaranteed under Article 37 of the 1995 FDRE Constitution. If you want to take an appeal to the federal courts from the regional courts' decisions, it is mandatory to translate to Amharic language from other languages including Afan Oromo.

The paradox is that while the Oromo are the largest people in Ethiopia and Afan Oromo is spoken by a majority of the Ethiopian people, the reason why Afan Oromo failed to be used at least parallel with the Amharic language at the federal level has remained an anomaly in complicated Ethiopia.

Equality of Ethnicities

The 1995 FDRE Constitution uses the terms Nations, Nationalities, and People to depict the term ethnicity in many places in its contents. Of course, the terms Nation, Nationalities, and

[47]Aberra Dagafa, Language Choice in Multilingual Societies: An Appraisal of the Ethiopian Case, (the Journal of Oromo Studies, Volume 15(2), 2008):61-77.

Peoples have not been directly defined under the same constitution. However, the same constitution explains these terms as follows:

> *A "Nation, Nationality or People" for the purpose of this Constitution, is a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.*[48]

On the other hand, the same constitution declares the equality of nations and nationalities. It says, "…. the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status."[49]Therefore, this constitution (the 1995 FDRE Constitution) enshrines the right to equality for all ethnic groups as one pillar of the federal constitution.

However, in practice, the equality of ethnicities has been challenging since the enactment of the 1995 FDRE Constitution. For instance, all ethnic groups have not established their regional state; all ethnicities' languages are not recognized as a working language. Because of historical injustice, some ethnicities' languages, religions, and cultures have gained super status when compared to others. Thus, there is a need to rectify such gaps and inequalities in present-day Ethiopia by introducing all-inclusive policies in languages, cultures, and religions.

Moreover, there is a serious discrepancy among the ethnic groups in literacy, infrastructure, and representation at the federal level. Some ethnic groups have got upper hand in federal governmental institutions, non-governmental institutions, international institutions, and civil societies. For instance, in the Ethiopian Telecommunication Corporation, Ethiopian Electric Corporation, Ethiopia Tax Authorities, Ethiopian Airlines, and others there are dominances of some ethnic groups.[50]Consequently, ethnic proportionality should be checked and rectified in federal government institutions in the current Ethiopia.

Equality of Religions

Historically there was no religious equality in Ethiopia since Orthodox Christianity was recognized as a state religion during the monarchical era.[51]

Accordingly, Orthodox Christianity had the privilege and was even registered under the

[48] See Article 39(5) of the 1995 FDRE Constitution.

[49] Ibid, Article 25.

[50]See Oromia Media Network's Reports: See the following websites accessed at different times, https://omnglobal.com/or/;https://www.youtube.com/watch?fbclid=IwY2xjaw ; https://web.facebook.com/watch/.

[51] See Article 126 of the 1955 Revised Ethiopian Constitution, which claims, "The Ethiopian Orthodox Church, founded in the fourteenth century on the doctrines of Saint Mark is the established church of the empire and is, as such, supported by the state. The emperor shall always profess the Ethiopian Orthodox Faith."

1960 Ethiopian Civil Code.[52] As explained above, during the *Derg* era there was no place for all religions as the *Derg* was a socialist-oriented government that propagated secularism and strived a lot to create atheist societies. Nevertheless, the influence of Orthodox Christianity was visible even during the *Derg* time. Upon the embarkment of federalism into Ethiopia following the demise of the *Derg* regime; secularism, freedom of religion, and equality of religions have been recognized constitutionally.[53]

Despite these constitutional guarantees under the 1995 FDRE Constitution on religious equality, freedoms, and secularism; practically, there are prevailing challenges that erode these constitutional guarantees on religious rights and secularism. There is a deep tension among religions, especially, when the followers of one religion are converted to the others massively, or when the followers of one religion increase whilst the other's followers decrease. For instance, the number of Orthodox followers decreased; whilst the followers of the Protestant followers increased in Ethiopia. The Ethiopian Demographic and Health Survey shows that the number of Protestant religious followers grew to over 27 percent in 2019; whilst the number of Orthodox Christians has, in contrast, declined from around 50 percent to 43 percent between 1994 and 2007.[54]

Moreover, there are interreligious clashes in Ethiopia here and there. For instance, recently, there was a violent clash between the Orthodox followers and the Muslims in which human lives were lost in the Gonder City of Amhara regions. According to the report of the UN High Commissioner for Human Rights, Michele Bachelet, at least 30 people were killed and more than 100 others injured in Gonder city of the Northern Amhara region on 26 April 2022.[55] It has been reported that Churches and Mosques are burned down in different parts of Ethiopia from time to time. For instance, in December 2019 four Mosques were burned and actions that targeted Muslim-owned businesses were taken in Motta town of Amhara region. [56]On October 30, 2024, churches were attacked in Birebisa Gale and Dereba Kebeles of Dugda Woreda in the Shawa Zone of the Oromia Region in which 38 civilians were killed as per the VOA report. [57]During the two-year civil war between the central government of Ethiopian forces and the Tigrayan rebels, in the Northern Tigray region, churches have been bombed, looted, and burned down.[58] The Ethiopian Evangelical Church Mekane Yesus reported that more than 15 members of its followers were indiscriminately killed by the armed groups (the so-called *Fanno Militants*) at Muleta Gela Congregation, in Galo Kebele of East Wallaga Zone in Oromia Regional State on 6 November

[52] See Article 398 (1, 2) of the 1960 Civil Code of Ethiopia, which claims, "The Ethiopian Orthodox Church is regarded by law as a person. As such it can have and exercise, through its organs, all the rights which are vested in it by the administrative laws.

[53] See Articles 11, 27, and 25 of the 1995 FDRE Constitution.

[54] Meron Zeleke (2015), "Cosmopolitan Youth Religious Movements in Ethiopia: Ethiopian Orthodox Tawahedo Youth as Vanguard and Self-Appointed Masters of Ceremony." Northeast African Studies 15 (2): 65-92.

[55] https://www.ohchr.org/en/statements/2022/05/inter-religious-clashes-ethiopia: Accessed on 20 July 2024.

[56] https://www.aljazeera.com/news/2019/12/24/ethiopian-Muslims-protest-after-several-mosques-burned/: Accessed on 21 July 2024.

[57] https://www.amharaamerica.org/post/voa-amharic: Accessed on 12 August 2024.

[58] https://www.washingtonpost.com/world/2023/04/12/ethiopia-orthodox-church-oromo-tigrayan/: Accessed on 29 June 2024.

2022 while churchgoers were gathered for prayer in their church.[59]

But, neither the causes of all these burning religious institutions and killing civilians (followers) nor the interested bodies beyond these illegal actions have been recognized officially. The government condemns these religious clashes and strives to take measures against the perpetrators of these heinous crimes following the crises.

The writer argues that these interreligious clashes, burning down of religious institutions, killings, and other destructive actions taken upon any religious institutions may arise out of past religious dominance, politico-religious extremists, and fear of massive conversion from one religion to the other.

On the other hand, in practice as a result of past historically unjust relationships some religions got the upper hand in current Ethiopia. In some instances, especially, from the practical point of view, there are grievances from some people that all religious institutions have no equal access to some resources, such as land. Accordingly, some religious organizations have some degree of tolerance from the government when they grab large lands and demarcate them for acquisition for their religious purposes and private individuals against the law; and some others are not tolerated in the same way.

There are some visible discrepancies in access to government services by religious institutions in many instances practically. For instance, *Orthodox and Waqqeffata* religion followers do not get equal (proportional) services on government mass media. The issue of getting licensing is also challenging for *Waqqeffata* religion followers. Access to land is also the other challenging issue for some religious institutions while few seized huge hectares of land here and there in Ethiopia. Furthermore, some religious institutions like the Orthodox Church prohibited the use of other languages except *Ge'ez* and Amharic in religious preaching and teachings.

C. The Right to Self-determination for the Nations, Nationalities and Peoples

The right to self-determination had been unfamiliar in the Ethiopian political history. Although, the right to self-determination is an elusive concept; it revolves around democratic and human rights. Under the UN Charter, the notion of the right to self-determination is reflected in perspectives. Firstly, it is understood in the sense that the state has the right to freely choose its political, economic, social, and cultural systems; secondly, it illustrates the freedom of a people to form their state or to freely choose how they want to be associated with an existing state.[60] The right to self-determination is recognized as part and particle of human rights since it is the right of certain people to determine their destiny. It is also recognized as part of democratic rights in which people can exercise their right to establish their state/government/ freely without intrusion. The two covenants (ICCPR and ICESCR) reinstated the right to self-determination, and sufficient proof of the concept and meaning of the right to self-determination has been provided under Article 1 of both covenants. [61]Even though, it is too

[59] https://addisstandard.com/news-evangelical-church: Accessed 15 August 2024.

[60] The UN Charter, Article 1, Paragraph 2, and Article 55, Paragraph 1.

[61] See Article 1 of the ICCPR and ICESCR, both say, "All peoples have the right of self-determination. By virtue of that right they freely determine their political

difficult to determine the scope of self-determination in practice; it is possible to construe that the right to self-determination allows people to choose their political status and to determine their form of social, economic, and cultural development freely without any interference.

Following these UN Charter, and International Human Rights Covenants and Declarations, Ethiopia has incorporated the unconditional right to self-determination up to secession. The 1995 FDRE Constitution claims that "Every Nation, Nationality, and People in Ethiopia has an unconditional right to self-determination, including the right to secession."[62]The position of the 1995 FDRE Constitution on the right to self-determination is sound as Ethiopia was a prison house for the Nationalities for many centuries. Since, Abyssinian monarchies subjugated the southern Nations, Nationalities, and Peoples like the Oromo, Sidama, Wolaita, Somalis, and other peoples by war and conquest; it is possible to extend this to the colonial thesis, which needs self-determination including secession to be rectified.

Therefore, the 1995 FDRE Constitution has recognized the right to self-determination as a guarantee for the Nations, Nationalities, and Peoples of Ethiopia to rectify their past historical unjust relationship. Historically, there was innumerable suppression, discrimination, and inequality in the empire of Ethiopia as explained in the above discussions. That is why the right to self-determination has been recognized as the promise for the Nations, Nationalities, and Peoples of Ethiopia in the contemporary Ethiopian federation. If the government or non-government actors will encroach on their human, democratic, and political rights by any means, the Nations, Nationalities, and Peoples of Ethiopia have the right to establish their own independent state by exercising their right to external self-determination through secession. Hence, it is possible to conclude that the right to self-determination can be utilized as an instrument to rectify the past historically unjust relationship in Ethiopia. Additionally, the right to self-determination will be utilized as a promising shield to defend the Ethiopian Nations, Nationalities, and Peoples from the possible future suppressions and unjust relationships that will arise from any causes and by any groups.

VI. *Conclusion and Recommendation*

Conclusion

Conceptually, rectifying historically unjust relationships has paramount importance in a country that is striving to transfer itself from a non-democratic system like monarchical, theocratic, dictatorship, and the like to a democratic and constitutional state. That is why Ethiopia incorporates the guarantee of rectifying historically unjust relationships in the preamble of the 1995 FDRE Constitution.

Historically in Ethiopia, suppressions of identities, languages, religions, cultures of the Nations, Nationalities, and Peoples were prevailing officially. The slogan that claimed 'One language, one flag, and one religion' remained the norms of the Ethiopian culture till the downfall of the monarchical government in 1974. Accordingly, Amharic was recognized as the Ethiopian national language, Orthodox Christianity was declared as the state religion; and the Amhara-Tigre culture was

status and freely pursue their economic, social, and cultural development."

[62] See Article 39(1) of the FDRE Constitution.

acknowledged as the national culture of Ethiopia by excluding and suppressing other languages, beliefs, and cultures of the Nations, Nationalities, and Peoples.

However, the 1995 FDRE Constitution brought a paradigm shift in converting oneness into diversity in Ethiopia for the first time in history. The first step was recognizing rectifying historically unjust relationships as a core promise in the preamble of the same constitution. Next, this constitution introduced federalism and federation as an ideology and the institutions of the state to uphold diversity. Moreover, the 1995 FDRE Constitution utilized federalism and democracy as the nomenclature of a multinational state of Ethiopia. Besides, this constitution put the right to self-determination as a promise for the Nations, Nationalities, and Peoples to avert the long-aged suppressions, discriminations, and inequalities in contemporary and future Ethiopia eternally.

Nevertheless, in present-day Ethiopia, enforcing these constitutional guarantees which are introduced in the contents of the 1995 FDRE Constitution starting from the preamble to the end to rectify historically unjust relationships remains a challenging task in practice. As a result, ensuring equality of languages, religions, cultures, Nations, Nationalities, and Peoples, and thereby, rectifying the historically unjust relationship among the Ethiopian Peoples in practice remains an unfinished agenda in contemporary federalist Ethiopia.

On the other hand, the Ethiopian political and constitutional culture has been proclaiming the supremacy of one language, one religion, one culture, and one myth over the others' cultures, languages, and myths for hundreds of years; for this reason, it challenges and hesitates to accept the culture of equality, rectifications of historically unjust relationships, and self-determination.

To sum up, although the 1995 FDRE Constitution incorporates the guarantees of rectifying historically unjust relationships in preambles and its contents; the quest for rectifying historically unjust relationships among the Nations, Nationalities, and Peoples of Ethiopia remains an unanswered political and constitutional question satisfactorily until today.

Recommendation

Based on the above findings and conclusions, the researcher would like to forward the following recommendations:

- The federal government of Ethiopia should ensure the rectification of unjust historical relationships that are already recognized under the federal constitution in practice.
- To rectify these unjust relationships the following political and constitutional reforms should be reconsidered:
    - Ethiopia shall introduce a multilingual language policy; that means, other languages like Afan Oromo must be added to Amharic as a federal working language.
    - To ensure fair/equitable representation in federal government institutions and non-government institutions, the federal government must renew the current platforms, and come up with a new policy; that transparently ensures equality among the Nations, Nationalities, and peoples in Ethiopia. For instance, the federal courts,

Federal Hospitals, Ministerial Offices, Business Organizations like National Banks, Telecom Corporations, Electric Corporations, and other governmental agencies should contain workers proportionally to the number of each ethnic group living in Ethiopia.

- Equality of religious institutions should be ensured practically as per the Constitutional promises: the right to access to resources like lands, equal access to government services in case necessary, equality of languages in all religious institutions (the right to use one's language in religion services) should be enforced practically.

- The right to self-determination must be enforced, fulfilled, and protected by both the federal and regional governments, as well as, by the non-state actors like the opposition political parties for all Nations, Nationalities, and Peoples of the Ethiopia federation.

WJLAW, Febr-June.2025,2(2), 33-56)
DOI: https://doi.org/10.20372/wjlaw.v2i2.1650
ISSN: 2226-7522 (Print) and 3005-7612 (Online)
Wallaga University Journal of Law
WJLaw, February- June. 2025, 2(2), 33-56
Home Page: https://journals.wgu.edu.et

Original Article

The Need to Expand the Space of the Ethiopian Legal System to Accommodate Non-state Law: Exemplifying Non-state Law through the Gada System

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Abstract

This article aims to examine the space of the Ethiopian legal system to accommodate non-state law in general and the Gada system in particular. It is an accepted truism that the development method of a given state law determines its space to accommodate non-state law and its efficiency. The development of non-state law, like law in the Gada system, is evolutionary, while Ethiopia's legal system has developed through a revolutionary method. Moreover, a state law that provides good space for non-state law and is developed through an evolutionary method is an efficient than one without fair space for non-state law and developed through a revolutionary method. Scrutinizing the space of the Ethiopian legal system to accommodate non-state law reveals that it has not yet provided justifiable space for non-state law to date. As a result, the researcher, by employing a doctrinal research method, argues that the Ethiopian legal system must be revised in a way that allows state and non-state law will be implemented in a way that complements each other for efficient and effective protection of a common good.

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Article Information

Article History:
Received: 27-01-2025
Revised: 12-03-2025
Accepted: 18-04-2025

Keywords:
Ethiopian Legal System; Gada System; Non-state law; State Law

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1. Introduction

Darling states that if you wish to control mosquitoes, you will learn to think like mosquitoes.[1] In the context of the theme under discussion, the Darling statement could be construed as exploring how indigenous knowledge helps to know and resolve social problems. Given this, it is an accepted fact that the development method of a given state law determines its space to accommodate non-state law and its efficiency. As will be discussed, the development of non-state law, like law in the Gada system, is evolutionary, while the development of the Ethiopian legal system is revolutionary. Moreover, a state law that provides good space for non-state law and is developed through an evolutionary method is simply and efficiently implemented than one without fair space for non-state law and developed through a revolutionary method.

Scrutinizing the space of the Ethiopian legal system to accommodate non-state law reveals that, even though there is a difference of degree in (dis)harmony in different periods, the Ethiopian legal system does not provide justifiable space for non-state law to date. As a result, the researcher argues that the Ethiopian legal system must be revised in a way that allows state and non-state law will be implemented in a way that complements each other for efficient and effective protection of a common good. As well, the Ethiopian laws, including the FDRE constitution, must be amended in a manner that allows the applicability of non-state laws by state courts.

To do so, the rest of this article is divided into five sections. The next section makes a brief discussion on the concept of state and non-state laws in general to lay it preludes for the ensuing sections. In section three, the article attempts to articulate the conceptual framework of state and non-state law in the Ethiopian legal system's context. It addresses these laws' development method and their basic concepts. Section four examines and attempts to contextualize the nexus between the state and the Gada system in the Ethiopian legal system. The final section provides the highlights of the concepts and arguments raised in the article, and ends by forwarding some recommendations.

2. State Vis – A – Vis Non-state Law

It is generally accepted that the Gada system is treated as one continuum of indigenous knowledge, while it is broadly argued that it is the ancient democratic system of the sub-Saharan African societies, particularly that of the Oromo people. This is congruent with Hinz's observation that there is no African country that is free of African traditions or free of at least some elements that belong to Western modernity.[2] Needless to state, the Gada system is one spectrum of indigenous knowledge which has elements of present Western Democracy and defines Oromo people in different perspectives.[3]

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[1] Samuel Darling as quoted in Benjamin Paul, Health, Culture and Community: Case Studies of Public Reactions to Health Programs, New York: Russel Sage Foundations, 1995, p. 1

[2] Manfred O Hinz, Traditional governance and African customary law: Comparative observations from a Namibian perspective, p. 61 <https://www.semanticscholar.org/paper/Traditional-governance-and-African-customary-law-%3A-Hinz/cad249ee6eb777ff90be5c0fa21d58862d6ed116> accessed on 23August 2021

[3] It is argued that Gada system is a very critical and complex system that shows the totality of the Oromo civilization since the ancient time. It encompasses the overall cultural, historical, political, legal, philosophical, religious, linguistic, and geographical foundations of the Oromo society. See Solomon Emiru, Resurrecting the Tenets of Rule of Law in the Classical Gadaa Democracy

Regarding its definition, it is seldom possible to get a common and internationally accepted definition of indigenous knowledge. All the same, some define it as it denotes a complex set of knowledge and technologies existing and developed around specific circumstances of populations and communities indigenous to a particular geographic locality.[4] Furthermore, it is also defined as it signifies local knowledge that is unique to a given culture or society.[5] More broadly, Battiste defines it as a special kind of wisdom that has been tested and proven for centuries to solve problems that are beyond the capacity of the so-called First Nations' education and knowledge system.[6]

Regarding its development, some scholars maintain that indigenous knowledge is developed through a process of acculturation and through kinship relationships that social groups form and are handed down to posterity through oral tradition and cultural practices such as rituals and rites.[7] Similarly, the Gada system, as it is one continuum of indigenous knowledge, could be described as the indigenous knowledge of Oromo that was innovated and renovated based on Oromo's ethos by Oromo people to govern their relationship as well as to solve their socio – legal and socio – political problems that they have been facing.

On the other hand, the concept of the Ethiopian law, also known as the state law, refers to all treaties signed and ratified by Ethiopia, and all primary, secondary, and tertiary laws issued by the pertinent Ethiopian government authorities for the protection of Ethiopia's and Ethiopians' interest.[8] It also includes the jurisprudence of the Federal Supreme Court cassation division's and House of Federation's decisions.[9]

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in the Ethiopian Federation, Jimma University Journal of Law, Vol. 14 , 2022, p. 7

[4] Parrotta, JA andTrosper RL, Traditional Forest-related Knowledge: Sustaining Communities, Ecosystems and Bio cultural Diversity. London: Springer, 2012, < https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjWgpqt9JONAxWAVqQEHXrYKGsQFnoECBQQAQ&url=https%3A%2F%2Fwww.researchgate.net%2Fpublication%2F307749488_Parrotta_JA_and_Ronald_L_Trosper_eds_2012_Traditional_Forest-Related_Knowledge_Sustaining_Communities_Ecosystems_and_Biocultural_Diversity_New_York_Springer&usg=AOvVaw054bmrUQfRKBko7RcND48q&opi=89978449 > accessed on 20 September 2023

[5]Visit <http://www.sedac.cisen.columbia.edu> last visited on 20 August 2021

[6]See Marie Battiste, Indigenous knowledge and pedagogy in first nations education: A literature review with recommendations Indian and Northern Affairs Canada, Ottawa, October 31, 2002, < https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjs0ujz9ZONAxUaU6QEHcWpDsQQFnoECBYQAQ&url=https%3A%2F%2Fwww.nvit.ca%2Fdocs%2Findigenous%2520knowledge%2520and%2520pedagogy%2520in%2520first%2520nations%2520education%2520a%2520literature%2520review%2520with%2520recommendations723103024.pdf&usg=AOvVaw0q5mH89yogkqnVNFTwORmF&opi=89978449> accessed on 25 August 2022

[7] Chikaire J. et al., Indigenous knowledge system: The need for reform and the way forward. Glob. Adv. Res. J. Agric. Sci. 1(8): (2012), p. 201.

[8]In Ethiopia, all powers, including legislative power, emanate from FDRE constitution. Pursuant to this constitution, all government organs except the judiciary have Legislative Power. In principle, per article 55(1) of this constitution, the function of enacting laws is the primary function of the parliament – House of People Representatives (HPR) while that of executive organ, pursuant to article 72, 74 and 77 of the constitution, is to execute the law enacted by HPR. Nonetheless, constitutionally executive organ has been empowered to enact secondary laws either when it declares state of emergency or when it is empowered to do so by HPR. Thus, one could conclude that, in Ethiopia, both parliament and executive organ has been empowered to enact laws. Besides, treaty signed and ratified by HPR, per article 9(4) of the constitution, is considered as one of Ethiopian laws.

[9] With the adoption of FDRE constitution, a precedent system was introduced as one spectrum of Ethiopian law. Accordingly, House of Federation's (HoF) decision on

As well, all indigenous knowledge of the Oromo people in general and the Gada system in particular is linked to the life of Oromo people and it mainly passes down orally from generation to generation. This characteristic of indigenous knowledge was succinctly appreciated in the Alexkor Ltd et al. v. Richtersveld case by the South African Constitutional Court.

In its assessment, this court held that;

> *It is important to note that indigenous law is not a fixed body of formally classified and easily ascertainable rules. By its very nature, it evolves as the people who live by its norms change their patterns of life. [. . .] unlike common law, indigenous law is not written. It is a system of law that was known to the community, practiced and passed on from generation to generation. It is a system of law that has its values and norms. Throughout its history, it has evolved and developed to meet the changing needs of the community.*[10]

A close look of this decision ascertains that law is not only state law but also non-state law. Besides, it indicates that the traditional laws of a given community cannot move ahead of prevailing traditional – not necessarily contemporary – structures, values and beliefs; and it places a relatively greater emphasis on the past [community] relationships[11]. Consequently, since the Gada system shares the characteristics of indigenous knowledge, the South African court's account of indigenous knowledge's characteristics, *mutatis mutandis,* is applies to the Gada system.

Unlike other indigenous knowledge, however, the Gada System embraces four basic indigenous governance institutions; viz., Age-sets, Gada Council, Gada General Assembly, and the religious institution.[12] The Gada General Assembly is the legislative body of the Gada system.[13] As Asmarom noted, one of the most interesting Oromo traditions (Gada system) is that laws are treated as products of human deliberation but not a gift of God; and Oromo legislative tradition is an uncommon phenomenon in African traditions.[14] He also adds that in the Gada system, law and custom are distinguished, and the law can be changed or altered by the 'Gumii or caffee'.[15] Continuing his appreciation, he inscribed that [in] the Gada system, people view laws as being their own, not something imposed on them by divine force, by venerated patriarchal

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the interpretation of the constitution and federal supreme court cassation division's decision, per article 62(1) and 80(3)(A) of the constitution respectively, are considered as a law. Thus, what is considered as Ethiopian laws, more or less, is what is enacted by these HPR and executive organ, cases decided by Federal Supreme Court cassation division, and constitutional disputes interpreted by HoF.

[10] Alexkor Ltd and another v. Richtersveld Community and Others (CCT19/03) [2003] ZACC 18; 2004 (5) SA 460 (CC); 2003 (12) BCLR 1301 (CC) (14 October 2003) < https://www.google.com/search?client=opera&q=Alexkor+Ltd+and+another+v.+Richtersveld+Community+and+Others+(CCT19%2F03)+%5B2003%5D+ZACC+18%3B+2004+(5)+SA+460+(CC)%3B+2003+(12)+BCLR+1301+(CC)+(14+October+2003)&sourceid=opera&ie=UTF-8&oe=UTF-8 > accessed on 25 October 2023

[11] Paul Brietzke, Private Law In Ethiopia, J.A.L, Vol. 18, No. 2, 1974, P.155

[12] Zelalem Tesfaye, Old Wine In New Bottles: Bridging The Peripheral Gadaa Rule To The Mainstream Constitutional Order Of The 21st C. Ethiopia, Oromia Law Journal, Vol.4, No.1, P.15

[13] Id p.17

[14] Asmarom Legesse, Oromo Democracy: An Indigenous African Political System, 1st Edition, The Red Sea Press, Asmara, Eretria, 2000, P.208

[15] Gumii or Caffee means legislative organ

lawgivers, by the superior learned men, or by tradition in a generic sense.[16] Thus, a law in the Gada system denotes a law that has been issued by the Gumii for the protection of mankind as well as flora and fauna.

3. Conceptual Framework of Non-State and State Laws in Ethiopia: the Gada System in Focus

Dworkin states,

> *'. . . we live in and by the law. It makes us what we are. [. . .] are forced to forfeit penalties or are enclosed up in jail, all in the name of what our abstract and ethereal sovereign, the law, has decreed. [. . .] we are subjects of law's empire, liegemen to its methods and ideals bound in spirit while we debate what we must therefore do.'*[17]

This observation, Doworkin's statement about law, describes the significance of law for the survival of human beings. Nonetheless, what does the term law denote in general and in the Ethiopian legal system in particular? Since one could not come up with and dry and internationally accepted definition of law, defining the term 'Law' is not an easy task. All the same, different authorities have tried to define it. Besides, sometimes the inquiry for the dentition of law is labeled as questioning the concept of proposition of law.

Thus, the phrase 'proposition of law' refers the various statements lawyers make in reporting what the law in question is to other.[18] More precisely, Boshno defines the term 'proposition of law' as an obligatory decree, expressed as a power-holding order governing public relations that has the feature of normativity, systemic, general obligatoriness, formal distinctness and representative-binding nature which distinguishes it from other social rule.[19] This indicates, according to Boshno, that to label one as a law it must not be a social rule but it must be a sovereign act.

With the same token, law, for legal positivists, is what is enacted by lawmakers.[20] Positivists capitalize only on positive laws. Positive law is the law in books, the law declared in the clear statements of statutes and court decisions.[21] Similarly, some take positive laws as those rules issued by the sovereign[22] while some also describe positivism as accepting law as it is in lieu of accepting law as it ought to be.[23]

For Austin, like Boshno, law is a general command, and the command is the expression of wish backed by threat to inflict an evil on case of the wish is not fulfilled.[24] Some scholars, however, simply understood law as it is the prophecy of what the courts will do in fact, and nothing more pretentious, are what someone means by the law.[25] Besides, Law Dictionary[26] also defines law as an aggregate of

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[16] Asmarom Legesse, Supra Note 14, p.208 – 209

[17] Ronald Dworkin, Law's Empire, The Beknap Press of Harvard University Press, Cambridge, Massachusetts, Landon, England, 1986, P. Vii

[18] Ronald Dworkin, Law as Interpretation, Taxes Law Review, Vol. 60, P.527.

[19] Svetlana Boshno, Proposition Of Law: Its Concept, Properties, Classification and Structure, Law and Modern States 4/2015, P.71

[20] Dworkin, Supra Note 17, p. 528.

[21] Ronald Dworkin, Law's Ambitions For Itself, Virginia Law Review, Vol.71, P.176

[22] Scott J. Shapiro, Legality, The Belknap Press of Harvard University Press, Cambridge, Massachusetts, London, England, 2011, p. 53.

[23] William Twining, General Jurisprudence: Understanding Law from a Global Perspective, Cambridge University Press, 2009, p.126

[24] Shapiro, Supra Note 22, p.53.

[25] Simeneh Kiros, Sharing Thought: What Is The Jail Man Doing?, Mizan Law Review, Vol. 12, No.1, September 2018, P. 226

[26] Black Law Dictionary, 9th edition, P. 962

legislations, judicial precedents and accepted legal principles. The upshot of this discussion indicates that the term of 'Law' is commonly understood as it excludes all non-state (indigenous) laws, like the Gada system's law, from the domain of the definition of law.

Against this line of argument, however, Seidman noted that people within societies engage in repetitive patterns of behaviour and this behaviour constitutes the institutions of the society. [. . .] repetitive patterns of behaviour are defined by rules or norms. [. . . thus] laws are norms. They state how people are supposed to behave on pain of sanction.[27]

Twining, on his part, opined that cosmopolitan discipline of law needs to encompass all levels of legal ordering, relations between these levels, and all-important forms of law including supra – state, viz.; international, regional and non-state law and various forms of 'soft law' and legal orders.[28]

Consequently, against forgoing argument, fairly approaching Seidman's and Twining's definition of law points out that the term 'Law' embraces not only state law but also non-state law. Thus, to these scholars' definition of law, indigenous laws, like laws under the umbrella of the Gada system, fall within the domain of the definition of law. However, as examined previously, assessing the definition of law in the Ethiopian legal system's context demonstrates that what is considered as law officially in Ethiopia is half of what is considered as a law by Seidman and Twining.

As is well known, in the Ethiopian legal system, a legislative act to be a law, it ought to be published in the official law Gazette, which may be either the Negarit Gazette for the Federal Laws[29] or the Megeleta Oromia for laws of Oromia Regional state[30] and *mutatis mutandis* to all other Regional States of Ethiopia. The rationale behind the publication of laws seems to implement the principle of ignorance of the law has no excuse by giving prior warning. Besides, in the words of Bentham, publicity [of law] is the most important security against misrule.[31]

In the case of Ethiopia, strictly focusing on the black letter of this Official Law Gazette Establishing Law, it takes us to argue that in Ethiopia publication of law is a mandatory condition precedent for all legislations to be a law. This could be extrapolated from this Federal Official Law Negarit Gazette's designs and spirits. The pertinent provision of this Gazette states,

> *All Laws of the Federal Government shall be published in the Federal Negarit Gazette, and all Federal or Regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of Laws published in the Federal Negarit Gazette.*[32]

[27]Robert Seidman, Law and Stagnation In Africa, p. 271, <http://saipar.org/wp-content/uploads/2013/10/chp_12_law_in_zambia.pdf> accessed on August 28, 2021

[28] Twining, Supra Note 23, p. 275

[29]Federal Negarit Gazeta Establishment Proclamation, 1995, Art. 2(2), Proclamation No.3, Fed. Neg. Gaz., Year 1, No.3. This article states 'all Laws of the Federal Government shall be published in the Federal Negarit Gazette'.

[30]Reestablishment Proclamation of the Megeleta Oromia News Paper, 2014, Art.3 (1), Proclamation No.186, Megeleta Oromia, Year 22, No.11. Similar to Federal, this article states, Proclamation, Regulations enacted, agreement entered by the Regional Government of Oromia and ratified by 'Caffee' and any law of the Region shall be published on Megeleta Oromia.

[31] Twining, Supra Note 23, p.332

[32] Proclamation No.3, Supra Note 29, article 2(3). All Regional States official law Gazettes were enacted with the same loaded fashion.

This suggests that the act of publication serves as a minimum requirement for legislation to be a law in the Ethiopian legal system. All the same, the House of people representative (HPR) proclamation defines laws narrowly than definition of Official Law Gazette Establishing Proclamation's definition of law when it states the laws that need publication are only proclamations, regulations or directives come into force upon their approval by the HPR and subsequent publication on the Federal Negarit Gazette under the signature of the President.[33]

Reading this proclamation in tandem with the Official Law Gazette Establishing Proclamation reveals that the HPR proclamation blindly excluded all legislations except that of the HPR laws from the ambit of the Ethiopian laws. However, this seems a fallacy since it fails to acknowledge the constitutional power of the Executive Organ to enact secondary laws at the Federal level on Federal matters[34] *mutatis mutandis* to Regional States' Legislative organs and Administrative Councils' lawmaking power on regional matters.

Other proclamation[35], proclamation to consolidate House of Federation, defines law as Proclamations issued by the Federal or State legislative organs, and regulations and directives issued by the Federal and States government institutions, and as it shall also include treaties that have been ratified by Ethiopia. To some extent, this legislation tries to fill the lacuna created by hereinabove mentioned proclamation when it tries to show the existence of legislative federalism and legislative power of executive organ, but in its definition, the mandatory publication precondition of legislations to be a law is either latent or absent.

Doubtlessly, the assessment of the definition of the term 'law' under these proclamations divulges that under the Ethiopian legal system, what is considered as a law is only a sovereign command. Put differently, it is only what is enacted by an appropriate government organ can be considered as a law. Following this line of argument takes one to conclude that, in the Ethiopian legal system, law constitutes only a sovereign command but not a non-state law.

This conclusion fits the command theory of law. Under this theory, law is the command of the state, backed by force, as an accurate or even a helpful characterization of a law.[36] Thus, non-state laws, like laws in the Gada system, are ousted from the definition of law under the Ethiopian legal system. This makes known that the Ethiopian legal system follows legal centralism, which entails that law should be the law of the state, uniform for all persons, exclusive of all other laws, and administrated by a single set of state institutions.[37]

Beyond state and non-state laws discourse, in the Ethiopian legal system, scholars argue that it is hardly possible to understand what

[33]House of Peoples' Representative Procedure Proclamation, 1995, Art. 2(1), Proclamation No.14, Federal. Neg. Gaz., Year 2, No.2.

[34] Constitution of the Federal Democratic Republic of Ethiopia Proclamation, 1995, art. 77(13), Proclamation No.1, year 1, No.1.

[35] Council of Constitutional Inquiry Proclamation, 2001, art.2 (5), Proclamation No.250, Year 7, No.40.

[36] Andrew Stumpff Morrison, Law is The Command Of The Sovereign: H.L.A. Hart Reconsidered, P.1 <https://onlinelibrary.wiley.com/doi/abs/10.1111/raju.12133> accessed on 28 August 2021

[37] Ayalewu Getachaw, Customary Law in Ethiopia: A Need for Better Recognition, Danish Institute for Human Right, 2012, P. 14 <https://menneskeret.dk/files/media/dokumenter/udgivelser/ayalew_report_ok.pdf. > accessed on 22 September 2023

constitutes state [Ethiopian] law. Wording it differently, scholars bestow the illusion of proposition of law in Ethiopia. Assefa, for example, dubbed proclamations No.250/2001 (repealed)[38] and 251/2001(repealed)[39] as *mother of all confusion to* about set the proposition of law in Ethiopia, particularly, in determining the scope of judicial review in Ethiopia[40].

On top of that the jungle of proposition of law in Ethiopia swells much when strictly assessed by juxtaposing these laws with judicial practices. FDRE Supreme Court's Cassation division, which has been empowered to assist the uniform application of law in Ethiopia, in the Ethiopian Revenues and Custom Authority *v.* Daniel Mokonin case, held that laws required to be published on Negarit Gazette are only those enacted by the HPR.[41] Put otherwise, the division held that only those laws enacted by the legislative organ but not those of the executive organ or agencies are required to be published in the Negarit Gazette to be a law.

However, even though this is an act of undermining the purpose of publication of laws, some authors also hold the same position with the decision of this division. In his comment, for example, Getachew argued that publication of law is required only for an evidentiary purpose.[42] Nonetheless, this division's decision and the author's standing inspire criticism when valued from cassation's division establishment aspiration and rational behind publication of laws perspectives. These include, *inter alia*, this division examined only the HPR's proclamation by excluding the Official Law Gazette Establishment Proclamation that has special preference about publication and House of Federation's Proclamation to provide a comprehensive definition of law in the Ethiopian legal system. Moreover, it limits itself to giving recognition to the existing practice without valuing publication from the right of the governed to be accessible to legislation and the duty of the governor to make its laws accessible to citizens to appreciate and defend their rights. From this scenario, it is arguable that the publication of laws has a constitutional base. FDRE Constitution[43], in the Ethiopian context, empowers the Ethiopian citizens to know all activities of the Ethiopian government whilst it obliges its government to make their activities transparent to their citizens.

As well, the division fails to appeal to all laws to appreciate them holistically to make all laws meaningful without making them self-contradictory in which some legislations'

[38] Council of Constitutional Inquiry Proclamation, 2013, art. 34, Proclamation No. 798, Fed. Neg. Gazette, Year 19th, No. 65. Just the same, even though this proclamation repealed its predecessor proclamation No. 250/2001, it does not come with new approach regarding the point under discussion.

[39] A Proclamation to Define the Powers and Functions of House of Federation, 2021, art. 84, proclamation No. 1261, Fed. Neg. Gazette, Year 27th, No. 43. All the same, even though this proclamation repealed its predecessor proclamation No. 250/2001, it does not come with new approach regarding the point under discussion.

[40] Asefa Fiseha, The Concept of Separation of Power and Its Impact on the Role of Judiciary in Ethiopia, Ethiopian constitutional series, Faculty Of Law, AAU press, vol. III, p. 14-16. Since the proclamations those replaced the previous proclamations those was dubbed mother of confusion has not yet come with different approach, thus this author's argument is still alive.

[41] Ethiopian Revenues and Custom Authority V. Dani'el Mokonin, (Federal Supreme Court Cassation Bench, Addis Ababa, 2010, Criminal Case File No. 43181), FDRE Cassation Division Decision Book, Vol.10, P. 345.

[42] Getachew Asefa, Is Publication Of Ratified Treaty Requirement For Its Enforcement In Ethiopia? Journal of Ethiopian Law, Vol. XXIII, No.2, 2009, P.168.

[43] FDRE constitution of 1995, Article 12(1). This article reads as 'The conduct of affairs of government shall be transparent'.

provision defeat the others' purpose. This like interpretation of laws conclusion is a fallacy. Unfortunately, this demonstrates, the FDRE Cassation division lost the opportunity to soundly nail down the discourse on the status of unpublished laws in the Ethiopian legal system.

From this discussion, one could synthesize two important points. In one hand, in Ethiopia legal system the issue of proposition of laws, particularly, the definition of law is the unsettled issue. On the other hand, scholars' inquiry to set the proposition of law in the Ethiopian legal system is limited to the old command theory of law. Thus, the status of non-state laws, including the Gada system, by the definition of law is excluded from the realm of the Ethiopian legal system.

At this juncture, another point worth discussion is the legislative system in the Gada system and the Ethiopian legal system. Fundamentally, as was shown earlier, Gada is an age-grade system that divides the stages of life of individuals, from childhood to old age, into a series of formal steps.[44] On the other hand, the Gada system is a system of generational classes that succeed each other at eight-years in intervals assuming political, military, judicial, legislative and ritual responsibilities.[45] Moreover, as was discussed, the Gada System embraces four basic indigenous governance institutions; viz. Age sets, the Gada Council, the Gada General Assembly, and the religious institution.[46]

The Gada General Assembly is the legislative body of the Gada government.[47] As was discussed, it is noted that one of the most interesting Oromo traditions is that laws are treated as products of human deliberation, but not a gift of God; and Oromo legislative tradition is an uncommon phenomenon in African tradition.[48] He adds that in Oromo tradition, law and custom are distinguished, and the law can be changed or altered by 'Gumii or caffee'. Continuing his admiration, Asmarom inscribed that in Oromo cultural tradition, people view laws as being their own, not something imposed on them by divine force, by venerated patriarchal lawgivers, by the superior learned men, or by tradition in a generic sense.[49] As a result, it is argued that, since in the Gada system the law is more valuable than one's own child, the Oromo people are committed enough to sacrifice their children for the observance of the rule of law.[50] This demonstrates that the understanding of law in the Gada system fits the notion that law is one ultimate expression of the community. Marvelously, this understanding of law in the Gada system took it is root at the time when the Western community thought that the King was ordained by God to be the expression of the complete community, as well as the King held the constituent power.[51]

[44]Taddesse Berisso, Chapter V: The Riddles Of The Number Nine In Guji-Oromo Culture, In Bekele Gutema and Charles C. Verharen (eds.), African Philosophy In Ethiopia, Cultural Heritage And Contemporary Change Series II. Africa, Volume 15, 2013, P.54

[45] Ibrahim Ame, The Roles Of Traditional Institutions Among The Borena Oromo, Southern Ethiopia, *[without Year and Place of Publication]*, P.17

[46]Zelalem Supra Note 12, P.15

[47] id p.17

[48]Asmarom, Supra Note 14, P.208

[49] Id, p.208 – 209

[50] Dirribi Demissie, Oromo Wisdom in Black Civilization, Finfine Printing & Publishing S.C., April 2011, Ethiopia, p. 278 cited in Solomon Emiru, Resurrecting the Tenets of Rule of Law in the Classical Gadaa Democracy in the Ethiopian Federation, Jimma University Journal of Law, Vol. 14 , 2022, p. 4

[51]This is the power to enforce laws, the power to claim legitimate authority of government over the governed. In many ancient and medieval societies this was said to come from God and be embodied in the authority of the

This suggests the presence of a deep-rooted understanding and practice of the rule of law in the Gada system. In legal jurisprudence, the term the rule of law could simply mean that government officials and citizens are restricted by and generally abide by the law.[52] Put it simply, the rule of law refers to the supremacy of law over all mankind.

However, the definition and perception of the rule of law in the Gada system is a little bit broader than the modern rule of law. Some researchers have found that according to the Gada system, the rule of law signifies not only the liability of individuals rather it also that everything and all beings have rules. That is, the law stands not only for the benefit of individuals or to the discipline of officials but it also extends to animals.[53] In this sense, the Borana, for instance, say '*seerri muummee, seera saree'*; which means a law for a minister is also a law for a dog.[54] According to Asmarom and Zelalem, this principle carries two deep-rooted concepts. On one hand, it refers that law is not designed only for the discipline of the highest[55] and it also protects the lowliest whilst, on the other hand, it suggests law is perceived not only as the law is superior to any person but it also extends to natural world – fauna and flora.[56] As well, the Tulama also say, *'huuru dheeroo akka seeri, huuru gabaabo akka seeri*', referring Dog and Cat. Hence, taming or having a dog is a right for anyone, but if you have a dog protecting and feeding is mandatory.[57] Consequently, unlike conventional state laws, in the Gada system laws are issued not only for the wellbeing and governance of mankind but also for fauna and flora.

Needless to state, Gada laws are non-state laws. In the Gada system, law is issued by 'Gumii' which means assembly, while broadly it is one of Gada's institutions with the highest authority in the Gada system.[58] Asmarom succinctly described Gumii as it is made up of all the Gada assemblies of Oromo, who meet, once every eight years, to review the law, to proclaim the new laws, to evaluate the men in power, and to resolve major conflict that could not be resolved at the lower level of their judicial organization.[59]

Thus, in the vernacular of modern democracy, Gumii stands for the parliament. Nonetheless, while Gumii could be equated with the parliament of modern democracy, all parliament of modern democracy couldn't be equated with Gumii. This is because to equate a given parliament with Gumii, that parliament must be the result of the utmost fairest electoral law, accompanied by free, fair, and all-inclusive elections.[60]

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monarchy. But gradually the democratic idea continued to emerge within human history. In the West this idea began to find a clear articulation in 17th century thinkers. Glen T. Martin, The I, the WE, the IT and the Third Estate, Academia Letters, Article 4333, 2021, p.2

[52] Brian Z. Tamanaha, Th e Rule of Law and Legal Pluralism in Development, Hague Journal on the Rule of Law, Vol. 3, 2011, p. 2

[53] Zelama, Supra Note 12, p. 20

[54] Asmarom, Supra Note 14, p.201

[55] ibid

[56] Zelama, Supra Note 12, p. 20

[57] Dirribi Demissie Bokku, Oromo Wisdom in Black Civilization, Finfine Printing & Publishing S.C., April 2011, Ethiopia, p. 278 cited in Solomon Emiru, Assessing The Law-Making process, Lawmakers and the value of laws in Gadaa Democracy, Haramaya Law Review, Vol. 10, 2022, P. 106

[58] Ibraahim, Supra Note 45, p.20

[59] Asmarom, Supra Note 14, p.100

[60] Scholars argue that in the Gadaa System all types of basic law-making process legislation will become a law only if it declared and accepted by people at large. According to the Gadaa making of law procedures, anybody can oppose the drafted law by saying "*damman*

The nomenclature of Gumii across Oromo land was derived their names from the names of the places where the assembly is regularly held. To name some of them, for example, the '*Gujii's Gumii Bokkoo*' is the Congress of the Gujii confederacy held every eight years at a place called '*Me'ee Bokkoo'*.[61] Similarly, the '*Borana's Gumii Gaayoo'* is named after the name of a water well called Gaayoo, while that of the central Oromo is called Caffee since the general assembly used to take place under a highly respected Tree known as Odaa (sycamore) on the edge of prairie grass (Caffee).[62]

Nonetheless, this approach took place after the breakup of the Central Gumii into regional assemblies. In the words of Taddese, Gumii broke up into regional assemblies during the great Oromo migration of the 16th Century, and assemblies were held by different splinter communities in different places.[63] It is from such meeting places that the term Caffee is given to the assembly. Moreover, this conclusion demonstrates that the Gada system was in a better position than today in the pre- and post-medieval period. This is because, by the general convention, the medieval period covers about 1000 years, commencing with the 5th century collapse of the Roman Empire and coming to a close with the 15th century Renaissance.[64]

4. Contextualizing the Nexus between State and Gada System in the Ethiopian Legal System

Emphatically, scholars argue that, owing to their eclectic/synthetic origin from a multitude of donors, the modern Ethiopian legal system was orphaned from the moment of its birth.[65] This is owing to the fact that Ethiopian legal transplantation of the late 1950s and early 1960s went against the old perception of diffusion of laws which was bipolar – single exporter to single importer.[66]

To easily assess the evolution of the modern legal system in Ethiopia, it is better to classify it into different phases. Given that the first phase, pre-1434 period, is an era when the Ethiopian Empire had not attempted to a written law and no codified law that can be applied nationwide while the second period, the period between 1434 and 1930, is a time when the first attempt was undertaken to have a written law in the legal history of Ethiopia. The third period, the period from 1931 to the present, is considered as the era of the modern Ethiopian legal system.[67] On the other hand, some also divide the relationship between State and Customary law into three but into different

qabe; kormaan qabe;fardaan qabe; tuni, tuni sirrii miti"; which means, this law is not correct. In this opposing the declared law, no one would be silenced but they are expected to talk based on the seniority of age. see Solomon Emiru, Supra Note 3, p. 6

[61] Dhaddacha Gololcha, The Politico – Legal System of The Guji Society of Ethiopia, 2006, p. 69;

[62] see Zelalem, Supra Note 12, p.17

[63] Taddese Lencho, Chapter VII: The Spirit Of Rousseau and Borana Political Traditions: An Exercise In Understanding 'In Bekele Gutema and Charles C. Verharen (eds.)', African Philosophy In Ethiopia, Cultural Heritage and Contemporary Change Series II. Africa, Volume 15, 2013, P.97

[64] Brian Z Tamanaha, Understanding Legal Pluralism: Past To Present, Local To Global, Sydney Law Review, Vol. 30, 2008, P.377

[65] Peter H Sand, Roman law in Ethiopia: traces of a seventeenth century transplant, Comparative Legal History Vol. 8, No. 2, 2020, p. 143

[66] See generally William Twining, Diffusion Of Law: A Global Perspective, Journal Of Legal Pluralism, Nr. 49, 2004

[67] Law and Religion in Ethiopia: The Evolution of a Complex Interaction, <https://dokumen.tips/documents/law-and-religion-in-ethiopia-the-evolution-of-a-complex-interaction.html> accessed on 2 September 2021

era, viz., the imperial imported sacred tradition in the pre-modern era, the modern secular imported nation-building period under Emperor Haile Sellassie and the Derg, and the Federal System period under the FDRE Constitution.[68]

All the same, regarding the source of Ethiopian laws, there is no consensus among the scholars. Some group opined that the source of the Ethiopian legal system comprised of the *Fetha Negust* (Law of Kings), the *Kibre Negust* (Glory of the Kings), codes enacted in [late]1950s and [early] 1960s[69], whilst others argued that as there are four sources of the modern Ethiopian legal system; viz. the *Fetha Negust* (Law of Kings), the *Kibre Negust* (Glory of the Kings), codes enacted in [late]1950s and [early] 1960s, and customary laws.[70] Simply put, some assume Ethiopian customary laws as one source of the modern Ethiopian laws while for some group customary law had not been recognized as a source of the Ethiopian legal system. As a result, at this juncture, in spite of this difference, this article centers only on the issue surrounding the *Fetha Negust* and customary law as a source of the modern Ethiopian legal system.

It is argued that the first attempts to codify Ethiopian law were made by Emperor Zera Yaikob (1434-1468).[71] It is transcribed that he endeavored to make his empire to be governed by written criminal and civil law [. . .]. Consequently, he ordered scholars of the Ethiopian Orthodox Church to prepare an authoritative written code of laws. [. . .] the clergy by strongly supporting the Emperor's idea of centralized power, it drafted the law known as '*Fawse Manfasawi'* and submitted it around 1450 the law which had 62 articles – mainly on criminal matters.[72] Thus, the period from 1434 to 1930 was a period when the first attempt had been undertaken to have a written law in the legal history of Ethiopia by codifying *Fawse Manfasawi* (spiritual remedy or canonical Penance) and the *Fetha Negust* (the law of the kings).[73] Even though, chronologically, *Fawse Manfasawi* is considered as the first Ethiopian written law, some scholars argue that the first written Ethiopian law is the *Fetha Negust.*[74] This may be due to the fact that the former was mainly spiritual rather than secular in its nature.[75]

Regarding customary laws in the Ethiopian legal system, in David's testimony, in many respects, Ethiopia differs from the countries of Western Europe. Thus, no rule of any foreign law whatsoever went into the Ethiopian Civil Code without their asking whether it was suitable for Ethiopia. [. . .] he also added that the Ethiopian civil Code is a product of French legal science, but in terms of the contents of the rule in, it is no more French than Greek, Swiss, and Egyptian or English, necessarily it is an

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[68] Muradu Abdo and Gebreyesus Abegaz, Customary law: Teaching Material, Prepared under the Sponsorship of the Justice and Legal System Research Institute, 2009, p.111

[69]Ayalew, Supra Note 37, p. 7 – 8

[70]Assefa Fiseha, 'Improving Access to Justice through Harmonization of Formal and Customary Dispute Resolution Mechanisms' in Pietro S. Toggia et al. (Eds.) Access to Justice In Ethiopia: Towards an Inventory of Issues, Center for Human Rights, Addis Ababa University, May 2014, P. 105 – 7

[71]Zuzanna Augustyniak, The Genesis of the Contemporary Ethiopian Legal System, Studies of the Department of African Languages and Cultures, No 46, 2012, P. 102

[72] ibid

[73] Law and Religion in Ethiopia, Supra Note 67

[74] Norman J. Singer, The Ethiopian Civil Code and The Recognition Of Customary Law, Houston Law Review, Vol. 19, 1972, P.467

[75]Augustyniak, Supra Note 71, p.102

Ethiopian code from end to end.[76] From this statement one could infer that as far as it was possible, the drafter of the Ethiopian civil code attempted to make Ethiopian customary law one source of the modern Ethiopian law.

Nonetheless, the question awaiting reasonable response is that since Ethiopia has been a multi – ethnic country, which ethnic group's customary law was consulted to be made a source of the code or incorporated in the modern Ethiopian law. Regarding this issue, Singer pointed out that the customary laws that are said to have been incorporated in the Ethiopian law belonged to the dominant Christian – *Amhara* – whose representatives also formed the Law Revision Committee and no one represented the values of the diverse minority groups at the time.[77] If so, since single ethnic group's customary laws were consulted, could we say that the Ethiopian customary laws were made the source of the modern Ethiopian laws?

As a result, from David's and Singer's view of the inclusion of the Ethiopian customary law into the modern Ethiopian law, one could baldly understand and argue that there is no consensus on whether Ethiopian customary laws were taken as source of the modern Ethiopian laws. Thus, this is the beginning of state *vis – a – vis* non-state law disharmony, including the Gada system, in the modern Ethiopian legal system.

Linked to this evolutionary *vis – a – vis* revolutionary debates on the development of the Ethiopian Legal System is the unsettled issue to date. Sand argued that ultimately Ethiopia embarked on a gradual modernization of its entire legal system *'from above'* in the 20th century, starting with the Penal Code in 1930 and followed by the comprehensive series of six other sectoral codes in the [late] 1950s and [early] 1960s.[78] Given this scholar, the development of the so-called the modern Ethiopian law is evolutionary and also started in 1930. Then, the proper issue will be whether the development of the modern Ethiopian legal system had been evolutionary and also commenced in 1930.

The argument of the gradual development of the Modern Ethiopian law takes one to say that the development of the Ethiopian legal system had been based on the philosophy of law is mainly an outgrowth of local society, values, and traditions[79] that was started in 1930. However, appraising from the approach Ethiopia adopted its modern laws in late 1950s and early 1960s suggests Sand's argument does not seem a water holding argument. On this issue, Rene David, the drafter of the Ethiopian civil code, stated that,

> *Ethiopia was only with two options; viz., either to adopt alien's law or to waits for 300 or 500 years to have modern laws. He also added that the development and modernization of Ethiopia necessitated the adoption of a ready-made system [...] while safeguarding certain traditional values to which she remains profoundly attached. Continuing the discussion, he*

[76] Rene David, Administrative Contract In The Ethiopian Civil Code, Journal Of Ethiopian Law, Vol. IV, No.1, P.145 – 6

[77] Norman J. Singer, A Traditional Legal Institution In A Modern Legal Setting: The Atbia Dagna Of Ethiopia (1970–1971) 18 UCLA Law Review 308 as cited in Tsehai Wada, Coexistence between the Formal and Informal Justice Systems in Ethiopia: Challenges and Prospects, African Journal of Legal Studies 5 (2012), P. 276

[78] Sand, Supra Note 65, p.137;

[79] Twining, Supra Note 23, p. 287.

wrote that Ethiopia wished to modify her structures completely, even the way of life of the people.[80]

This drafter's statement indicates that the development of the modern Ethiopian legal system started in the late 1950s and early 1960s in a revolutionary method. Taking this truth into consideration, Twinning argued that like Japan and Turkey, Ethiopia is one of the few 'exceptional' 20th century cases of what he called 'diffusion of law.[81]

Unlike this revolutionary approach, the evolutionary development legal system is based on the principle that what is law ought to be what is society and *vice versa,* which means law ought to come out by mirroring socio-political values of the society it governs. Here, the term society is sensed as a pillar of all societal endowment which among others includes non-state laws like laws that flourished under the umbrella of the Gada system. So, it is a generally accepted veracity that non-state laws serve as governing law before state law and sometimes parallel it. Thus, at this juncture, it's logical to argue that the Gada system's laws should have been one source of the modern Ethiopian legal system – the state laws.

All the same, there is no consensus among the scholars on the extent of evolutionary method of legal development. In one extreme, some argue that the tenets of laws primarily from custom through an organic non-deliberate process seem valid only for private law, and only in circumstances of relative stability.[82] As to this scholar, non-state laws to be source of state laws, it ought to have stability and the state law also ought to be non-public laws.

Furthermore, regarding custom – non-state law in the context of the issue under discussion – as a source of law, there is a difference between the Historical and the Analytical School of Law.[83] As to the Historical School of Law, custom in *per se* serves as an authoritative source of law, whereas to Analytical School of Law, custom is not an authoritative source of law at all until incorporated in decision for common law legal system and legislation in continental legal system. Thus, according to the Historical School of Law, the Gada system's law serves as if it is a law, whereas as to Analytical School of Law, it serves as a law only if it is recognized and incorporated in state laws. Nonetheless, the problem with the latter school of law is not whether custom is an authoritative source or not rather whether custom is recognized as law either as judge made law or legislative act to be a law.

On the other extreme, some argue that as most of us conform to law because of more complex social and psychological processes, obedience to law lies in the idea of some inner psychological inclination whereby we accept the legitimacy or authority of the source of law.[84] This suggests that even compliance or non-compliance to law, though it may not

[80]Rene David, A Civil Code For Ethiopia: Considerations On The Codification Of The Civil Law In African Countries, Tulane Law Review, Vol. XXXVII, P.188-189.

[81]According to Twining, diffusionism represented a reaction against the prevailing nineteenth- century view that there were natural laws of evolution governing human progress. See Twining, Supra Note 23, P. 273-274.

[82] George Krzeczunowiczi, The Ethiopian Civil Code: Its Usefulness, Relation To Custom and Applicability, J.A.L, Vol. 7. No- 3, Pp.174.

[83]Tesfaye Abate, Introduction To Law and The Ethiopian Legal System Teaching Material, Prepared Under The Sponsorship of The Justice And Legal System Research Institute, 2009, p.40 seq.

[84] Phil Harris, an Introduction to Law, 7th edition, Cambridge University Press, p.7.

always be, is based on whether the source is alien or non-alien (non-state law) of a given law. It is for this reason that some opined that in Ethiopia some nations, nationalities and peoples' customary law processes have proven resistance to the incursion of modern Ethiopian state law.[85] This resistance to Ethiopian state law that was developed through revolutionary methods fortifies the assertion that law should mirror the society it governs.

Besides, this assertion is highly conjugated with the so-called Mirror Theory. This theory provides that legal systems do not float in some cultural void, free of space and time and social context rather it necessarily reflects what is happening on their societies.[86] In a nutshell, this theory states,

> *The very fact that law mirrors society, it is often said, is what makes law effective and legitimate in functioning to maintain social order. Because law reflects and bolsters prevailing social norms, the bulk of behavior conforms to these norms without the need for legal sanction, allowing law to conserve resources and maintain efficacy […] The citizenry view the norms enforced by law as their products, reflecting their way of life, manifesting their consent. Law, in turn, claims that citizens owe it obedience because it is doing their work, preserving their norms, constituting their way of life, keeping their order and allowing them to pursue their projects and enjoy life in safety and security.*[87]

Consequently, this theory conveys the message that the law is not effective if it fails to reach the heart of those to whom it is intended to apply and does not respond to their needs as well as custom and natural justice.[88] Moreover, under this theory, it is arguable that the development of the legal system is owed to be in an evolutionary approach.

Nonetheless, as will be discussed later, the development of the Ethiopian legal system had not been in line with mirror theory. As is well known, Ethiopia is one of those jurisdictions that voluntarily transplanted Western laws without being colonized by the West. In the words of Brietzke, however, the approach in which the law was transplanted in Ethiopia was similar to that found in colonial legal thinking, namely, good law in one place is good law at any place else, since there is no need to consider interactions between law and social values and structures.[89] With this thinking, Ethiopia repealed all its customary rules that were serving as a law before modernizing its legal system with the promulgation of the civil code[90] in 1960. All the same, in a country with a diversified indigenous law like the Gada system, repealing all customary law is

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[85] for detail on this point, see Dolores A. Donovan and Getacho Assefa, Homicide in Ethiopia: Human Rights, Federalism and Legal Pluralism, the American Journal Of Comparative Law, vol.15, 2003

[86] Mulugeta Getu, Departure of Ethiopian Family Laws: The Need To Redefine The Place Of Societal Norms In Family Matter, Haramaya Law Review, Vol.4.1, Pp.83-84.

[87] Brian Z. Tamanaha, Law and Society, St. John's University School Of Law, Legal Studies Research Paper Series, <http://ssrn.com/sol3/papers.cfm?abstract-id=1345204> accessed on April 15, 2021.

[88] Krzeczunowiczi, Supra Note 82, p.174.

[89] Brietzke, Supra Note 11, P. 150-151

[90] Civil Code of the Empire Of Ethiopia, 1960, Art. 3347 (1), Proclamation No.165, Negarit Gazeta, 19th Year No 2, Addis Ababa, 5th May 1960.

equivalent to the Ostrich's act of putting its head in the sand.

5. Setting the Nexus between State and Non-State Law through Hinz's and Forsyth's Observations

To point out the point under discussion succinctly, setting the nexus between state and non-state law through scholars' observations is worthwhile. In this regard, it is bearable to discuss Hinz's[91] and the Forsyths[92] models of state and non-state law relationship.

To begin with, the issue of the nexus between state and non-state laws is mainly the issue of legal pluralism in a broader sense. Scholars of the area argue that legal pluralism is everywhere[93], particularly in Africa. The Ethiopian situation is not different from that of many African countries while, unlike other African countries, it imported foreign laws voluntarily. One of the challenges of legal pluralism is the competition – conflict or peaceful coexistence – between state and non – state laws[94] which is *mutatis mutandis* applies to state and the Gada system in Ethiopia.

As was pointed out, Hinz and Forsyth are among those top scholars who tried to analysize the nexus between state *vis-a-vis* non-state law by developing their own models to identify the categories of state and non-state law relationship. Reasonably, Hinz and Forsyth had tried to locate the relationship between these two legal systems in their version in 2008 and 2007, respectively. While Hinz identified five models to appraise their relationship[95], Forsyth came out with seven models to assess the relationship of these two laws.[96] Nonetheless, the close scrutinizing of Hinz's models reveals that his models are the contraction of Forsyth's models. Be that as it may be, these scholars' models are summarized and briefed as follow one after the other.

As was alluded earlier, Hinz developed five models to assess the relationship between state and non-state law.[97] His first model is the model of Strong Modern Monism.[98] In jurisdictions with this model situation, he

[91] Prof. Manfred Hinz, who published widely in legal and political anthropology, is attempted to set the nexus between state and non-state succinctly in his article entitled 'Traditional governance and African customary law: Comparative observations from a Namibian perspective'. < https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwig_rH5vY-NAxXezgIHHRTEE6EQFnoECC8QAQ&url=https%3A%2F%2Fconstructor.university%2Ffaculty-member%2Fmanfred-hinz&usg=AOvVaw09yhapWpXHFjq0m-sKZLJU&opi=89978449> accessed on 4 May 2023 Consequently, the researcher employed Hinz's work to set the nexus between these two laws in Ethiopian legal system's context.

[92] Prof. Miranda Forsyth's scholarship is how people's diverse justice needs can best be met in contexts of multiple legal and normative orders. In search for an answer to her central analytical question, she wrote one of her interesting intellectual works that entitled 'the relationships between state and customary justice'. < https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiUpPu9xI-NAxWMcaQEHdpUKloQFnoECDIQAQ&url=https%3A%2F%2Fresearchportalplus.anu.edu.au%2Fen%2Fpersons%2Fmiranda-forsyth&usg=AOvVaw2O68jhj4DwYDdz_jVoSRCA&opi=89978449 > accessed on 4 May 2023 Owing to this, the researcher also used her work to assess the relationship between state and non-state law in Ethiopian legal system's context.

[93] Tamanaha, Supra Note 87

[94] Tsahay, Supra Note 77, p.276

[95] Hinz, Supra Note 2, p. 61 – 63

[96] Miranda Forsyth, A Typology of Relationships Between State and Non-State Justice Systems, Journal of Legal Pluralism, 2007, Nr. 56, p. 69 – 107

[97] Hinz, Supra Note 2, pp. 62 -3

[98] Id 62

argues that, non-state law would not be accepted as law in the sense of law defined by the constitution of those jurisdictions. It is a situation of jurisdiction which recognizes only sovereign command as law.

The Hinz's second model is the model of Unregulated Dualism.[99] It is a model that describes a situation that the state ignores, either explicitly or implicitly, the existence of traditional governance and non – state law, but tolerates both without formally confirming or recognizing their existence, performance and acceptance. Put otherwise, it is a situation of a jurisdiction that neither acknowledges nor rejects non-state laws.

The third model of Hinz is the model of Regulated (Weak or Strong) Dualism.[100] In jurisdictions with this model, the state confirms traditional governance and non – state law. Both enjoy their own places apart from the authority structures of state government and the law of the state. In other words, it is plural system with the state-run system on the one side and a plurality of traditional systems on the other. In the context of this model, plural systems are systems in which traditional governance and non-state law represent officially recognized semi-autonomous social fields as defined in the theory of legal pluralism while weak or strong will depend on the degree of autonomy the state accepts to grant to those semi-autonomous social fields.

His fourth model is the model of Weak Modern Monism.[101] It is model that describes a situation of the jurisdiction that takes note of the existence of traditional governance and non-state law, but does not acknowledge their existence by giving them a semi-autonomous status as in the case called the model of regulated dualism. Instead, the state provides for a set of rules that integrate traditional authority and non-state law into the overall state system. As well, according to this model, non-state law would be law of the state as any other state law.

His last model is the model of Strong Traditional Monism.[102] It demonstrates the character of the jurisdictions that have the form of traditional authority and the law in the state would be non-state law.

On the other hand, Forsyth developed seven models to assess the relationship between state and non-state law.[103] Her first model is Repression of a Non-State Justice System by the State System.[104] Conceptually, this model involves a situation in which the state actively repressing a non-state justice system by making it illegal for it to deal with cases. She argued that, if this model is entrenched in a given legal system, the non-state justice system is completely dysfunctional and abuses of human rights will be pervasive. The aim of this model is to develop homogenous legal system with no competing systems.

Forsyth's second model is the formal independence between the systems but tacit acceptance by the state of a non-state justice system.[105] In this model, while the state does not actively suppress the non-state justice system, neither does it support it. It is a situation where there is no formal recognition given to a non-state justice system, but the state turns a 'blind eye' to the fact that the non-state justice system processes the vast majority of

[99] Ibid
[100] Id 63
[101] Ibid
[102] Ibid
[103] Forsyth, Supra Note 96, 73 -107
[104] Id 73ff
[105] Id 75ff

disputes and state actors often unofficially encourage reliance on the non-state justice system. It is a situation in which the society would get the service of both systems.

Her third model is no formal recognition but active encouragement of a non-state justice system by the state.[106] This model involves the state fostering and supporting a non-state justice system at an informal level, but stopping short of endorsing its exercise of adjudicative power.

Her fourth model is limited formal recognition by the state of the exercise of jurisdiction by a non-state justice system.[107] This model involves the state's giving limited legislative recognition to a non-state justice system, but no exclusive jurisdiction, no coercive powers and very little in the way of state resources and support. An important feature of this model is that the non-state justice system is also able to make rules or by-laws for the communities it governs, although this may be limited by the requirement that such laws must be in accordance with custom and usage.

Forsyth's fifth model is a formal recognition of exclusive jurisdiction in a defined area.[108] According to this model, the state recognizes the legitimacy of the non-state system exercising exclusive jurisdiction within a defined area. This area may either be a specific geographical location, such as a village or a reserve, or a specific type of subject matter, such as family law or minor criminal matters. What is crucial in this model is that the non-state justice system makes the final decision in a particular case.

The sixth model of Forsyth is a formal recognition and the giving of state coercive powers to a non-state justice system.[109] In this model the state recognizes the right of a non-state justice system to exercise jurisdiction, and also provides support in terms of using its coercive powers to enforce decisions made by a non-state justice system. The exercise of jurisdiction is exclusive in that a person who has been dealt with by one system cannot go afresh to the other system. However, it is not exclusive in that a person may appeal from the non-state justice system to the state.

Forsyth's last model is a complete incorporation of the non-state justice system by the state.[110] This model involves incorporating the non-state justice system entirely into the state system by bureaucratizing and civilizing, and embracing it as the lowest tier in the family of courts under the Constitution.

6. Modeling the Nexus between State and Non-State Law in the Ethiopian Legal System through Hinz's and Forsyth's Models

Examining the space of the Ethiopian legal system to accommodate non-state law employing Hinz's and Forsyth's models, to get a clear picture of the nexus between state and non-state law in the Ethiopian legal system's context, is worthwhile. Thus, scrutinizing the Ethiopian legal system ensuing these scholars' models of the traditional versus the modern, or the modern in the traditional and the traditional in the modern, or the relationship between state and non-state laws, one could broadly categorize it into three periods, namely; the pre-modern legal system, the modern legal

[106] Id 79ff
[107] Id 84ff
[108] Id 89ff
[109] Id 95ff
[110] Id 102ff

system of late 1950s to 1995 and the post 1995 Ethiopian legal system.

6.1 The Nexus between State and Non-State Law in the Pre-Modern Ethiopian Legal System

Whilst some scholars argue that the era of the modern Ethiopian legal system started in 1930[111]It is more justifiable to argue that the modern Ethiopian legal system started in the late 1950s. This is because the late 1950s and early 1960s were a period during which Ethiopia adopted six systematically codified public and private codes with the help of foreign legal comparatists.[112] Owing to this, in historizing the Ethiopian legal system, the pre-1950s era is categorized into the era of the pre-modern Ethiopian legal system. Needless to state, in this era, Ethiopians were governed without comprehensive and systematized laws. Thus, in an era of the pre-modern Ethiopian legal system, Ethiopians were resolving their differences by employing their indigenous law, like the law embraced under the umbrella of the Gada system. Nonetheless, it is seldom possible to locate the relationship between state and non-state laws that was in the era of the pre-modern Ethiopian legal system in a single Hinz's and Forsyth's model.

Albeit there are so many reasons for this difficulty, the main reason is the Northern and the Southern Block scenario of the Ethiopian political system. The North Block, the area that covers most of the present Amhara and Tigray regions, started to be governed by semi-written laws like '*Fawse Manfasawi'* that was written based on Holly Bible around 1450[113] and '*Fetha Negast'* – a non-indigenous law – which is the ancient and most probably the first foreign law that was transplanted to Ethiopia.[114]

As a result, in the pre-modern legal system of Ethiopia, the Northern Block was trying to make their tradition a Christian-based and bureaucratically assisted to impose on the Southern Block of the country. On the other side, the Southern Block, unlike the Northern, was administering themselves with their pure indigenous laws. Put it otherwise, in the pre-modern legal system of Ethiopia, the Northern Block had state-assisted tradition while Southern Block was out of the reach, neither for

[111]The argument that modernization of the Ethiopian legal system had started in 1930 bases on the promulgation of the first written constitution of 1931. Nonetheless, in one side the constitution of 1931 didn't have constitutional value, and, the other side, the period from 1930 to early 1950 were a period in which public and private matters were ungoverned by systematically designed state laws. Thus, taking 1930 as the era of the beginning of modern Ethiopian legal system is not plausible.

[112] These codes are Penal Code, Commercial Code, Maritime Code, Civil Code, Criminal Procedure Code, and Civil Procedure Code. Among these codes some of them promulgated on the same day, viz. commercial code, civil code, and maritime code promulgated on 5th day of May, 1960.

[113] Augustyniak, Supra Note 71, P. 102

[114]Sand, Supra Note 65, p.116-143. The origin and how *'Fetha Negast'* was transplanted to Ethiopia is transcribed succinctly as follows. *'[...] one day a certain Petros Abda Sayd, an Egyptian by origin, found the Emperor in a sad mood. When Petros asked the emperor what the cause of his sadness was, the latter replied that he was displeased that the justice in his empire was still administered based on the Old Testament although he and his people lived in the era of the New Testament. Then Petros informed the emperor that there was a book of laws that had been compiled by the 318 Fathers of the Council of Nicaea, and was then promulgated as law by the Emperor Constantine. The book [...] has been translated into Arabic and could be found in Alexandria; why not send somebody and fetch a copy of it? Zar'a Ya'qob responded, You know the language of this country and that country. Go and bring me the book, and gave Petros 30 weqets [28 grams] of gold. Petros brought the book and subsequently translated it into Ge'ez'*. Augustyniak, Supra Note 71, p. 103

assistance nor influence, of the Northern Block's approach.[115]

Taking this truth to the Hinz's and Forsyth's models of state and non-state law relationship, the Northern Block was mainly characterized by the weak modern monism model of Henz and formal independence between the systems but tacit acceptance by the state of a non-state justice system model of Forsyth whilst the Southern Block was mainly characterized by strong traditional monism model of Henz and no formal recognition but active encouragement of a non-state justice system by the state model of Forsyth.

Consequently, in the pre-modern Ethiopian legal system the relationship between law under the Gada system and Ethiopian (state) law was the era in which the former law had strong influences and implementation than the latter. Nonetheless, the situation was happened not because the latter formally recognized the former rather because it was by the chance that the former was out of the reach of the latter law's influence.

6.2 The Nexus between State and Non-State Law in the Ethiopian Legal System from the Late 1950s to 1995

By and large, the period from the late 950s to 1995 was a period when non-state law and state law relationship hostility reached a pressing stage. As well, it could also be dubbed as the period of '*the tyranny of state laws over non-state laws*. As it was discussed, the so-called modernization of the Ethiopian legal system was launched in full-fledged form in the late 1950s with the promulgation of codes. Nonetheless, to appraise the nexus between state and non-state law in the modern Ethiopian legal system from the late 1950s to 1995, this article focuses on the pertinent provisions of the civil code.[116]

There is consensus among scholars that the modernization of the Ethiopian legal system was undertaken with the flavor of *Fetha Negest.*[117] As a result, some described the Ethiopian civil code as a '*new form of Fetha Negust, or Europeanized Fetha Negust'*[118] taking the emperor's preface of the code. As it was indicated, *Fetha Negust* was imported and adapted to the Northern Block traditional sentiment.

On the other side, the emperor in the preface of the code stated something paradoxical when it is assessed from the origin and design of *Fetha Negust.* He stated that;

> *No law which is designed to define the rights and duties of our people and to set out the principles governing their mutual relations can ever be effective if it fails to reach the heart of those to whom it is intended to apply and does not respond to their needs and customs, and natural justice. In preparing the Civil Code, the Codification Commission convened by us and whose work we have directed has constantly borne in mind the special requirements of our empire and of our beloved subjects and has been inspired in its labours by the genius of Ethiopian legal*

[115] See generally Hailegebriel G. Fayisa, The Ethiopian Civil Code Project: Reading A 'Landmark' Legal Transfer Case Differently, PhD Dissertation, November 2017, P.95, 103

[116] Civil Code Proclamation, 1960, Proclamation No. 165, Negarit Gazeta Gazette Extraordinary, Year 19th, No.2

[117] Sand, Supra Note 65, P.138

[118] Hailegebriel, Supra Note 115, P.95, 103

> *traditions and institutions as revealed by the ancient and venerable Fetha Negust.*[119]

This quote, in the one hand, suggests that law is ineffective unless it mirrors the traditions and social life of the people it governs. For this reason, the codification process of the civil code took *Fetha Negust* as its bedrock. On the other hand, it suggests that *Fetha Negust* had been reflecting the culture and tradition of all nations, nationalities, and people of Ethiopia. Moreover, the worst sentiment of this preface is that the tradition and culture of the Northern Block is also that of the Southern Block which is completely wrong. Nonetheless, it seems as it was not done inadvertently but rather advertently to impose the Northern Block's culture and tradition on the Southern Block. As a result, scholars argue that the codification of the code was done with dual purposes; viz., anti-semi colonial (externally) and imperial (internally)[120] to impose Northern Block's tradition on the Southern Block. To explain the inappropriateness of this purpose of the code, in 1974 Brietzke wrote that this disregard of the traditions of *non-Amhara* cultural groups will create problems if the code norms seriously impinge upon traditional laws in the future.[121]

About the point under discussion, this paradox has taken the end of the nexus between state and non-state law to the unwarranted destination. Taking *Fetha Negust* as it was the reflection of all Ethiopian traditions and bedrock of the source of the code, it comes with sweepingly repealing provision of the code which states,

> '. . . *unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed.*[122]

Thus, Article 3347 of the Civil Code is the provision that governs the nexus between state and non-state laws in the modern era of the Ethiopian legal system that ranges from the late1950s to 1995. Taking Ethiopian situation of this era to the Hinz's and Forsyth's models of the relationship between state and non-state law, it falls in the strong modern monism model of Hinz and the repression of a non-state justice system by the state system model of Forsyth. Consequently, the modern era of the Ethiopian legal system from late 1950s to 1995 was an era in which the nexus between law in the Gada system and state law was unfriendly.

Consequently, the Ethiopian legal system that had existed from the late 1950s to 1995 is characterized by its extreme centralist approach as well as its lack cultural sensitivity and relevance. As described earlier, the centralist ideology pursued in Ethiopia was based on the belief that law is and should be the law of the state, uniform for all persons, exclusive of all other laws, and administered by a single set of state institutions.[123] This was because during that period, all non-state laws,

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[119] Paragraph two of the preface of the civil code

[120] Hailegebriel, Supra Note 115, p.96

[121] Brieztke, Supra Note 11, P.155

[122] Article 3347 of the Civil Code; regarding this approach of Ethiopian legal system reforming, Muradu states that in 1950s to 1960s Ethiopia were striving to replace its customary laws with western laws while other African countries were exploring and contesting on how to implement their modern and customary law in harmony. See Muradu Abdo, Major Themes in the Study of Ethiopian Customary Laws (Amharic), Vol. 16, No. 2, Mizan Law Review, p. 423 – 454

[123] Aberra Degefa, Legal Pluralism in Multicultural Setting: Legal Appraisal of Ethiopia's Monist Criminal Justice System 'in Elias N. Stebek and Muradu Abdo (Editors), Law and Development, and Legal Pluralism in Ethiopia', Justice and Legal Systems Research Institute, Addis Ababa, 2013, P.142

including laws under the umbrella of the Gada system, were denied any role in almost all spheres of societal relationships.[124]

6.3 The Nexus between State and Non-State Law in Post-1995 The Ethiopian Legal System

As it is well known, 1995 was the year in which the constitution of the Federal Democratic Republic of Ethiopia (FDRE) was adopted with a new approach in the nexus between state and non-state law arena. Even though the constitution was adopted with so many departures from its predecessor constitutions, here the focus of this article will be only on its provisions about the nexus between state and non-state laws. Given the fact that all previous Ethiopian rulers have pursued a complete assimilationist and unitarist policy in the realm of legal and political arrangements, this constitutional departure deserves great commendation. One of the reasons for this praise is the recognition it gives for multiculturalism and legal pluralism are the main ones.[125]

Just the same, generally, there is a consensus among the scholars that the FDRE Constitution recognizes non-state laws and non-state institutions of nations, nationalities, and peoples in Ethiopia.[126] To argue so, scholars base, *inter alia*, articles 9, 40, 34(5), 37, 39(2), and 78(5) of the FDRE Constitution. Simply put, per these provisions, the constitution recognizes indigenous laws and institutions. Moreover, unlike its predecessor, it is claimed that as far as the Constitution has given space to the possible adjudication of disputes relating to personal and family laws based on religious or customary laws and it has provided for the possible establishment or recognition of religious and customary courts, the constitution has attempted to accommodate legal pluralism.[127]

Here the term '*legal pluralism'* is used to describe the co-existence of two or more legal systems within the same geographical space or jurisdiction.[128] It is argued that in almost all parts of the world, legal pluralism is a reality that includes the formal justice system – national law and international law – and informal justice systems – customary law, religious law, and other normative orders.[129]

Consequently, one could argue that the FDRE constitution shares some characteristics of what Henz called the *'new African constitutionalism'*. On the one side, the concept of new African constitutionalism, per Henz, is characterized by the notion of constitutional supremacy and the binding force of human rights and freedoms and, on the other side, by the confirmation of traditional governance and African customary law.[130]

Taking this stand of the FDRE constitution to the Henz's and Forsyth's models of the nexus between state and non-state law, the post 1995

[124]Tsahay, Supra Note 77, p.276

[125]Aberra, Supra Note 123, p. 145

[126] See, as an instance, Yidnekachew Kebede et al., Case Study on Seven Customary Laws in Ethiopia, in Elias N. Stebek and Muradu Abdo (Editors), Law and Development, and Legal Pluralism in Ethiopia', Justice and Legal Systems Research Institute, Addis Ababa, 2013, p.195,

[127]Aberra, Supra Note 123, p. 146

[128] William Twinning, Normative and legal pluralism: A global perspective, Duke Journal of Comparative and International Law 20, 2010, 473–517

[129]Aberra Degefa, When Parallel Justice Systems Lack Mutual Recognition: Negative Impacts On The Resolution Of Criminal Cases Among The Borana Oromo, P. 312, <https://www.degruyter.com/document/doi/10.14361/9783839450215-015/html> last visited on august 25, 2021

[130]Hinz, Supra Note 1, p.86,

Ethiopian legal system shares some characteristic of the strongly regulated dualism model of Henz while limited formal recognition by the state of the exercise of jurisdiction by a non-state justice system model Forsyth. Consequently, assessing the relationship between state and non-state law perspectives, the post-1995 Ethiopian legal system is better than its predecessors in providing space for non-state law.

However, a scrutiny of the FDRE constitution reveals that the non-state law has not yet been fairly recognized in the post-1995 Ethiopian legal system. This is mainly because the recognition does not encompass all areas of law, but rather only a limited area of private law. Nonetheless, the recognition should have been to the extent of non-state laws' applicability by state courts, which *mutatis mutandis* concerns the applicability of law in the Gada system by state courts in Oromia Regional State.

From this discussion, one could simply synthesize that the earlier assumption that law is the monopoly of the state and the consolidation of lawmaking power in the hands of the state was an essential aspect of the state-building process[131] is still deeply rooted in the Ethiopian legal system. Moreover, taking this assumption to the relationship between state and non-state law discourses in the present Ethiopian legal system reveals that state courts in Ethiopia have a responsibility to apply only state law, but not non-state law, like laws under the umbrella of the Gada system, to resolve disputes. As well, non-state law can be employed to solve a limited private law-related matters. Consequently, as all things stand now, the Ethiopian legal system has limited space for non-state law.

7. Conclusion and Recommendations

In this article, the discourse on the relationship between state law and non-state law, particularly the Gada system, is appraised. It revealed that the relationship between these two laws, albeit there is a degree of hostility in different periods, has co-existed in disharmony since the modern law incubation in Ethiopia. The main reason for their hostile relationship is the distorted political minds behind the Ethiopian modern legal system that did not envisage the role of non-state law in general and laws in the Gada system in particular in maintaining social tranquility. Due to this distortion, the development of the Modern Ethiopian legal system commenced with the importation of *Fetha Negest* in the 16th century and ended up with the *Europeanized Fetha Negest* in the 20th century. *Fetha Negust* was imported and processed in the Northern Block mentality and then imposed on the Southern Block. In this process, integrating non-state law in the modern Ethiopian legal system in general and that of the Southern Block, including law in the Gada system, in particular, was neglected. This completely makes non-state laws, including the Gada system, a superfluous one.

As recommendations, the following point is forwarded as a way out.

- Even though non-state law, particularly law in the Gada system, has so many unique features and far-reaching benefits in protecting the common good of Ethiopians, it has not received a fair focus in all periods of the modern Ethiopian legal system. Nonetheless,

[131] Tamanaha, Supra Note 52, p.380

now it is mandatory to curb the past tendency by seriously working on non-state law. Thus, governmental institutions and Higher Education institutions must ensure that the non-state laws are documented and preserved for future generations as well as for research purposes.

- As was discussed, a legal system of a given jurisdiction can be effective and simply implemented only if it is a reflection of the character of the society it governs. Against this truth, however, the political mind behind the Ethiopian modern legal system did not recognize the role of non-state law in general and the Gada system in particular could play in preserving social tranquility. Even though the deep-rooted hostility between state and non-state law in the pre-1995 Ethiopian legal system was softened by the FDRE constitution in post-1995, it still needs to expand the space for non-state law. That is to say, the space should be to the extent of non-state laws' applicability by state courts, which *mutatis mutandis* concerns the applicability of law in the Gada system by state courts in Oromia Regional State.
- As it was shown, in Ethiopia, the relationship between state and non-state laws is not mutually supportive and cooperative. This applies *mutatis mutandis* to the relationship between the state and the Gada system's laws. This suggests the need to reform the relationship between the state and the non-state law to maximize the chances of these laws to support and cooperate in performing the tasks for which they are best suited to their fullest potential, and complement each other's weaknesses with their strengths. Consequently, the Ethiopian legal system should be revised in a way that gives chances for non-state laws to maintain the common good of the nation.

WJLAW, Febr-June.2025,2(2), 56-75)
DOI: https://doi.org/10.20372/wjlaw.v2i2.1651
ISSN: 2226-7522 (Print) and 3005-7612 (Online)
Wallaga University Journal of Law
WJLaw, February- June. 2025, 2(2), 56-75
Home Page: https://journals.wgu.edu.et

Original Article

The Ethiopian Legal Frameworks for the Protection of Stateless Persons

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Abstract

This paper examines the legal protections available to stateless persons in Ethiopia, highlighting the significant challenges posed by the absence of specific laws addressing their rights. The paper explores international and regional legal instruments, which outline the rights and protections afforded to stateless persons; although Ethiopia is a signatory to some of these instruments, the effectiveness of their implementation at the national level remains limited. It further analyzes Ethiopia's national legal framework, including the FDRE Constitution, the Ethiopian Nationality Proclamation No. 378/2003, and other related laws. This paper aims to pinpoint the gaps in the existing legal frameworks, particularly how these laws address (or fail to address) the rights of stateless persons, identifying gaps such as the lack of clear procedures for acquiring nationality, insufficient protections against statelessness arising from birth, and the absence of targeted legal provisions for stateless individuals. It also attempts to fill existing legal gaps, enhance the protection of stateless persons, and contribute to reducing statelessness in Ethiopia. By highlighting these issues and proposing concrete legal reforms, the article seeks to improve the legal environment for stateless persons in Ethiopia. The paper concludes by advocating for the enactment of specific legislation tailored to protect stateless persons in Ethiopia.

Article Information

Article History:
Received: 22-02-2025
Revised: 27-03-2025
Accepted: 25-04-2025

Keywords:
Ethiopia, Stateless Person, Legal, Protection, Statelessness

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Acronyms

ACRWC:African Charter on the Rights and Welfare of the Child

CEDAW:Convention on the Elimination of All Forms of Discrimination against Women

CERD: Convention on the Elimination of All Forms of Racial Discrimination

CRC: Convention on the Rights of the Child

CRPD: Convention on the Rights of Persons with Disabilities

CRSSP:Convention Relating to the Status of Stateless Person

ENP: Ethiopian Nationality Proclamation

FDRE:Federal Democratic Republic of Ethiopia

ICCPR: International Covenant on Civil and Political Rights

ICESCR:International Covenant on Economic, Social, and Cultural Rights

ICMW:International Convention on the Protection of the Rights of All Migrant Workers

IDPs: Internally Displaced Persons

UDHR:Universal Declaration of Human Rights

Introduction

Statelessness is the worst possible result of the violation of the right to a nationality.[1] It is clear that the synonyms, nationality and citizen ship serves as a crucial link connecting an individual to a specific state.[2] The laws governing nationality, along with the principles that underpin these laws, contribute to the phenomenon of statelessness.[3] Although, the issue of statelessness is not a recent development, it has recently attracted global attention as nations adopt policies that strip individuals of their citizenship to sanction those deemed undesirable.[4] Stateless individuals are those who do not hold citizenship in any nation.[5] This situation arises from their exclusion from nationality, leading them to feel as though they do not belong anywhere.[6] For example, in 2024, around 12 million peoples were known as stateless globally.[7] While some are born without nationality, others may become stateless later in life.[8] Notably, a person may become stateless as a result of the following factors: discrimination of minority groups,[9] emergency

[1] R.P. Choudhary, "Causes of Statelessness", *Pramana Research Journal,* Volume 8, Issue 3, (2018), pp.154-156

[2] Samuel Bizen Abraha, 'The protections of Stateless persons in the African Human Rights Systems', University of Pretoria, (31 October, 2012), p.10, available at: <https://repository.up.ac.za/server/api/core/bitstreams/f2f19423-7b5d-4f8e-b7c2-6d2c8f2add60/content> [accessed on 15 April,2025]

[3] Ibid

[4] Aimée-Noël Mbiyozo, "Statelessness: an Old Problem with new Threats" *Institute of Security Studies*, (13 November 2019), available at: <https://issafrica.org/iss-today/statelessness-an-old-problem-with-new-threats> [accessed 20 April, 2025]

[5] Samuel Bizen Abraha*, supra* note 3

[6] Ibid

[7] UNHCR, 'Protecting the Rights of Stateless Persons: The 1954 Convention relating to the Status of Stateless Persons', (2024), available at: <https://www.unhcr.org/wp-content/uploads/sites/91/2024/01/ENUNHCR-Protecting-the-Rights-of-Stateless-Persons.pdf> [accessed on 25 April, 2025]

[8] UNHCR, 'The #IBelong Campaign was launched in November 2014 with the goal of ending statelessness within 10 years', (2024), available at: <https://www.unhcr.org/ibelong/about-statelessness/> [accessed on 29 May, 2025]

[9] Factsheet: How does someone become stateless? *Peter McMullin Centre on Statelessness:* Melbourne Law School, (February 2023), pp. 1-3. <https://law.unimelb.edu.au/centres/statelessness/education/factsheet/how-does-someone-become-stateless> [accessed on 29 May, 2025]

of new state,[10] decolonization,[11] gaps in nationality laws or conflicts of law between countries,[12] denationalization/deprivation of nationality,[13] and lack of birth registrations to prove a person's place of birth and parentage.[14] More importantly, the majority of the world population is unaware of statelessness and the problem related to it.[15] That is why stateless persons are mostly considered as forgotten, and their identification remains a series challenge.[16] In essence, a person's nationality gives them a sense of identity, and grants them a number of rights, but due to lack of nationality they cannot exercise their rights under the operation of the law.[17] Consequently, stateless persons are more susceptible to human rights violations, and they face legal challenges primarily related to access to birth registration, identity documentation, education, health care, legal employment, property ownership, political participation, and freedom of movement.[18] In order to address the problem of statelessness international community has been working for a long time.[19]Accordingly, some international Conventions affirmed that all types of statelessness should be put an end, and the right to nationality has been protected under various international and regional instruments.[20]
However, based on international law of statelessness definition it is not possible to provide statics on how many peoples are stateless in the horn of Africa[21] including Ethiopia. A research revealed that there are potential stateless individuals/groups at risk of statelessness in Ethiopia,[22] but due to lack of continuous assessment of the condition, the level of the problem remains unknown.[23] For instance, the conflict between Ethiopia and Eritrea from 1990 to 2000 created more than 75,000 stateless persons (people of Eritrean descent and of mixed Eritrean-Ethiopian descent living in Ethiopia) due to mass expulsion and being stripped of their civil status.[24] In this case, Ethiopia deprived their nationality rights due to unclear nationality status, and lax laws against statelessness following Eritrea's formation.[25] Nowadays, even if there is high tension between Ethiopia and Eritrea, there is a fear that history repeats itself.
The recent forcibly displaced high number of Internally Displaced Persons (IDPs) situation in Ethiopia also challenges the right to

[10] R.P. Choudhary, *supra* note 2
[11] Factsheet, *supra* note 10
[12] Ibid
[13] USA for UNHCTR, (August 22, 2023), available at: <https://www.unrefugees.org/news/statelessness-explained/> [accessed on 29 May, 2025]
[14] R.P. Choudhary, *supra* note 2
[15] Samuel Bizen Abraha, *supra* note 3, p.1.
[16]ISL Qatar Model United Nations, 'Humans Rights Commission: Measures to Eradicate and Prevent Statelessness', Fourth Annual ISLMUN Conference (12-13 January 2018), p.3
[17] Samuel Bizen Abraha, *supra* note 3
[18] Ibid
[19] Petter Danckwardt, 'Statelessness and the Rewriting of Rights: The Legal Development in Sweden as a Case inPoint', (16 April, 2025), available at: <https://www.ejiltalk.org/statelessness-and-the-rewriting-of-rights-the-legal-development-in-sweden-as-a-case-in-point/> [accessed on 30 May, 2025]
[20] Ibid
[21] UNHCR, 'Citizenship and Statelessness in the Horn of Africa', (December 2021), p.1
[22] Ibid
[23] Ibid
[24] Human Rights Watch (HRW), The Horn of Africa War: Mass Expulsions and the Nationality Issue, A1503, (30 January 2003), available at: <https://www.refworld.org/reference/countryrep/hrw/2003/en/18587> [accessed 22 June 2025]
[25]'Ethiopia-Eritrea: Statelessness and State Succession', available at: <https://www.fmreview.org/southwick/> [accessed 22 June 2025]

nationality that can lead to statelessness.[26] Similarly, for refugees in protracted situation documentation is difficult for those who fled into Ethiopia and never registered as refugees.[27] In this case, when the nationality of the refugees was not determined for long period of time, there may be a chance of statelessness. Other groups at risk of statelessness in Ethiopia are cross-border populations, such as nomadic and pastoralist communities, as well as those affected by border disputes.[28] Thus, the aforementioned facts show the seriousness of statelessness in Ethiopia that needs more attention. In addition, B Manby affirms that stateless persons are among the most vulnerable category of persons in the African society, as they cannot vote, stand for governmental office, enroll their children inn schools, travel free, or own property, etc.[29] This indicates that like refugees, women, disabled persons, children, IDPs, and others, stateless persons are in need of special protection. However, in Ethiopia there is no specific law that prohibits all forms statelessness, and even in the existing laws there is no single provision that explicitly protect the rights of stateless persons.

The purpose of this article is examining the protection against stateless persons in Ethiopia. Section one explores the definition of Stateless Persons. Section two examines Stateless Person's Protection under International/Regional Law. Section three dealt with Protecting Stateless Persons at National Level. The Federal Democratic Republic of Ethiopia Constitution, Ethiopian Nationality Proclamation No.378/2003, and other related laws briefly discussed in this section. The article finalized with the conclusion.

1. Definition of Stateless Person

Today, the absence of uniform definition over who specifically is to be considered as "stateless person" remains a key problem.[30] This is because statelessness varies from state to state.[31] The term stateless person is for the first time defined under Article 1 of the 1954 Convention Relating to the Status of Stateless Persona (CRSSP) as a person who is not considered as a national by any state under the operation of its law.[32] This definition being considered as part of Customary International Law,[33] hence no state can deny the existence of stateless people, or have an opposing definition.[34] According to this provision the person concerned is not considered as a national by any State … under the operation of its law, and by any State,[35] even though the term is not used in the Convention, the person

[26] UNHCR, 'Ethiopia Refugees and Internally Displaced Persons', (31 January, 2025)

[27] UNHCR,' Statelessness and Citizenship in the East African Community', (September 2018)

[28] For example, the "Ilemi triangle" on the Kenya-South Sudan-Ethiopia border was never clearly delineated during the colonial period and is claimed by all three countries.

[29] B Manby, Citizen Ship Law in Africa: *A Comparative Study*, (2010), p.1

[30] Bianchini, K, "Protecting Stateless Persons: The Implementation of the Convention Relating to the Status of Stateless Persons across EU States", Brill/Nijhoff, (22 Mar 2018). DOI: https://doi.org/10.1163/9789004362901_010.

[31] Ibid

[32] The 1954 Convention Relating to the Status of Stateless Persona, (1954), Article 1 (1) (CRSSP)

[33] International Law Commission (ILC), Draft Articles on Diplomatic Protection with Commentaries, as contained in Report of the International Law Commission: Fifth-English Session, UN Doc A/61/10,1 (Oct 2006),pp.48-49

[34] The Rights of Non-Citizens: Refugees and the Stateless, available at:<https://shapesea.com/wp-content/uploads/2016/02/HR-Textbook-Ch-6-Refugees-and-Stateless-Ed-1.pdf> [accessed on 25 April 2025]

[35] Amsterdam International Law Clinic, the Concept of 'Stateless Persons' in European Union Law: Final Report Sponsored by the Euro-Mediterranean Human

who fall within the scope of Article 1 (1) are sometimes referred to as *de jure*.[36] Accordingly, the person who qualifies under this definition is referred as *de jure* stateless.

As a result, the appraisal of the term *de jure* dependent on a point of law, or the existence (absence) of a formal bond of nationality without pausing to consider the quality or effectiveness of citizenship.[37] Commonly, *de jure* stateless persons are persons who are not nationals of any State, either at birth or subsequently they were not given any nationality, or during their lifetime they lost their own nationality and did not acquire a new one.[38]

Besides, *de facto* statelessness occurs when the rights protection that the state provides for its nationals is ineffective.[39] As a result, *de facto* stateless persons are those who, after having left the country of which they were nationals, are no longer protected and assisted by their national authorities. This is because either those authorities refuse to provide them assistance and protection, or they themselves reject the protection and assistance of their home countries of which they are nationals.[40] Consequently, *de facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons are unwilling to avail themselves of the protection of that country.[41] Persons who have more than one nationality are *de facto* stateless only if they are outside all the countries of their nationality and are unable, or for valid reasons, are unwilling to avail themselves of the protection of any of those countries.'[42] In sum, since the definition under CRSSP considered as part of Customary International Law, Ethiopia cannot deny their existence, and has the duty to accept the definition.

2. Stateless Person's Protection under International/Regional Law

Basically, after World War II the need for international action to protect stateless persons became apparent.[43] The 1954 Convention Relating to the Status of Stateless Persons (CRSSP), which Ethiopia not state party is the only international treaty particularly regulating the standards of treatments for stateless persons.[44] It plays a crucial role in ensuring the protection of susceptible stateless persons.[45] According to Article 1 (1) of CRSSP stateless person is a person not considered as national under the law of any state.[46] In addition, the

Rights Monitor (August 2017), pp.9-10, available at: <https://euromedmonitor.org/uploads/reports/Stateless-EN.pdf> [accessed on 25 April 2025]

[36] UNHCR, Guidelines on Statelessness No.1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons, HCR/GS/12/01, (20 February 2012)

[37] Van Waas, L.: 'Nationality matters: *Statelessness under International Law',* (2008) p. 20

[38] A Study of Statelessness United Nations, Lake Success - New York E/1112; E/1112/Add.1 (August 1949), p.7, available at: <https://www.unhcr.org/media/study-statelessness-united-nations-august-1949-lake-success-new-york> [accessed on 17 April 2025]

[39] Kun-Feng Tu, 'The Right of Stateless Peoples-Reconsidering Statelessness, Rightlessness, and the Right to Have Rights' A Thesis submitted in Partial Fulfillment of the Requirement for the Degree of Doctor of Philosophy in Politics and International Studies *University of Warwick*, Department of Politics and International Studies (June 2022), p.27

[40] Eric Fripp and Katia Bianchini, 'Statelessness', available at: <https://rightsinexile.org/special-issues/statelessness/> [accessed on 17 April 2025]

[41] UNHCR, 'Expert Meeting–UNHCR and 'De facto' Statelessness', (2010), available at: <http://www.unhcr.org/4bc2ddeb9.html> [accessed on 16 April, 2025]

[42] Ibid

[43] UNHCR, Handbook on Protection of Stateless Persons, under the 1954 Convention Relating to the Status of Stateless Persons, Geneva, (2014), P.3

[44] CRSSP, *supra* note 33

[45] UNHCR, *supra* note 37

[46] Id, p.11

Convention under Article 1 (2) outlined that the conditions under which a person who fit the definition of stateless person are excluded from the protection of this treaty.[47] According to this provision, the Convention does not apply to persons there are series reasons they have committed against peace, war crime or crime against humanity,[48] or they have committed a series nonpolitical crime outside their country of residence prior to their admission to that country,[49] or they have been guilty of acts contrary to the purpose and principles of United Nations.[50]

Bestowing to the CRSSP, those who meet the definition are entitled to certain rights and obligations contained there.[51] It also does not cover *de facto* stateless persons; however they are entitled to protection under international human rights law.[52] Additionally, CRSSP delineates the minimal set of human rights to which stateless persons are entitled. These include but are not restricted to the right to education,[53] shelter,[54] work,[55] association,[56] access to courts,[57] freedom from religion,[58] the right to administrative assistance,[59] a right to identity,[60] travel document,[61] freedom of movement,[62] the right to exempt from reciprocity requirement,[63] etc. the CRSSP also obliges all stateless individuals to obey the laws and rules of the country in which they are located.[64] Likewise, some obligations are imposed on state parties to the convention in relation to facilitating assimilation and naturalization of stateless persons.[65]

The 1961 Convention on the Reduction of Statelessness (CRS) is also the other main international instrument that aims to prevent and reduce statelessness by ensuring every individual's right to nationality.[66] According to Article 1 of the CRS contracting state shall grant its nationality to a person born on its territory who would otherwise be stateless.[67] This means that a child is entitled to the nationality of the country where they are born if that child does not have any other nationality or is not able to acquire any other nationality. States are required "to grant their nationality to children who would otherwise be stateless and have ties with them through either birth in the territory or descent" However; as guaranteed under Article 1 (2) of the CRS contracting states are permitted to set certain optional conditions before granting nationality to a person born in the territory who would otherwise stateless.[68]

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[47] CRSSP, *supra* note 33, Article 1 (2)

[48] Id, Article 1 (2) (a)

[49] Id, Article 1 (2) (b)

[50] Id, Article 1 (2) (c), See also Article 1 (2) (I and ii), circumstances that led the Convention does not apply to specific persons.

[51] UNHCR, 'Protecting the Rights of Stateless Persons: The 1954 Convention relating to the Status of Stateless Persons', Geneva (September 2010),p.3, available at: <https://www.unhcr.org/wp-content/uploads/sites/91/2024/01/ENUNHCR-Protecting-the-Rights-of-Stateless-Persons.pdf> accessed on 25 April 2025

[52] Ibid

[53] CRSSP, *supra* note 33, Article 22

[54] Id, Article 21

[55] Id, Article 17, 18, and 19

[56] Id, Article 15

[57] Id, Article 16

[58] Id, Article 4

[59] Id, Article 25

[60] Id, Article 27

[61] Id, Article 28

[62] Id, Article 26

[63] Id, Article 7

[64] Id, Article 2

[65] Id, Article 32

[66] The 1961 Convention on the Reduction of Statelessness, (1961) (CRS)

[67] Id, Article 1(1)

[68] Id, Article 1 (2) (a-d), these requirements include:

Furthermore, CRS establish the circumstances in which loss and deprivation of nationality are bearable.[69] According to this convention an individual should not lose or be deprived of his/her nationality, if that led to stateless.[70] However, there are two circumstances where contracting states are allowed to withdraw nationality or loss of nationality is permitted: if a person resides abroad for at least seven consecutive years[71] and where persons who were born abroad and are not resident in the State when they attain majority.[72] Similarly, there are some limited exceptions whereby contracting states may lawfully deprive a person's of nationality, even where it may render statelessness, such as where the person obtained their nationality by misrepresentation or fraud,[73] and when a person show disloyalty to the state.[74]

In addition, the CRS prohibits deprivation of a person or group of person of their nationality based on racial, ethnic, religious, or political grounds.[75] Unlike the above provisions, there are no exceptions to this prohibition as enshrined under Article 9. Lastly, the convention describes measures to avoid statelessness in the event of state succession, including the cession of territory from one state to another and the creation of new states.[76] Essentially, disputes between states concerning the interpretation or application of the convention, which cannot be settled by other means, are to be submitted to the International Court of Justice.[77]

Furthermore, international human rights instruments also safeguarded human rights for every person, including stateless persons. In this context, the right to stateless persons can be protected through the right to nationality guaranteed as a fundamental right in the each treaty.[78] At United Nation's level the first effort to address the problem of statelessness is the Universal Declaration of Human Rights (UDHR).[79] According to Article 15 of the UDHR, every state has the rights to nationality[80] and that no one shall be arbitrary neither deprived of their nationality nor denied the right to change their nationality.[81] This

That the person has always been stateless, and/or the person has habitually lived in the territory of the state for up to five years, or/and that the person has not been convicted of an offence against national security nor been sentenced to imprisonment for 5 or more years on a criminal charge.

[69] UNHCR, Guidelines No.5, (2020), para.101

[70] CRS, *supra* note 67, Article 7 and Article 8 (1)

[71] Id, Article 7 (4)

[72] Id, Article 7(5)

[73] Id, Article 8 (2)

[74] Id, Article 8 (3) provides that:

Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time: (a) that, inconsistently with his duty of loyalty to the Contracting State, the person (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, o (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State; (b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

[75] Id, Article 9

[76] Id, Article 10 (2)

[77] Id, Article 15

[78] The Institute on Statelessness and Inclusion (ISI), 'The World's Stateless: Deprivation of Nationality', (March 2020), p. 19, available at: <https://files.institutesi.org/WORLD's_STATELESS_2020.pdf> [accessed on 25 April 2025]

[79] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA res 217 A(III) (UDHR)

[80] Id, Article 15 (1)

[81] Id, Article 15 (2)

shows statelessness, or the condition of having no legal or effective citizenship is a critical problem.[82] At this juncture, as the term citizenship and nationality are synonymous, these words can be used interchangeably.[83] According to Monica Gancer, the UDHR at the same time recognizes both the right to one's nationality and the right to change one's nationality, and the prohibition of arbitrary deprivation of these rights.[84] Similarly, the 1957 Convention on the Nationality of Married Women[85] repeated the right to a nationality and the right not to be deprived of a nationality guaranteed under UDHR.[86] Thus, despite certain limitations, the UDHR attempts to grant the right to acquire a nationality to stateless persons.[87]

Afterward, several international human rights instruments contain provisions targeted to protect stateless persons. Principally, the International Covenant on Civil and Political Rights (ICCPR)[88] that Ethiopia is state party[89] recognize additional and specific rights of the child.[90] The ICCPR in Article 24 (1) specifically prohibits discrimination against stateless children or born from stateless parents on any ground. It also safeguards the right of every child including stateless child for registration immediately after birth. State parties are obliged to ensure that all children born in their territory are registered that protect them from statelessness. Similarly, the ICCPR under Article 24 (3) protects the rights of every child to obtain nationality aiming to prevent them from stateless. Similarly, the Convention on the Rights of the Child (CRC)[91] to which Ethiopia is member state[92] protects every child from being stateless. It asserts that every child has the right to acquire a nationality,[93] and right to be registered immediately after birth.[94] The CRC under Article 7 (2) highlights the obligation of States Parties to guarantee that no child is stateless. Pursuant to Article 8 of the CRC, states are required to respect the child's right to preserve his or her identity, including nationality, name, and family relations as recognized by law without unlawful

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[82] David Weissbrodt and Clay Collins, 'The Human Rights of Stateless Persons', *Human Rights Quarterly,* Vol. 28 (2006) 245-276, P. 246, available at: <http://www.mcrg.ac.in/RLS_Migration/Reading_List/Module_E/5.%20The%20Human%20Rights%20of%20Stateless%20Persons.pdf> [accessed on 16 April 2025]

[83] Ibid

[84] Mónika Ganczer, 'The Right to a Nationality as a Human Right', (2014), p.15, available at: <https://doi.org/10.5553/HYIEL/266627012014002001002> [accessed on 25 April 2025]

[85] UN General Assembly, Convention of the Nationality of Married Women, A/RES/1040, UN General Assembly, (29 January 1957), available at:<https://www.refworld.org/legal/resolution/unga/1957/en/7204> [accessed 16 June 2025]

[86] UNHCR, 'Nationality and Statelessness: A Handbook for Parliamentarians', *Inter-Parliamentary Union,* (2005), P. 13, available at: <https://peacemaker.un.org/sites/default/files/document/files/2022/07/nationalitystatelessnesshandbookenglishunhcr2005j0.pdf> [accessed on 20 April 2025]

[87] Mónika Ganczer, *supra* note 85. See also Convention on the Nationality of Married Women (1957)

[88] International Covenant on Civil and Political Rights (adopted 16 December 1966 and entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

[89] Ethiopia acceded to ICCPR on 11 June 1993

[90] ICCPR, *supra* note 89, Article 24 state that: 1)every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. 2) Every child shall be registered immediately after birth and shall have a name. 3) Every child has the right to acquire a nationality.

[91] Convention on the Rights of the Child (adopted on 20 November 1989 entry into force 2 September 1990) (CRC)

[92] Ethiopia acceded to CRC on 14 May, 1991

[93] CRC, *supra* note 92, Article 24 (3)

[94] Id, Article 7 (1)

interference,[95] and deliver appropriate assistant and protection to illegally deprived child to re-establish his/her identity.[96]

In addition, Convention on the Rights of Persons with Disabilities (CRPD)[97] under Article 18 affirms the right to a nationality for persons with disabilities[98], Convention on the Elimination of All Forms of Racial Discrimination (CERD)[99] under its Article 5 (d) (iii) guarantees the right to a nationality to all people including stateless persons, regardless of race, color, or national, or ethnic origin,[100] International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW)[101] under Article 29 also provides the right to a nationality for children of migrant workers,[102] and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[103] under Article 9 grants women the same rights as men to acquire, change, or retain their nationality, as well as with regard to the nationality of their children.[104] The International Covenant on Economic, Social, and Cultural Rights (ICESCR),[105] Ethiopia acceded on 11 June, 1993 safeguards everyone's rights including stateless persons, irrespective of citizenship, the right to work (Article 6), the right to labor under just and favorable conditions (Article 7), the right to form trade unions (Article 8), the right to receive social security (Article 9), the right to enjoy an adequate standards of living (Article 11), the right to health (Article 12), the right to education (Article 13), and the right to engage in cultural activities (Article 15).

Outstandingly, the protection for stateless individuals further promised during armed conflict. For instance, the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War[106] specifically under Article 44 states that "in applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat

[95] Id Article 8 (1)
[96] Id, Article 8 (2)
[97] Ethiopia acceded to CRPD on 7 July, 2010
[98] Convention on the Rights of Persons with Disabilities (adopted on 13 December 2006 and entered into force on 3 May 2008) (CRPD), Article 18 states that:
"(1) States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities: (a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability; (b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement; (c) Are free to leave any country, including their own; (d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country. (2) Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents."
[99] Ethiopia acceded to CERD on 23 June, 1976
[100] Convention on the Elimination of All Forms of Racial Discrimination (adopted in the 1965 and entered into force in 1969) (ICERD)
[101] Ethiopia is state party to ICMW
[102] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Adopted on 18 December 1990 and entered into force on 1 July 2003) (ICMW)
[103] Ethiopia acceded to CEDAW on 10 September, 1981
[104] Convention on the Elimination of All Forms of Discrimination against Women (adopted on 18 December 1979 and entered in to force on 3 September 1981) (CEDAW)
[105] International Covenant on Economic, Social, and Cultural Rights (adopted on 16 December 1966 and entered into force on 3 January 1976) (ICESCR)
[106] Ethiopia acceded to ICESCR on 2 October, 1969

as enemy aliens exclusively on the basis of their nationality *de jure* of an enemy State, refugees who do not, in fact, enjoy the protection of any government."[107] This shows that in times of armed conflict, stateless persons are entitled to very limited protection. The 1977 Protocol I Additional to the 1949 Geneva Convention[108] under Article 73 identify protected persons are only those who were before the beginning of hostilities regarded as stateless persons or refugees.[109] In this context, stateless persons are entitled to very limited protection in time of war or other armed conflict. In addition, Ethiopia is a State Party to the 1951 Refugee Convention[110] and its 1967 Protocol[111] protect the rights of stateless persons who are refugees, but not all stateless persons/some stateless persons are refugees. Thus, stateless persons who are not refugees benefited from international human rights treaties.

Moreover, at regional level there are also instruments that protect the rights of stateless persons either explicitly or impliedly.[112] For instance, in the African Human Rights System there are also treaties that deal with the issue of statelessness. The Protocol to the African Charter on Human and People's Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa is one among others adopted in 2024[113] strive for solution to legal gaps that make stateless persons exercise their right to nationality and enable to access other fundamental human rights. On the other hand, the African Charter on Human and People's Rights (African Charter) adopted in 1981 and entered in to force in 1986[114] does not infer any specific provision on right of nationality. However, the African Charter contains numerous provisions that can be applied to protect the right to nationality that can be engaged to protect the right of stateless

[107] Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted on 12 August 1949 and entered in to force on 21 October, 1950)

[108] Ethiopia ratified Geneva Convention IV on 8 April, 1994

[109] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1) (adopted on 8 June 1977 and entered in to force on 7 December 1979), Article 73 states that:

Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction.

[110] Convention Relating to the Status of Refugees (adopted 28 July 1951 and entered into force 22 April 1954) 189 UNTS 137, Article 1 (A) (2) states that it includes in the refugee definition "those not having a nationality and being outside their country of former habitual residence" who are unable or, due to their fear of persecution, unwilling to return to their former residence.

[111] Protocol Relating to the Status of Refugees (adopted 31 January 1967 and entered into force 4 October 1967) 606 UNTS 267

[112] European Convention on Nationality, ETS 166– Convention on Nationality, 6.XI.1997, European Treaty Series- No. 166, Strasbourg, (November, 1997), Article 5 (acquisition of nationality), Article 7 (loss of nationality), and Article 4 (four principles of rules of nationality), See also The American Convention on Human Rights, adopted at San Jose Costa Rica on 22 November 1969. Entry into force: 18 July, 1978, Article 20 (2) (right to nationality), and Article 20 (3) (prohibits arbitrary deprivation of nationality).

[113] The Protocol to the African Charter on Human and People's Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa, (18 February, 2024)

[114] African (Banjul) Charter on Human and People's Rights, (Adopted 27 June 1981 and entered into force 21 October 1986) (African Charter)

persons. For example, the charter under Article 12 prohibit mass expulsion of non-nationals based on discriminatory grounds such as national, racial, ethnic, or religious.[115] According to this provision, non-nationals including stateless persons are prohibited from expulsion based on any grounds. The right human dignity (Article 5), the African Commission on Human and People's Rights also interpreted Article 5 of the African Charter under which the right to nationality is recognized.[116] The right not to be discriminated (Article 2), the right to equality before the law (Article 3), the right to due process of law and fair trial (Article 7) are also recognized to protect the right of stateless persons in the African Charter. Thus, any state party to the African Charter including Ethiopia shall respect and ensure the rights assured for stateless persons there.

African Charter on the Rights and Welfare of the Child (ACRWC or Children's Charter)[117] is regional human rights instrument that has been ratified by all African Union member states including Ethiopia also assured the right of stateless children. The ACRWC similar to CRC recognizes for every child the right to be registered immediately after birth (Article 6 (2), and the right to nationality (Article 6 (3). It also stipulates that state parties to the Charter are required to ensure their constitutional legislation acknowledges the principles according to which a child shall obtain the nationality of the State in which he/she are born, provided that, at the time of the child's birth, they are not conferred nationality by any other State in accordance with its laws.[118]

Moreover, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) which was adopted in July, 2003 and entered in to force in 2005 that deals only with rights of women[119] under Article 6 recognized women's shall have equal rights to nationality with men which provides that a woman shall have the right to retain her nationality or to acquire the nationality of her husband,[120] and a woman and a man shall have equal rights with regard to the nationality of their children, unless it against a provision in national legislation or is contrary to national security interests.[121] The rights of stateless persons are also safeguarded in the

[115] Id, Article 12

[116] Id, Article 5 provides that: "every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." See also Communication No. 97/93 *John Modise v. State of Botswana*, in which it concluded that Botswana, confining Mr Modise in a no man's land for years simply to deny nationality violated Article 5 of the African Charter. See also Communication No. 212/98 *Amnesty International v. State of Zambia*, in which it says that "in forcing the plaintiffs (William Banda and John Chinula) to live as stateless in degrading conditions, the Zambian government ... deprived them of affection from their families and deprived families the support of these men, and that this constitutes a violation of the dignity of the human person, in violation of Article 5 ". See also Communication No. 211/98 *Legal Resources Foundation v. State of Zambia* which states the famous constitutional amendment Zambian government which required anyone wishing to run for the presidency he proves that both his parents are Zambians by birth or descent (amendment clearly intended to prevent former President Kenneth Kaunda to run for re-election) contrary to Articles 2, 3 and 13 of the African Charter.

[117] African Charter on the Rights and Welfare of the Child (adopted July 1990 and entered in to force on 29 November, 1999 (ACRWC)

[118] Id, Article 6 (4)

[119] Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, (adopted on 11th July 2003 and entered into force on 25 November, 2005)

[120] Id, Article 6 (g)

[121] Id, Article 6 (h)

African Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)[122] to which Ethiopia member state, but yet not fully domesticated.[123] Ethiopia is a state party to the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa that protect the rights of stateless refugees.[124]

Moreover, African Commission on Human and Peoples' Rights adopted two resolutions on the right to nationality, specifically Resolution 234: Resolution on the Right to Nationality[125] adopted in 2013 which assigned the task of carrying out an in-depth study on issues relating to the right to nationality to the Special Rapporteur on Refugees, Asylum Seekers, Migrants and IDPs in Africa.[126] The second one is Resolution 277: Resolution on the drafting of a Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality in Africa[127] adopted in 2014 which the final version of the study on The Right to Nationality in Africa was presented and assigned the Special Rapporteur the task of drafting a Protocol to the African Charter on the right to a Nationality and the eradication of Statelessness.[128] Overall, every stateless persons as right holders in the Ethiopian territory have right to benefit from the above aforementioned international and regional human right treaties, and Ethiopia as state duty bearer shall respect, protect, and fulfill all the duties incorporated in the above instruments.

3. Protecting Stateless Persons at National Level

3.1. The Federal Democratic Republic of Ethiopia Constitution

After the down fall of Derg regime, the 1995 Federal Democratic Republic of Ethiopia (here after FDRE Constitution) was adopted on the 8th day of December, 1994 and entered into force as of the 21st day of August, 1995.[129] It adopted with 106 Articles, most of the provisions under chapter three of fundamental rights and freedoms are entitled to every person including foreigners (or stateless persons), except a few provisions that provides specific rights only to Ethiopian citizens. The FDRE Constitution does not explicitly indicate the term 'statelessness', but it does mention only nationality without defining it. However, the protection against statelessness can be addressed through interpreting the provisions that deals with the nationality. The FDRE Constitution explicitly guaranteed the right to nationality under Article 6. According to this provision:

> (1) Any person of either sex shall be an Ethiopian national where both or either parent is Ethiopian. (2) Foreign nationals may acquire Ethiopian nationality. (3)

[122] African Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted 23 October, 2009 and entered in to force on 6 December, 2012) (Kampala Convention)

[123] Ethiopia ratified Kampala Convention on February 2020

[124] Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, (adopted on 10 September 1969 and entered in to force 20 June,1974)

[125] ACHPR/Res.234 (LIII) 2013: Resolution on the Right to Nationality, The African Commission on Human and Peoples' Rights, Meeting at its 53rd Ordinary Session held in Banjul, Gambia (9 to 23 April 2013)

[126] Ibid

[127] ACHPR/ Res.277 (LV) 2014 : Resolution on the Drafting of a Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality in Africa, The African Commission on Human and Peoples' Rights (the Commission), meeting at its 55th Ordinary Session held in Luanda, Angola (28 April to 12 May 2014)

[128] Ibid

[129] Constitution of the Federal Democratic Republic of Ethiopia Proclamation No.1/1995 (FDRE Constitution)

> Particulars relating to nationality shall be determined by law.

According to sub article 1 any person, regardless of gender who has born from Ethiopian mother or/and father in Ethiopia or abroad shall be considered as an Ethiopian national. This indicates that any person shall be an Ethiopian national by descent, wherever both or either of his/her parent is Ethiopian, and their nationality shall not be deprived arbitrarily. However, it does not prohibit dual citizen ship. It also permits foreign nationals to acquire Ethiopian nationality through naturalization, and the details relating to nationality is left to be determined by law. The FDRE Constitution under sub article 2 simply confirms that foreigners have the right to obtain Ethiopian nationality, but the conditions under which they can acquire Ethiopian citizen ship not identified. However, as indicated under sub article 3 the specific law with respect to nationality was enacted as per Ethiopian Nationality Proclamation No.378/2003.

The FDRE Constitution in addition recognized the right to nationality under Article 32 as any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to.[130] Likewise, the right to nationality is stipulated under Article 33 of the FDRE Constitution. According to this provision:

> (1)No Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will. Marriage of an Ethiopian national of either sex to a foreign national shall not annul his or her Ethiopian nationality. (2) Every Ethiopian national has the right to the enjoyment of all rights, protection and benefits derived from Ethiopian nationality as prescribed by law. (3) Any national has the right to change his Ethiopian nationality. (4) Ethiopian nationality may be conferred upon foreigners in accordance with law enacted and procedures established consistent with international agreements ratified by Ethiopia.

The FDRE Constitution under Article 33 (1) strongly prohibits involuntary deprivation of Ethiopian nationality. This means every Ethiopian national has the right to renounce his/her citizen ship, but it should be based on their consent. It also affirms that marriage to a foreign national does not annul Ethiopian nationality. The FDRE Constitution under sub article 3 also allows anyone can change their Ethiopian nationality. According to Article 33 (4) Ethiopian nationality may be conferred upon foreigners in accordance with the law enacted and procedures established consistent with international agreements ratified by Ethiopia. Similarly, under Article 36 FDRE Constitution also ensures that every child has the right to nationality.[131] However, there is no single provision in the FDRE Constitution that provide protection against stateless children born with in territory of Ethiopia. In addition, the rights of stateless persons are guaranteed under provisions of the constitution principally the rights assured for every person, non-discrimination (Article 25), the right to life (Article 15), the right of the security of person (Article 16), right to liberty (Article 17), prohibition against inhuman treatment (Article 18), etc.

[130] Id, Article 32 (1)

[131] Id, Article 36 (1)

Overall, with respect to stateless person's protections assumed in the FDRE Constitution there are two possible limitations come across. First, the Constitution does not explicitly mention or provide protections specifically for stateless children born within Ethiopia. Second, it lacks provisions ensuring the prevention of statelessness, especially for children born to parents who are themselves stateless, or whose nationality is undetermined.

Moreover, to scrutinize the legal protection of stateless persons under FDRE Constitution, several international and regional treaties those provide legal standards with respect to statelessness and nationality/citizen ship to which Ethiopia is state party can be used. According to Article 9 of the FDRE Constitution all international/regional/ agreements ratified by Ethiopia are part and parcel of the law of the land.[132] In addition, as stipulated under Article 13 fundamental rights and freedoms including the right to nationality specified under chapter three of the FDRE Constitution shall be interpreted in accordance with international human rights instruments adopted by Ethiopia, such as ICCPR, CEDAW, CERD, CRC, ICESCR, ACWRC, African Charter, etc.

3.2. Ethiopian Nationality Proclamation No.378/2003

The Ethiopian Nationality Law of 1930 (as amended) for the first time repealed in 2003 by the Ethiopian Nationality Proclamation No.378/2003 (here after Ethiopian Nationality Proclamation or ENP)[133] as per FDRE Constitution which was entered into force as of the 23rd of December, 20023. It was enacted to provide a clear legal framework regarding Ethiopian citizenship and nationality. It also provides all inclusive frame work for individuals to acquire Ethiopian nationality. Ethiopian nationality can be acquired in two ways, namely acquisition by descent, and by law.

3.2.1. Acquisition of Ethiopian Nationality by Descent

Acquisition by Descent is known as nationality acquired by birth right which is typically practiced in Ethiopia. As provided under Article 3 of the ENP any one can acquire Ethiopian nationality automatically by birth in case he/she born everywhere from at least one parent who is an Ethiopian national.[134] Bronwen Manby asserts that nationality by descent is when an individual acquires nationality on the basis of his/her father's and/or mother's nationality, regardless of place of birth.[135] This reflects the principle of *jus sanguinis* (right of blood), born to parents with Ethiopian nationality.[136] However, ENP does not address an individual who born in Ethiopia from non-Ethiopians, that leads to otherwise stateless.

The ENP also insists that an infant found abandoned in Ethiopia is presumed to have been born to an Ethiopian parent and is granted nationality by descent, unless proved to be a foreign national.[137] According to this provision abandoned infant discovered in the Ethiopian soil (*jus soil*) whose parents are unknown presumed to have been born to an Ethiopian

[132] Id, Article 9 (4)
[133] Ethiopian Nationality Proclamation No.378/2003, Article 25 (ENP)
[134] Id, Article 3 (1)
[135] Bronwen Manby, 'Citizen ship law in Africa: A Comparative Study', *Open Society Foundations*, (January 2016)
[136] Ibid
[137] ENP, *supra* note 134, Article 3 (2)

parent and automatically granted Ethiopian nationality.[138] The only protection against statelessness is provided for children of unknown parents. However, ENP do not protect the child born in Ethiopia of parents who themselves are stateless, or their nationality unknown, or who cannot transmit nationality to their children because of gender discrimination in the law of countries of origin.[139] Therefore, in order to fill such gaps the Ethiopian government must amend the ENP in considering the child who is not protected before.

Further, it does not define the upper age of infant, as far as the presumption of Ethiopian nationality linked to infant.[140] The higher age of the infant must be defined in the proclamation. As a result, ENP is inconsistent with Article 7 (2) of the CRC, and Article 24 (3) of the ICCPR that obliges state party including Ethiopia to respect the rights of every child to acquire a nationality, where the child would otherwise stateless. In addition, it is also against Article 6 (4) of the ACRWC which provides that Ethiopia should ensure the right to nationality of children in the national legislation specifically in the ENP. In order to overcome such problems ENP should be amended in line international human rights instruments (e.g., CRC, ICCPR, and ACRWC) that require states to grant nationality to children to prevent statelessness.

3.2.2. Acquisition of Ethiopian Nationality by Law

Acquisition by law means an individual those who born not in an Ethiopian nationality (foreigners) can acquire an Ethiopian nationality in line with Article 5-12 of the ENP.[141] Based on these provisions, foreigners can acquire Ethiopian nationality through marriage, adoption, or special contributions, provided they meet certain conditions. Accordingly, any foreigner who applies to acquire Ethiopian nationality by law must fulfill the following requirements:[142] have attained the age of majority and capable under Ethiopian law, have established domicile in Ethiopia in accordance of Ethiopian Civil Code and lived in Ethiopia for at least four years before applying, be able to communicate in anyone of the languages of the nations/nationalities in Ethiopia, have sufficient and lawful source of income to maintain himself/herself and his/her family, be a person of good character, have no criminal record, be able to show that he has been released from his previous nationality or the possibility of obtaining such a release upon the acquisition of Ethiopian nationality or that he is a stateless person, and be required to take the oath of allegiance stated under Article 12 of ENP.

Indeed, acquisition of Ethiopian nationality by law can be obtained through three ways: first, acquisition of Ethiopian Nationality by Marriage: pursuant to Article 6 of the ENP, a foreigner women or men who are married to Ethiopian national may acquire Ethiopian nationality by law if: the marriage is concluded in accordance with the Ethiopian laws or in accordance with the laws of any other country where the marriage is contracted, at least two years of lapse since the conclusion of the marriage, lived in Ethiopia for at least one year

[138] UNHCR, 'Citizenship and Statelessness in the Horn of Africa', (December 2021), P.21
[139] Ibid
[140] Ibid
[141] ENP, *supra* note 134, Article 4
[142] Id, Article 5

before applying, and fulfilled other conditions mentioned in Article 5 particularly legal capacity, release from prior nationality, and the oath.

Second, acquisition of Ethiopian Nationality by adoption: according to Article 7 of the ENP, any child adopted by Ethiopian may acquire Ethiopian nationality by law if: he/she has not attained the age of majority (minor),[143] he/she lives in Ethiopia together with his/her adopting parent,[144] Where one of his/her adopting parents is a foreigner, such parent has expressed his/her consent in writing,[145] and be able to show that he has been released from his previous nationality or the possibility of obtaining such a release upon the acquisition of Ethiopian nationality or that he is a stateless person.[146] Third, acquisition of Ethiopian Nationality by Special case: a foreigner who has made an outstanding contribution in the interest of Ethiopia may be conferred with Ethiopian Nationality by law in exceptional circumstances without any language and domicile requirements. In this case, however it is intended for specific group of foreigners who made an exceptional involvement in the Ethiopian interest and cannot be given to stateless person not contributed to Ethiopian interest.

Similarly, pursuant to Article 9 of the ENP, any naturalized Ethiopian can request for their minor child living with him/her in Ethiopia to acquire Ethiopian nationality. On the other hand, in cases when the applicant is the only parent who has obtained citizenship, the child's naturalization will require the approval of both parents. In this case to be eligible the child must be released from his/her previous nationality or the possibility of such release.[147]

Certainly, the ENP under Article 14 recorded the rights of Ethiopian nationality as: the protection given by State,[148] in which the Ethiopia has the duty to protect and ensure the rights and legitimate interests of its nationals residing in Ethiopia and abroad.[149] Next, the right not to be extradite by foreign state to any other third country.[150] The right to change nationality[151] is also the other right guaranteed in the ENP. However, it must be subject to Article 19 of the ENP that deals with renunciation. The other right is non-deprivation of nationality, which stipulates that every Ethiopians have the right not to be deprived their nationality by decision of any government authorities, save as in case of renunciation and acquisition of another nationality as per Article 19 and 20 of the ENP respectively.[152] To end, the right to equality of nationals which is recognized as notwithstanding the manner the nationality acquired, all Ethiopian nationals has equal rights and obligations of citizen ship.[153] However, the rights listed in the ENP are not exhaustive; there are several rights of Ethiopian nationals other than enumerated above. More importantly, the ENP prohibits dual nationality in unequivocal manner.

On the other hand, the ENP acknowledged the Modes/ways of Loss of Ethiopian Nationality. There are different modes of loss of nationality in the world, since different states apply it

[143] Id, Article 7 (1)
[144] Id, Article 7 (2)
[145] Id, Article 7 (3)
[146] Id, Article 7 (4)
[147] Id, Article 9 (2)
[148] Id, Article 14
[149] Id, Article 14 (1) and (2)
[150] Id, Article 15
[151] Id, Article 16
[152] Id, Article 17
[153] Id, Article 18

differently, for example, nullification, deprivation/withdrawal, lapse/expiration, renunciation, release, etc.[154] The FDRE Constitution and ENP are essential in order to identify the ways of losing nationality in Ethiopia. Essentially, the FDRE Constitution under Article 33 (3) unequivocally stated any Ethiopian national has the right to change his/her Ethiopian national. Similarly, ENP under Article 16 recognized the right to change Ethiopian nationality as stipulated under Article 19 of the proclamation. As a result, according to the ENP, Ethiopian nationality lose through two ways, particularly renunciation[155] and up on acquisition of other countries nationality.[156]

Lose of Ethiopian nationality via renunciation is simply the voluntary way of losing nationality. As indicated under Article 16 above no Ethiopian national is prohibited from changing his/her citizen ship, but it must consider the conditions stated under Article 19 of the Proclamation. The person who has the right to renounce Ethiopian nationality must fulfill the following requirements:[157] If he/she renounces his/her Ethiopian nationality, an Ethiopian who intends to renounce his/her nationality shall in advance inform the authority in the form prescribed by the authority, the renunciation of the nationality of a minor child shall be effected by the joint decision of his/her parents or, where one of his/her parents is a foreigner, by the decision of the Ethiopian parent, an Ethiopian who has declared his/her intension to renounce his/her nationality may not be released until: he/she has discharged his outstanding national obligations, and he/she has been accused of or convicted of a crime, he/she has been acquitted or served the penalty, the Authority shall issue the applicant with a certificate stating the effective date of his/her release, and any Ethiopian who is not issued with a certificate of release shall have the right to appeal to the competent court.[158]

Modes of acquisition of other countries nationality is also the other approaches of loss of Ethiopian nationality assured in the ENP. Normally, in Ethiopia the acquisition of another nationality results in the loss of Ethiopian nationality. According to the ENP, any Ethiopian who voluntarily acquires another nationality is considered to have voluntarily renounced his/her Ethiopian nationality.[159] This shows any Ethiopian up on acquisition of another country nationality lose simultaneously his/her Ethiopian nationality, unless specific provisions are made to retain Ethiopian nationality under certain conditions. According to Article 22 (1) (a-c) of the ENP, a person who was an Ethiopian national, but acquired foreign nationality by law may readmit to Ethiopian nationality when the following conditions in existence: he/she returns to domicile in Ethiopia, renounces his/her foreign nationality, and he/she applies to the authority for re-admission.

The ENP plainly clarified, even though an Ethiopian national changes his/her nationality, the nationality of both the spouse and children remains as it is. Undoubtedly, the proclamation prohibits double nationality stating that an

[154] Luuk Van der Baaren and Maarten Vink, "Modes of Acquisition and Loss of Citizenship around the World: Comparative Typology and Main Patterns in 2020," *European University Institute*, (November 2021), P.14.
[155] ENP, *supra* note 134, Article 19
[156] Id, Article 20
[157] Id, Article 19 (1-6)
[158] Ibid
[159] Id, Article 20 (1)

Ethiopians who acquire another nationality may lose the Ethiopian national. Similarly, a person who was an Ethiopian national, but obtained foreign national may lose his/her foreign citizen ship when re-acquired Ethiopian nationality. To end with, the ENP imposed two restrictions: first, prohibits dual nationality and considers acquisition of another nationality as a form of voluntary renunciation, which may lead to statelessness if not carefully managed. Second, it emphasizes the importance of releasing from previous nationality, which can be problematic if the individual's previous nationality is unknown or stateless.

3.3.Other Laws

In Ethiopia there are certain laws that safeguard the rights of stateless persons, while other laws failed to do so. For instance, the Ethiopian Civil Code under Article 1 essentially asserts that human beings are subjects of rights from its birth to death. This indicates that all children have rights including stateless children. Therefore, any provision of the Ethiopian Civil Code that deals with the rights of every human being is also applicable for any stateless persons. In addition, in 2019 Ethiopia passed a new refugee Proclamation[160] by repealing Refugee Proclamation No.409/2004.[161] In this proclamation Article 42 provides that every recognized refugee or/and asylum seeker who fulfills the necessary conditions guaranteed in the relevant provisions of Ethiopian Nationality law particularly Proclamation 378/2002 relating to naturalization can apply to obtain Ethiopian Nationality through law. Thus, refugee or asylum seekers in considering ENP they have the right to acquire Ethiopian nationality. The Ethiopian Employment Proclamation No.1156/2019[162] further ensure that every person in Ethiopia including stateless persons without nationality requirement has the right to participate in any employment contract, except employment of foreign nationals as enshrined under Article 176. It also prohibits exploitation of all workers/employees including stateless one.[163]

On the other hand, there are various Ethiopian laws lacks to safeguard stateless persons. For example, in 2002 Ethiopia enacted Proclamation for Providing Foreign Nationals of Ethiopian Origin with certain Rights to be exercised in their Country of Origin[164] desire to strength their tie,[165] and to contribute development in their country of origin,[166] but it plainly excludes people who forfeited Ethiopian nationality and acquired Eritrean nationality.[167] In this context, the proclamation excludes majority of Ethiopians of Eritrean descent who are regarded by the Ethiopian authorities as Eritrean nationals.[168] In 2004, interestingly Ethiopian government enacted Directive Issued to Determine the Residence Status of Eritrean Nationals Residing in Ethiopia.[169] The objective of this Directive is to provide the means to every person of Eritrean descent who lived in Ethiopia when Eritrea became an independent and who has remained

[160] Ethiopian Refugee Proclamation No.1110/2019, Federal Negarit Gazette No.38, 27th February, 2019
[161] Id, Article 45 (1)
[162] Ethiopian Labour Proclamation No.1156/2019, Federal Negarit Gazette No. 89, 5th September, 2019
[163] Ibid
[164] Providing Foreign Nationals of Ethiopian Origin with certain Rights to be exercised in their Country of Origin Proclamation No. 270/2002, Federal Negarit Gazette No. 17, 5th February, 2002
[165] Id, Preamble para.1
[166] Id, Preamble para.2
[167] Id, Article 2 (1)
[168] Id, Article 2 (1)
[169] Directive Issued to Determine the Residence Status of Eritrean Nationals Residing in Ethiopia, (January 2004)

a permanent resident of Ethiopia until this Directive is issued to verify whether they have obtained Eritrean nationality and to ascertain their status of residence in Ethiopia.[170] Some believe that the directive, which seeks to ascertain the residency status of Eritrean nationals living in Ethiopia, could result in arbitrary deportations, the denial of citizenship rights, and the creation of stateless people.

Besides, the Ethiopian Digital Identification Proclamation was passed in 2023[171] without bearing in mind their vulnerability that leads to protection. As enshrined under Article 9 (2) of this proclamation the Digital Identification System must comprise Nationality Demographic Data,[172] but which is impossible for stateless persons. Thus, in order to overcome this particular issue, it is better to accept stateless persons without nationality criteria as an exception.[173] Likewise, stateless persons are not protected in the Proclamation for the Prevention and Suppression of Trafficking in Persons and Smuggling of Persons which was enacted in 2020.[174] Pursuant to Article 24 it stipulates that victims must receive necessary protection and support by taking in to account the vulnerability and special needs of women, children, persons with mental health problems, and persons with disability.[175] This provision shows those stateless peoples are forgotten or deliberately left during the enactment of this proclamation. Moreover, stateless persons are not protected under some particular laws such as Ethiopian Private Organization Employees' Proclamation, Ethiopian Federal Civil Servant Proclamation, Vital Events Registration and National Identity Card Proclamation (amendment),[176] etc. Several other laws do not recognize, or safeguard the rights of stateless persons, leaving a significant legal protection gaps.

4. Conclusion

Statelessness remains a pressing issue globally, and particularly in Ethiopia, where a significant number of individuals are at risk of losing their nationality due to various factors, including historical conflicts and inadequate legal frameworks. The lack of a clear definition of statelessness, coupled with gaps in national laws and insufficient awareness, exacerbates the plight of stateless persons. While international and regional treaties provide a foundation for protecting the rights of stateless individuals, Ethiopia's legal framework falls short in explicitly addressing the needs of these vulnerable populations.

Moreover, the historical context of conflict, discrimination, and inadequate birth registration systems has exacerbated the statelessness problem, leaving many individuals vulnerable to human rights violations and exclusion from essential services. The FDRE Constitution and the Ethiopian Nationality Proclamation No. 378/2003 offers some avenues for acquiring nationality, but fails to adequately address the needs of children born in Ethiopia who would

[170] Id, Article 2

[171] Digital Identification Proclamation No. 1284/2023, Federal Negarit Gaze No. 19, 18th April, 2023

[172] Id, Article 9 (2)

[173] Ibid

[174] Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No. 1178/2020, Federal Negarit Gazette No. 31, 1st April, 2020

[175] Id, Article 24 (1)

[176] Vital Events Registration and National Identity Card Proclamation (Amendment) Proclamation No. 1049/2017, Federal Negarit Gazette No. 74, 7th August, 2017

otherwise be stateless. Both the constitution and the proclamation do not sufficiently safeguard against arbitrary deprivation of nationality or ensure that all children born in the territory acquire a nationality, particularly those at risk of statelessness (for children born to stateless parents or those with undetermined nationality). Furthermore, the prohibition of dual nationality and the stringent requirements for naturalization can lead to further instances of statelessness, particularly among vulnerable populations such as refugees and internally displaced persons. Moreover, the absence of specific laws prohibiting all forms of statelessness, and the lack of provisions for the rights of stateless persons further highlight the need for reform.

To effectively combat statelessness and ensure the protection of rights for all individuals within its borders, Ethiopia must take concrete steps to align its national laws with international human rights standards. This includes amending existing legislation to provide clearer pathways to nationality acquisition, ensuring that all children born in the territory are granted nationality, implementing measures to prevent discrimination based on ethnicity or nationality, and establishing procedures for identifying and regularizing the status of stateless persons and those at risk.

To end with, addressing statelessness in Ethiopia requires a multifaceted approach, involving legal reform, increased awareness, and commitment from the government and civil society to recognize and protect the rights of all stateless individuals, regardless of their nationality status. By doing so, Ethiopia can not only fulfill its international obligations, but also work towards fostering a more inclusive society where every individual has a recognized identity and the ability to exercise their fundamental rights. Only through concerted efforts at the national and international levels can Ethiopia hope to eradicate statelessness and uphold the fundamental right to a nationality for all its residents.

Wollega University
School of Law

WJLAW, Febr-June.2025,2(2), 76-87)
DOI: https://doi.org/10.20372/wjlaw.v2i2.1655
ISSN: 2226-7522 (Print) and 3005-7612 (Online)
Wallaga University Journal of Law
WJLaw, February- June. 2025, 2(2), 76-87
Home Page: https://journals.wgu.edu.et

Report, June 2025

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Reports About Wollega University School of Law and Its Success Story

Compiled by the School of Law, Dean's Office

Abstract

This is a report on Wollega University School of Law. It assessed the school's establishment, progress, programs, community services (Free Legal Aid Services), research activities (its Journal of Law), partnership with National and International levels since the school's establishment as a department of law till this date (June 20225).

Keywords: *Wollega University, School of Law, Its Success Story*

About Wollega University School of Law (the School) is one of the law schools engaging in teaching, researching, and serving the community in Ethiopia. The Law Department was officially established following the inauguration of Wollega University back in 2007. Through subsequent developments, the department was restructured into the Law School.

The Law School aims at producing adequately trained legal professionals who can serve their community and beyond with legal skills, ethical and intellectual guidance, and to strengthen the qualification and man power of the personnel in the judiciary, law enforcement agencies, counseling and advisory departments, and other institutions engaged in law related activities at various levels.

Concerning the teaching-learning, the School runs both undergraduate and graduate

studies. At the undergraduate level, the School teaches LL.B. degree programs in regular, evening, and summer modalities. The School launched its first graduate program named LL.M in Criminology and Criminal Justice, in 2014, and its second program, LL.M in International Business and Economic Law, in 2016. While the former focuses on reforming the country's criminal justice system, the latter aims at strengthening and modernizing the economic and business laws and policies of Ethiopia in the context of the current global order. The LL.M. programs, which are available in regular, weekend, and summer modalities, are open to any person having a Law Degree from recognized higher education institutions, who has passed the national exit examination and who is able to pass the entrance examination to be administered by the School. So far, the LL.M. programs have been attracting and bringing together professionals from different walks of life, members of academia, and practitioners, from within the country and abroad. Further, the School has launched a new graduate program named LL.M. in Constitutional and Human Rights Law in 2021.

Human Resource

Currently, the School has 59 (fifty-nine) staff, of which 16 (sixteen) are academic and 40 (forty) are legal aid workers, and three are technical supportive staff. The School has established cooperation with renowned legal professors from both domestic and foreign universities.

Material Resource

The School possesses a G+2 building, which it utilizes for offices, classrooms, and a library. Most of the rooms are furnished with relatively better facilities, including access to the internet. The building owns a Video Conference room, which supports the teaching-learning and research activities of the School. Nearly all of the classrooms are smart, and this has created a conducive environment for teaching activities. Further, the Law Library, which is accessed by the staff and students of the School, is enriched with books, laws, and court decisions.

Administrative structure

The School is chiefly administered by the Dean, along with one Vice Dean, Undergraduate, Postgraduate, and continuing education Head, Research, Community Engagement, and Industry Linkage Vice Head. In addition, there exists a Free Legal Aid Services Coordinator and a Journal of Law Editor.

Wollega University Law Journal (WULJ)

The School of Law launched the WULJ in 2018 and, currently publishing impactful academic works. WULJ is an official open-access print and online international journal of Wollega University School of Law, which publishes the finest peer-reviewed research biannually in all fields of law.

Wollega University Free Legal Aid Service

It is a clear fact that Wollega University, since its very inception, has been serving the surrounding community in various aspects of their life where they seek support. One of the community services the university is

providing to the community is free legal aid. The legal aid is aimed at giving persons of limited means a free legal service(s) which includes legal advice, client representation in courts, and legal empowerment. Its primary objective is to make it impossible for any man, woman, or child to be denied equal protection under the law simply because he or she is poor. It works towards ensuring access to justice. Legal aid has, therefore, both remedial and preventive potential.

Wollega University Legal Aid Center was started in the year 2010 with one centre in Nekmete. In 2011, the university increased the number of Free Legal Aid Centers to **three,** which are found in Nekemte, Shambu, and Gimbi. Currently, twenty-three (23) centres have been functioning.

Activities/service

Free legal Aid centers are rendering various types of activities. They are, *inter alia,* providing legal Advice/counseling, preparing pleadings for clients, representing clients in the courtroom, creating awareness creation and participating in ADR by representing the interests of our clients.

Beneficiaries from the center

Beneficiaries from the center are those who are incapable of hiring lawyers (poor), Women, Children, HIV/AIDS infected, Elders, Disabled persons, prisoners, and internally displaced persons/Returnees.

Partners working with Wollega University Free Legal Aid Service

- Oromia Supreme Court (providing Office, before 2011 E.C. fund)
- Oromia Justice Bureau (Issued for the center's special license for representation)
- EHRs Commission (funded through it lacks continuity, as a top-up before the middle of 2012 EC)
- Kebele administration, women's and children's affairs offices
- UNHCR, an international humanitarian agency currently an active partner of the Center.
- UNODC and the Center for Justice (Through the grant from the European Union).

Centers

Legal Aid centers are established in the three Wollega Zones (East Wollega, West Wollega, and Horo Guduru Wollega) and in West Shoa. They are: Nekemte, East Wollega Correction Center, Sasiga, Haro Limu, Gidda Ayana, Jimma Arjo, Sibu Sire, Anno, Nekemte High Court, Shambu, Horro Guduru Wollega Correction Center, Harato, Guduru, Amuru, Kiramu, Gedo, Bako Tibe, Gimbi, West Wollega Correction Center, Nejo, Kiltu Kara, Mendi, and Boji Dirmaji centers.

Membership and Collaboration

- Member of the Ethiopian Law Schools Association (ELSA).
- Member of the Ethiopian Law Schools Consortium.
- Working in collaboration with Caffee Oromiyaa.

Picture

School of Law Building

When UNHCR is donating office furniture and Motorcycles for the center

Project launching with UNHCR

Legal Aid Project Partnership Signing b/n Wollega University and UNODC

When the Center is serving clients

When there is giving cash assistance for persons with specific needs in collaboration with UNHCR

While giving training for Woreda and City Counsellors

Training for Customary Court Elders

Wollega University Centre for Moot Court and Legal Profession Development short narration on the Moot Court Participation of the School of Law

Wollega University School of Law Moot Court Room

Prologue

The consortium of Ethiopian Law Schools is functioning towards the betterment of quality legal educations. Notwithstanding to limitations on its part, the consortium has so far been engaged in the reform of legal education and tasks associated with it. It is the body which has a say on the legal educations delivered in higher educations.

With the view to produce competent and responsible legal professionals who contribute towards democracy, human rights, good governance, social justice and development, the old and heterogeneous Legal Education Curriculum was supplanted by a new and uniform national curriculum.

Deborah Bultuma and Girma Moges at ICRC IHL moot court competition at Addis Ababa

The revised National Modularized Curriculum of the LL. B Program in Laws began to be applied in all Law Schools of the

Country since 2013. This curriculum reiterates the importance of supporting law students' theoretical knowledge with practice. Hence, the curriculum has incorporated a number of practiced based courses and methods. And one of the methods of enhancing the practical knowledge of law students is moot court competition.

Godana Muzeyin, Tedi Bekele, and Mihret Girmay at the 4th Ethiopian national moot court competition Bahir Dar

A moot court is an extracurricular activity at many law schools in which participants take part in simulated court proceedings, which usually involves drafting briefs (or memorials) and participating in oral argument. The basic structure of a moot court competition roughly parallels what would happen in actual appellate practice. Participants will typically receive a problem ahead of time, which includes the facts of the underlying case, and often an opinion from a lower court that is being challenged in the problem. Students must then research and prepare for that case as if they were lawyers or advocates for one or sometimes both of the parties.

Thus, by participating in moot court competitions, law students would be able to enhance their advocacy skills by building upon the class room education they have garnered. Moot court specifically enables the students to engage in real life court adventure by writing memorials, arguing both as an applicant and defendant and presenting their case to a panel of judges thereby experiencing the court room drama.

Moreover, writing appeal either for the applicant or the respondent requires an intensive research. Thus, the engagement in moot court activities, will also enhance students' research skills.

Drawing from the past (Previous Moot Court Related Activities WU)

Wollega University's Law Department was established in 2007 within Social Science Faculty. Later in 2010, the Ethiopian Law Schools' Consortium was established under the auspice of the Federal Democratic Republic of Ethiopia Justice and Legal System Research Institute. The Consortium decided that all Law Departments existing in various higher education institutions of the country had to be named as "Law Schools" and become autonomous. Thus, the then Law Department of the University became School of Law.

Addis Ababa University

ICRC
International Committee of the Red Cross

CERTIFICATE OF PARTICIPATION

To: Wollega University

For participating in the oral rounds of the 2017 National Moot Court Competition on International Humanitarian Law (IHL) organized by the ICRC Delegation in Ethiopia and Addis Ababa University from the 11th to 13th of May 2017, Addis Ababa, Ethiopia.

James Reynolds
Head of Delegation, ICRC

Since its establishment, Law Department (herein after WUSL) of has been participating in different moot court related activities and competitions both at national and international levels. For instance, in 2009, Wollega University was the only "new generation" university that was able to participate and win a trophy for preparing best a memorial, at the National Moot Court Competition organized by Bahir Dar University. Moreover, WUSL was also the only "new generation" university that was able to participate in national moot court competitions held at Jimma University and University of Gonder in 2010 and 2011, respectively.

Girma Moges and Deborah Bultuma representing WUSL at the IHL National Moot Court Competition organized by ICRC (these students are now Lecturers at the School

WUSL has also been participating in various international moot court competitions.

Figure 1Obse Basha, Robera Girma and Tedi Bekele at the National FDI moot court competition organized by Haramay University (our team was runner up in the compeition)

al. For instance, in 2009, WUSL was the only university among the "new generation"

universities that was able to represent Ethiopia, in the 19th African Human Rights Moot Court

Competition held in Nigeria, Legos. Moreover, in 2010, WUSL was also the only new "generation university" to be able to represent Ethiopia in the national rounds at the 50th Phillip C. Jessup International Law Moot Court Competition held in Saint Mary University.

from left to right Godana Muzeyin, Tedi Bekele, Wagari Kebeta (coach), and Mihret Girmay at the 4th Ethiopian national moot court competition, Bahir Dar

In 2019, the Phillip C. Jessup International Law Moot Court Competition is an annual premium event where more than 700 Law Schools from around 110 countries compete in Washington, DC, USA.

In 2019, WULS was the only Law School in the country that was able to qualify and represent Ethiopia in the 2019 Phillip C. Jessup International Law Moot Court Competition, where more than 700 Law Schools from around 110 countries were qualified to compete in Washington, DC, USA. However, while the WUSL team was processing visas to travel to Washington, DC, organizers of the event announced that the competition was cancelled due to CORONA coronavirus.

Before 2018, the moot court activities of the School were conducted by volunteer Lecturers of the School who had a great desire to share their moot experience with their students. And there was no separate structure within the School that operated independently of moot court-related tasks.

In January 2018, however, Centre for Moot Court and Legal Profession Development (herein after the Center) structure was established within the School with the view to independently carryout moot court and other legal profession development tasks.

Since its establishment, the centre has been organising different moot court activities and legal profession development activities, such as

debate between students and instructors. Besides enhancing the advocacy

INTERNATIONAL LAW STUDENTS ASSOCIATION
EXECUTIVE OFFICE

February 21, 2020

Dear Wollega University:

Congratulations on advancing to the White & Case International Rounds of the 61st Philip C. Jessup International Law Moot Court Competition! After months of grappling with the facts of the Jessup Problem, you have qualified to represent your nation in Washington, D.C., where you will face fellow elite competitors from almost 100 other countries and jurisdictions.

The International Rounds will be held **12 April – 18 April 2020**, at the Hyatt Regency on Capitol Hill, 400 New Jersey Avenue NW, Washington, D.C., 20001. Some teams arrive earlier in order to mitigate jet-lag, though many will arrive between 11-12 April. Teams *must* arrive no later than the **morning of 12 April** for two mandatory events: Registration (10:00 am to 2:00 pm) and Orientation (2:00 pm to 4:00 pm). It is mandatory that teams be in attendance for Orientation at 2:00 pm on Sunday, 12 April, and that the teams register in advance of Orientation.

A tentative schedule of events during the week is on the next page of this letter. A final schedule of events will be posted on our website by April 2020.

ILSA has also secured a room block at the competition hotel (the Hyatt Regency on Capitol Hill), which you can access here. Rooms start at a rate of $229/night. If you have any troubles making your bookings, please e-mail us at jessup@ilsa.org. Furthermore, if your team is in need of travel documentation or a visa invitation letter, please e-mail your request to jessup@ilsa.org.

Congratulations again! We are very excited to see you this spring!

Sincerely yours,

Lesley A. Benn, J.D.
Executive Director
International Law Students Association
701 13th Street NW
Washington, D.C. 20005
www.ilsa.org

ILSA

Figure 2A letter issued to our school by ILSA(International Law Students' Association congratulates us for qualifying to represent Ethiopia in the international rounds.

The major activities undertaken by the Center are the following.

The Center organized the 3rd National Moot Court Competition in collaboration with the Higher Education Strategy Centre on internally displaced persons, which is still one of the bold human rights concerns in Ethiopia. Though hosting a National Moot Court Competition is an arduous task that requires detailed planning, organization, and follow-up, thanks to the School's staff who have enormous experience in moot court activities, the Center was able to host one of the most successful national moot court competitions in the Country. The major tasks of the Center were: preparation and approval of rules of procedure that regulate the competition; recruitment of professional judges who judge the skills of students through moot courts. the Center has also enhanced the University's reputation through participation in different national and international moot court competitions.